WISCONSIN CATHOLIC CONFERENCE

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RULINGS ON RELIGION HAVE CHANGED MUCH OVER TIME

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Supreme court opinions at the state or federal level offer insights into how society changes its mind on key questions. Over the past forty-plus years, the rulings of the Wisconsin Supreme Court on matters related to religion show such a change – a change more favorable in its treatment of religion.

Article 1, Section 18, of the Wisconsin Constitution says the following:

The right of every person to worship Almighty God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend, erect or support any place of worship, or to maintain any ministry, without consent; nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishments or modes of worship; nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries.

From statehood through the 1960s, Wisconsin courts interpreted Article 1, Section 18, as a strict bar against any aid to religion. In the 1890s, Roman Catholic citizens took legal action to protest the purchase and reading of the King James Bible in public schools. The court upheld their challenge stating that the school district supported bible reading was illegal.

In the early 1960s, the Wisconsin Supreme Court continued to rule against state aid to religion. In one opinion, the court held that Wisconsin's constitution was the strictest in the nation regarding the separation of church and state.

By the early 1970s, things began to change. In 1971, the U.S. Supreme Court opinion in *Lemon v. Kurtzman* provided additional direction to lower courts on the question of state support for religious institutions. The Court crafted a three-part test, since known as the "Lemon test", for use in cases regarding religion that came before it.

To pass the Lemon test, a law must: 1) have a valid secular purpose; 2) not have the primary effect of advancing religion; and, 3) not require excessive entanglement between government and religion.

In 1974 and 1975, the Wisconsin Supreme Court heard cases involving state aid to the Marquette Dental School. In those cases, the court modified its earlier rulings regarding the state

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constitution. The court ruled that both the First Amendment and Article 1, Section 18, "operate to serve the same purpose" and that a law or policy that meets the Lemon test would also be valid under the Wisconsin Constitution.

Since the 1970s, the state supreme court has used the Lemon test and its three parts to uphold, among other things, the Milwaukee Parental Choice Program, which provides students of limited means with vouchers to attend schools of their family's choosing, including religious schools.

In a 1996 decision involving the religious liberty of the Amish, the court ruled that, while the Wisconsin Constitution and the First Amendment mean the same thing in matters relating to the free exercise of religion, the state constitution goes further than the First Amendment in protecting religious liberty from state interference. This summer, in a ruling about the right of religious schools to hire people in "ministerial" positions, the state supreme court held that the Wisconsin Constitution uses "the strongest possible language" in the protection of the rights to conscience and religious freedom.

When it comes to religious liberty, our state supreme court has charted new territory over the past 40 years. And it raises interesting questions as to its path in the future.

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