

Court Ruling That Could Convey Special Civil Rights Legal Protection Based Upon Sexual Orientation and Sexual Identity

There is a pending Michigan Supreme Court case (the Rouch World case) that could dramatically alter the interpretation of the Michigan civil rights law and thereby convey protections based on “sexual orientation” and “gender identity” that could significantly impair religious liberty in the future. Of course, Michigan’s civil rights law does not expressly provide such protections. It only provides legal protection based on the “sex” of the individual, not expressly “sexual orientation,” or “gender identity”. Unfortunately, recently the U.S. Supreme Court ruled that the term “sex” in the federal civil rights act also provides protection based on sexual orientation and gender identity. There are some who hope to use this opinion to pressure the Michigan Supreme Court to interpret the Michigan civil rights act in the same way. The Michigan civil rights law has broad application and dictates requirements and prohibitions applied to all employers, labor unions, public accommodations, educational institutions, and housing. This law has almost no exemptions for religious institutions or religious individuals. Were it not for constitutional exemptions imposed by courts for “ministerial” employees, the law would apply to almost all religious organizations and individuals. Unfortunately, when civil rights laws add special protections for “sexual orientation” and “gender identity”, it has a strong tendency to undermine religious liberty. For example, in the famous Jack Phillips cake baker case out of Colorado, anti-Christian activists have been trying to use such laws to run a Christian cake baker out of business for many years because he refuses to create cakes to celebrate same-sex sexual relationships. In cases across the country, sexual orientation provisions have been used to interfere with the free exercise of religion, including religious business owners involved in the creation or provision of creative expression products or services including a photographer and florist. A biological male in Anchorage, Alaska, who identified as transgender, tried to use such laws to gain access to an overnight domestic violence shelter for women who were often escaping sex-trafficking or being assaulted by men. Unfortunately, these laws are a weapon of choice to punish religious groups and individuals to affirm same-sex sexual conduct.

Michigan is no stranger to cases like this. Country Hill Farm in Eaton County, owned by Stephen Tennis, declined for religious reasons, to host wedding for same-sex couples. After expressing his position on social media, Country Mill was excluded from the nearby East Lansing Farmers Market based on sexual orientation protections of the City’s civil rights ordinance. Fortunately, the U.S. District Court for the Western District of Michigan granted an injunction against the City based on the likelihood of a First Amendment violation, requiring that Country Mill Farm be reinstated into the Farmers Market.

If the Rouch World ruling is unfavorable, churches will also face the issue of potentially being required to grant access to transgender individuals in female restrooms. I am already advising church clients struggling with these issues.

There is clear evidence to support the position that the writers of the Michigan civil rights law (known officially as the Elliott-Larsen Civil Rights Act) never intended it to provide protections based on sexual orientation. I understand that one of the 2 original sponsors of the Act acknowledged in a public hearing before it was passed that the law did not provide protection based on sexual orientation.

So What Can We Do?

The briefs have already been filed by the attorneys in this case. The Michigan Attorney General is strongly supporting the position to interpret the term “sex” to provide protection for sexual orientation, gender identity, and gender expression. So, what can you do now? You can pray. The Bible clearly indicates that the heart of kings and rulers is in the hand of the God of the universe. Pray that wisdom and good legal sense will prevail to reject this attempt to expand the Michigan civil rights law beyond what the drafters ever intended. We serve the God who is able to do exceedingly abundantly above all that we ask or think. Ephesians 3:20. There is currently a 4 to 3 Democrat to Republican majority on the Michigan Supreme Court. This is a close case. I remember years ago when there was an important case in front of the Michigan Supreme Court that dealt with whether or not the Christian schools in Michigan would be required to follow the teacher certification rule. In a shocking decision the Court ruled 4 to 3 that the application of the rule to private religious schools would violate the First Amendment. I am told this case shocked even court insiders, and I am sure many prayers went up to God before that case was decided.

Timothy W. Denney, Attorney at Law