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USCCB briefs in two cases urge court to uphold traditional marriage

Patricia Zapor Catholic News Service | Jan. 30, 2013
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In "amicus" or friend-of-the-court briefs in two Supreme Court cases that weigh the constitutionality of same-sex marriage, the U.S. Conference of Catholic Bishops argues that redefining marriage as other than between one man and one woman is not required under the Constitution.

In separate briefs submitted Tuesday, the USCCB urged the court to uphold California's Proposition 8, in which voters said marriage should be limited to the traditional definition of one man and one woman and to uphold the federal Defense of Marriage Act, known as DOMA.

The court will hear oral arguments in the two cases -- *Hollingsworth* v. *Perry*, and *United States* v. *Windsor* -- on March 26 and 27, respectively.

In the California case, the USCCB argues that though the Supreme Court "has held that laws forbidding private, consensual, homosexual conduct between adults lack a rational basis, it does not follow that the government has a constitutional duty to encourage or endorse such conduct. Thus, governments may legitimately decide to further the interests of opposite-sex unions only."

The brief argues that because the union between a man and a woman is "the only union capable of creating new life," therefore "given both the unique capacity for reproduction and unique value of homes with a mother and father, it is reasonable for a state to treat the union of one man and one woman as having a public value that is absent from other intimate interpersonal relationships."

USCCB General Counsel Anthony Picarello Jr. said in the brief's summary that though society has changed some standards, the idea that marriage is a union of a man and a woman is not a historical relic, "but a vital and foundational institution of civil society today. The government interests in continuing to encourage and support it are not merely legitimate, but compelling."

The summary said only marriage as traditionally defined "joins together persons with the natural ability to have children, to assure that those children are properly cared for. No other institution ensures that children will at least have the opportunity of being raised by their mother and father together."

It added that the problems flowing from divorce and broken families "would not be addressed -- indeed, they would only be aggravated -- were the government to fail to reinforce the union of one man and one woman with the unique encouragement and support it deserves."

In the USCCB brief in the DOMA case, Picarello argued that the 1996 federal law does not infringe on a fundamental right.

"There is no fundamental right to marry a person of the same sex," the brief's summary notes. "Such a claim must be rejected because it does not satisfy the test to which this court adheres in determining whether an

asserted right is fundamental. Specifically, civil recognition of same-sex relationships is not deeply rooted in the nation's history and tradition -- quite the opposite is true.

"Nor can the treatment of such relationships as marriages be said to be implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed."

That case takes up the law passed by Congress and signed by President Bill Clinton defining marriage as between one man and one woman for the federal government's purposes, such as for Social Security benefits, federal programs, and federal estate and income taxes. A New York woman who inherited her wife's estate upon her death and had to pay $363,000 in federal estate taxes is challenging the law. Had her spouse been male, she would have been exempt from that tax.

Picarello's argument summary said Edith Windsor's claim that her marriage should be recognized by the federal government "cannot fairly be characterized as part of a generalized 'right to marry.' This court's decisions describing marriage as a fundamental right plainly contemplate the union of one man and one woman."

He wrote that Windsor's case does not involve a class of people deserving of heightened scrutiny by the court.

"Windsor's involvement in a past homosexual relationship, by contrast, is the product of her own voluntary choice," the brief said. "Likewise, she is not a member of a politically powerless group needing protection against majoritarian impulses. To the contrary, the last two decades have witnessed far-reaching changes in how the law treats persons in same-sex relationships, changes that belie any claim of political powerlessness."

Extending heightened legal scrutiny to Windsor's situation to extend the definition of marriage "would not only have a distorting effect on this court's equal protection jurisprudence as a whole, but would undermine the defense of state laws that define marriage as the union of one man and one woman, or that otherwise involve a classification based on 'sexual orientation,'" it said.

"Such a ruling would compromise the ability of states to accommodate religious and moral objections to homosexual conduct on the part of employers and individuals. In the end, a decision applying heightened scrutiny would seriously impede democratic solutions to questions about the legal treatment of persons in same-sex relationships."

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