

The U.S. Supreme Court and parental responsibility for a transgender child: much ado about nothing or implicit stance?

On March 19, U.S. news agencies announced that the appeal filed by Mary and Jeremy Cox will not be heard by the U.S. Supreme Court.

Before delving into the procedural matter and its repercussions on the ecclesiastical level, it should be emphasized that the decision taken by the highest body of federal jurisdiction does not enter into the merits of the matter. It should be remembered that the acceptance of the petition of a *writ of certiorari* is only the preliminary stage to the scheduling of the hearing and is entirely discretionary. Moreover, as appears from the statistics released by the Supreme Court itself, it is a very rare event, in the order of 2% of all requests¹.

This means that this type of dismissal does not even require a statement of reasons, and it is not possible to argue, except indirectly and by conjecture, an indication of the will of the panel of judges. Actually, this type of dismissal may well be the result of contingent assessments, of low *constitutional tone* of the appeal, or of elements concerning the individual dispute.

With these due premises, these are the facts of the case: the couple formed by Mary and Jeremy Cox, in 2021, had lost custody, *rectius* had been declared forfeited of parental responsibility, of their son A. Cox, who had begun a path of affirmation of his transsexual identity. The disagreement had reached levels that were not easily manageable within the family, reaching its climax in the refusal by the former to call the latter with a gender-neutral name and pronoun.

The removal order of the minor, who was fifteen years old at the time, had been taken by the social services of the State of Indiana and had been confirmed in the various levels of judgment.

As stated in the *writ of certiorari*² petition, dated September 25, 2023, the Indiana judges did not generally deny the suitability of the Coxes to carry out their duties, but argued that the education given, based on the Christian faith, was detrimental to the orderly growth of the child who, in the meantime, had developed an eating disorder³.

¹ Cf. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, *Supreme Court Procedures* (<https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/supreme-1>).

² Accessible on the website of the Supreme Court (https://www.supremecourt.gov/DocketPDF/23/23-450/280447/20230925182821507_JcMc%20Petition%20E%20FILE%20Sep%2025%2023.pdf).

³ Cf. J. HERSHBERGER, *Petition for a writ of certiorari, M. C. and J. C. v. Indiana Department of Child Services*, Supreme Court Press, Boston, Massachusetts, 2023, p. 4.

Some media⁴ have pointed out, as a feature of the situation, that the Coxes are Catholic; to be fair, other news agencies⁵, referring more accurately to the text of the *writ* petition, have called them devout Christians. The common trait is the incidence of their religious beliefs in openly condemning the young person's gender identification.

To tell the truth, it is evident that Catholic doctrine, while reprobating gender ideology and transsexualism, does not cease to offer pastoral assistance and support to those who live these inclinations, as demonstrated by the magisterium of recent Pontiffs⁶. Nor does the Church forget the difficult and very serious and primary responsibility of parents in offering their children moral and religious education⁷, which naturally includes support in moments of identity crisis.

This would lead to the subsuming of the appeal in the case protected by the First Amendment, the foundation of religious freedom and American separatism. And, in fact, this was the argument proposed by appellants' lawyers: the State and federal authorities would not have the power to influence the moral education of children, except in the case of an objective assessment of the existence of a higher interest to be protected.

Since gender ideology, in addition to being considered unacceptable on a religious level, does not enjoy unanimous consensus on the beneficial effects on growth, it would not be seen – in the appellants' opinion – an interest worthy of protection, such as to surpass freedom of conscience and education⁸.

We will not know the Court's orientation on this point: since A. Cox has become an adult pending the judgment, the subject matter of the dispute has ceased, and the supreme magistracy has not intended to exercise its nomophylactic authority. Of course, as the plaintiffs' lawyers already predicted, this is only a postponement of an issue that will be the subject of future court battles.

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⁴ Cf. A. WRIGHT, *Catholic couple say Indiana state government took their trans son away from them because they refused to use his preferred pronouns*, in "MailOnline", February 20, 2024 (<https://www.dailymail.co.uk/news/article-13106033/Indiana-trans-son-taken-away-Supreme-Court.html>); Q. PAYNE, *Supreme Court declines to hear Catholic couple's lawsuit over transgender child custody*, in "CNA. Catholic News Agency," March 19, 2024 (<https://www.catholicnewsagency.com/news/257137/supreme-court-declines-to-hear-catholic-couple-s-lawsuit-over-transgender-child-custody>).

⁵ Cf. K. PHILLIPS, *Indiana parents asking U.S. Supreme Court to take case involving custody of trans teen*, in "IndyStar," December 14, 2023 (<https://eu.indystar.com/story/news/2023/12/14/indiana-dcs-parental-rights-transgender-rights-supreme-court-petition-indiana-lgbtq-aclu-todd-rokita/71815606007/>); S. MARTIN, *Christian Parents Who Lost Custody of Transgender Teen Appeal Case to U.S. Supreme Court*, in "Churchleaders," December 18, 2023 (<https://churchleaders.com/news/464600-indiana-parents-of-transgender-teen-appeal-case-to-u-s-supreme-court.html>).

⁶ See BENEDICT XVI, *Address on the Occasion of Greetings to the Roman Curia*, 21 December 2012; FRANCIS, *Address to the participants in the international conference "Man-woman, image of God. For an Anthropology of Vocations"*, 1 March 2024; cf. also DICASTERY FOR THE DOCTRINE OF THE FAITH, *Replies of the Dicastery to H. E. Mons. Blacks*, October 31, 2023 (https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_ddf_20231031-documento-mons-negri.pdf).

⁷ Cf. can. 1136 CIC; *Gaudium et Spes*, no. 48; *Gravissimum Educationis*, no. 3.

⁸ Cf. J. HERSHBERGER, *Petition for a writ of certiorari, M. C. and J. C. v. Indiana Department of Child Services*, pp. 16-20.