

THE CULTURE WAR

Good News from a Surprising Source: The Federal Judiciary

by David Barton
April, 2007

When considering the role of judges today, most Americans emphatically agree with a declaration made two centuries ago by Founding Father Elbridge Gerry, a signer of the Declaration of Independence and a framer of the Constitution and Bill of Rights. In describing the role of federal judges at the Constitutional Convention in 1787, Gerry succinctly declared:

It was quite foreign from the nature of their office to make them judges of the policy of public measures.¹

Luther Martin, another delegate at the Constitutional Convention, agreed, declaring:

A knowledge of mankind and of legislative affairs cannot be presumed to belong in a higher degree to the Judges than to the Legislature.²

Two centuries later, Americans still believe that the courts should not be lawmakers or super-legislatures; but they also believe that the courts have wrongly taken unto themselves this role, especially in the area of religious expressions. A recent poll found that seventy-seven percent of the nation felt that “the courts have overreacted in driving religion out of public life,” and fifty-nine percent believed that the judiciary was singling out Christianity for attack.³ Such opinions are not surprising when considering that judges and public officials currently:



- Censor religious words from student graduations but allow all other words⁴
- Allow classrooms to have information on Eastern Oriental and Native American religions but not on Christianity⁵
- Permit Jewish and Islamic holiday displays but not Christian ones⁶
- Allow students to wear Islamic but not Christian garb⁷
- Require students to participate in an indoctrination to Islam in which they must pretend they are Muslims and pray to Allah⁸ but prohibit those same students from saying “under God” in the Pledge of Allegiance⁹
- Require that if Christians pray public prayers, they may not use Christian words¹⁰

There are many other examples reflecting a similar hostility to Christianity – and this is only one of the many areas in which judicial activism is evident. Citizens have become critical of judges legislating their own personal views through judicial fiat not only in the area of religious expression

but also in the areas of marriage, education, criminal justice, and many other subjects. Yet, when citizens publicly express their disapproval of judicial activism, judges respond with stern warnings that to criticize the judiciary endangers the country and threatens our form of government.

For example, following two decisions in which the U. S. Supreme Court used foreign precedents to strike down American laws, Justice Sandra Day O'Connor (picture on left) publicly condemned the verbal attacks on the judiciary in the wake of the Court's irresponsible and unprecedented action.¹¹ Similarly, Chief Justice of the Massachusetts Supreme Court Margaret Marshall (center picture), who bypassed the legislature and judicially ordered the official recognition of homosexual marriages, warned that those criticizing her decision were "threatening public trust in the judicial system, a cornerstone of democracy."¹² And in hearings before the U. S. Senate Judiciary Committee, federal judge Joan Lefkow (picture on right) called on Congress "to publicly and persistently repudiate gratuitous [verbal] attacks on the judiciary."¹³



(Evidently, these judges have forgotten that the First Amendment protects not only Free Speech in general but also specifically protects the right of citizens to express their "grievances" to and about the government. As one national columnist insightfully observed, "Isn't it amazing how easily free speech frightens its so-called advocates?"¹⁴ President Harry Truman's advice seems appropriate for such judges: "If you can't take the heat, get out of the kitchen.")

These and other judges warn that public criticism against their decisions "threatens the independence of the judiciary" and that the opinions of citizens must never be permitted to influence their branch. The Founders would have been appalled by such rhetoric, for as Jefferson explained:

We think, in America, that it is necessary to introduce the people into every department of government.¹⁵ (emphasis added)

Furthermore, the Founders flatly rejected the notion that the judiciary – or any branch, for that matter – was independent from the people. As Jefferson declared:

It should be remembered as an axiom of eternal truth in politics that whatever power in any government is independent is absolute also. . . . Independence can be trusted nowhere but with the people in mass.¹⁶ (emphasis added)

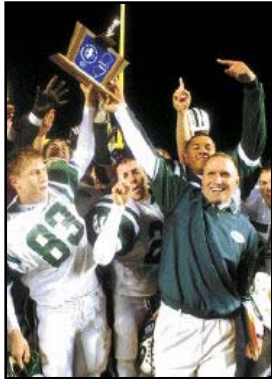
The hyper-sensitivity of judges to what is often justly deserved criticism, combined with what many times are absurd and asinine rulings, not only elicits but also deserves the public disapproval they receive. Yet, it is only the worst judges that become public caricatures of the judiciary; the reasonable, consistent, and restrained judges (of which there are hundreds) are rarely noticed. For example, there are currently some 882 federal judges,¹⁷ and each handles more than 400 cases per year, issuing dozens of rulings,¹⁸ but the public probably hears about less than one percent of the total rulings each year – and even then they hear only about the most egregious decisions; the many good decisions usually go unnoticed. This newsletter will therefore examine some of the numerous decisions indicating the positive changes currently occurring within the federal judiciary.

[Click Here to Sign Up
for our Newsletter!](#)

RELIGIOUS EXPRESSIONS & RELIGIOUS LIBERTIES

Athletic Prayers

Over recent decades courts have regularly ruled against public religious activities involving teachers. (Some courts permit student-led, student-initiated activities, but activities involving teachers have been curtailed.) Courts hold that teachers are authority figures and for them to be involved in a religious activity constitutes possible coercion against students who might feel that if they didn't participate that their grade would suffer. Consequently, schools regularly bar teachers from participating with students in religious expressions.



For example, New Jersey high school football coach Marcus Borden was prohibited by the school from bowing his head and “taking a knee” with his team when his players voluntarily gathered for prayer before their games. (Coach Borden was a model coach, having been awarded *USA Weekend Magazine*’s “National Caring

Coach of the Year” and the American Football Coaches Association’s “National Power of Influence Award.”) Coach Borden objected to this exclusion from joining with his team and sought relief in court.

Federal judge Dennis Cavanaugh ruled that the school had violated Coach Borden’s First Amendment rights of free speech, academic freedom, and freedom of association. In fact, after acknowledging that the pre-game prayers were a tradition that had existed for decades, Judge Cavanaugh stated that for the coach “to not be allowed to participate in these traditions . . . just doesn't seem right.”¹⁹

Although Coach Borden is now free to kneel with his team in prayer, the school warns that he still cannot pray with them. (Yet, since many prayers are silent, how will the school know whether he is praying silently when the team prays? – how will they know when to enforce their ban against him?) Nevertheless, this ruling is a happy departure from previous rulings in this area.

(The case was argued on behalf of Coach Borden by the Seton Hall Lawschool Center for Social Justice. Judge Dennis Cavanaugh was placed on the federal bench in 2000 by President Bill Clinton.)

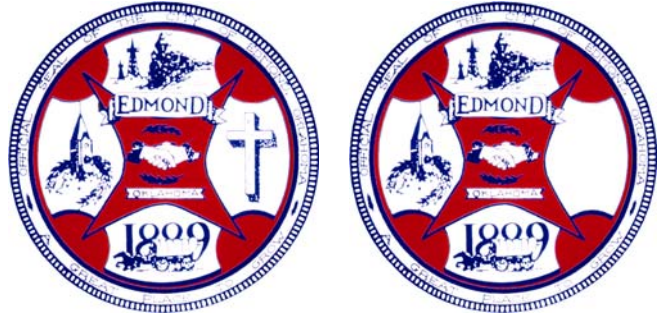
Crosses in City Seals

Over recent years, numerous federal courts have ordered the removal of Christian symbols from city seals, even if the symbols appeared for historic reasons.

For example, Zion, Illinois was founded in 1901 by clergyman John Alexander Dowie, who also founded the major church in the town. In laying out the city, the north-south streets bore a Bible name while the east-west streets were numerically numbered. There is no doubt of the significant religious influence on the formation of the town, and the city seal acknowledged that religious heritage (after all, what would you expect from a town named “Zion”?!). Nevertheless, a dissident filed a lawsuit against the seal and in 1991 the federal courts ordered that the seal be changed.²⁰



Edmond, Oklahoma experienced a similar effort to censor an acknowledgment of its heritage. In 1887, Edmond was a watering point on the Santa Fe railroad line that stretched across the buffalo covered prairies of the Oklahoma Territory, and Catholic priests operated an Indian mission there. Following the Oklahoma land rush of 1889, Edmond grew into a full-fledged town. The Catholic mission built a church to serve both the Indians and the settlers (the church was used by several denominations), and other churches were steadily added. In 1890, the Oklahoma territorial governor made Edmond the site of a state teachers' college (now called the University of Central Oklahoma), and the college met in a church for its first three years. Not surprisingly, the city's seal acknowledged the religious element in its heritage, but an unhappy dissident brought a lawsuit and in 1995, a federal judge ordered that the seal be changed.²¹ (Rather than adding something new to the seal, citizens simply removed the "offensive" element and left that portion vacant.)



The city seal of Los Angeles, California, also became the target of attack. Founded in 1771 (five years before the American Revolution), Los Angeles was birthed from the work of the Spanish padres, especially Father Junipero Serra. Spanish missions still dominate the landscape, and even the translation of the city's Spanish name affirms its religious roots: "The City of Angels." Without the work of the Spanish priests, Los Angeles well might not exist, so the city seal acknowledged (even though the acknowledgment was extremely minor) its profound debt to religion in its founding. Nevertheless, the ACLU threatened a lawsuit, to which one city official poignantly replied: "Your failure to understand the history and to rewrite it from the so-called political correctness follows the hate of past book burners. . . . [The seal's cross] does not mean that we are all Roman Catholic, or that everyone who resides in our county is a Christian – it only reflects our historical roots."²² Nevertheless, in order to avoid the lawsuit, in 2004 the city supervisors voted 3-2 to change their seal.



The city seal of Las Cruces, New Mexico is the most recent to come under attack. That community had its beginnings in 1598, well before Pocahontas was born, Jamestown was settled, or the Pilgrims arrived on the Mayflower. Like so many other southwestern states and towns, Las Cruces owes its existence to the Spanish Catholic explorers and priests. Las Cruces received its current name in 1830, after eight in a party of nine individuals were massacred by Apaches. The lone survivor (a young choir boy from a nearby mission) buried the other eight, erected a cross on each grave, and then named the area "El Pueblo del Jardín de Las Cruces" (translated "The Village of the Garden of the Crosses"). That name was eventually shortened to "Las Cruces" – "The Crosses." Given this history, it is not surprising that the city seal contains crosses – or that the seal became the target of a lawsuit. Yet, unlike the other suits, federal judge Robert Brack ruled in favor of the seal²³ – the first such victory in years!



(Judge Brack was appointed to the federal bench in 2003 by President George W. Bush.)

Student Expressions

New York Elementary student Michaela Bloodgood wanted to share with her friends at school a flyer she had written containing her personal testimony. It began: “Hi! My name is Michaela and I would like to tell you about my life and how Jesus Christ gave me a new one. I asked Him to come into my heart and save me from my sins.” She then listed several specific prayers God had answered and closed by saying: “Now that I am saved, God gave me peace in my heart and the truth that I am going to heaven instead of the other place. Praise the Lord.”

School officials forbade Michaela from giving this flyer to her friends, even during free time. They inanely reasoned that Michaela’s friends receiving the flyer would mistakenly believe that it was the school’s message instead of Michaela’s.

(This is a position taken by far too many school attorneys and judges – that when a student speaks or writes, observers will mistakenly believe that the student is actually giving the school’s official viewpoint rather than his own personal belief. This is the reason students are frequently barred from saying “God” in their personal graduation speeches. Silly, huh? When a



Congressman speaks at a news conference, does any citizen believe that he is speaking on behalf of all 535 Representatives and Senators? Certainly not! All recognize that he is expressing his own personal viewpoint.

Similarly, when an athlete is interviewed after a game, do viewers believe that he is speaking for all athletes in America or just for himself? Or when President Bush speaks, is he talking for all Republicans – or President Clinton for all Democrats? The answer is obvious – except to many judges and school attorneys.)



In their effort to keep students from thinking that Michaela was speaking on behalf of the entire school administration, school officials banned all distribution of literature at school. Fortunately, Michaela’s parents were willing to challenge this policy in court, and federal judge Norman Mordue emphatically rejected the school’s actions.²⁴ The attorney defending Michaela summarized the decision: “Religious speech is constitutionally protected, even in the public schools. School officials had no right to silence Michaela’s personal Christian testimony. . . . She has every right to express her religious views at school, and that right has been vindicated.”

(This case was argued by Liberty Counsel. Judge Norman Mordue was appointed to the federal bench in 1998 by President Bill Clinton. Interestingly, in a religious liberty case prior to this one – a case involving the religious expression of kindergarten student Antonio Peck, who included a picture a Jesus on his artwork²⁵ – Judge Mordue was twice unanimously overruled by the Second Circuit Court of Appeals. Evidently, he got the message; he ruled favorably in this case.)

[**Click Here to Sign Up
for our Newsletter!**](#)

Prayers at Public Gatherings

In recent years, federal judges have decreed which words may be used when individuals pray in public, specifically ruling that using explicitly Christian language is unconstitutional. For example, in a 1995 case involving graduation prayers, a federal judge ruled:

The court will allow that prayer to be a typical nondenominational prayer, which can refer to God or the Almighty or that sort of thing. The prayer must not refer to . . . Jesus. . . . And make no mistake, the Court is going to have a United States marshal in attendance at the graduation. If any student offends this court, that student will be summarily arrested and will face up to six months incarceration in the Galveston County Jail. . . .



Anybody who violates these orders, no kidding, is going to wish that he or she had died as a child when this court gets through with it.²⁶

Similarly, in 1999, a high school senior was chosen by her peers to offer a prayer at their graduation, but school officials required that she submit her prayer in advance so that they could edit it. They struck out innocuous “offending” phrases such as “Heavenly Father,” “Thank You for having a plan to prosper us,” “Help us to lean on Your direction and follow in Your footsteps,” and “We love You”; disappointingly, the federal courts upheld the edits.²⁷



In 2006, a federal court prohibited the Indiana legislature from opening in prayer (a 189 year-old tradition) unless the prayers avoided explicitly Christian words. Significantly, even though the legislature regularly included Christian, Jewish, and Muslim prayers, the judge ruled that the Christian prayers must be screened. He listed permissible phrases to be used in the prayers (including “Lord God, our creator,” “the God of Abraham, Isaac and Jacob,” “the God of Abraham, of Moses, Jesus, and Mohammad,” “Heavenly Father,” and “creator of

planet Earth, and the universe, and our own creator”) and decreed that prayers “using Christ’s name or title” were unconstitutional.²⁸

There are numerous others examples in which prayers are forbidden because Christian words were used, including for school boards²⁹ and city councils.³⁰

With such rulings, many secularist groups have been aggressive in challenging public prayers – including against the County Commissioners in Cobb County, Georgia (near the metro Atlanta area). Commissioners there opened their meetings with prayer but refused to tell any individual



what to say in his prayer. The ACLU therefore filed suit, claiming that by not prohibiting individuals from using the word “Jesus,” the Commissioners were thus engaging in an unconstitutional government action. However, federal judge Richard Story disagreed, and ruled that ministers who prayed to open the meetings could “identify the deity to whom they direct their prayer”³¹ – including to Jesus. This is a major victory, and a clear reversal from recent trends.

(Judge Story was appointed as a federal district judge in 1998 by President Bill Clinton.)

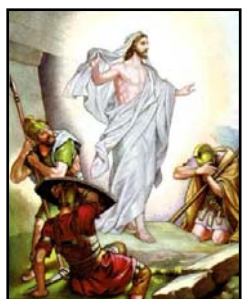
Equal Access to Public Gatherings

In *Westside v. Mergens*³² in 1990, the Supreme Court unanimously held that religious groups may have the same access to government facilities as all other groups. Nevertheless, many

officials, citing the so-called “constitutional separation of church and state,” persist in denying the use of public facilities to religious groups.

(The fact that officials place the word “constitutional” in the same phrase with “separation of church and state” is unequivocal proof that they are unfamiliar with the Constitution. The separation phrase appears nowhere in the Constitution or in any of the official discussions surrounding the framing our founding documents; there is therefore no “constitutional” separation of church and state.)

One example of public officials refusing equal access recently occurred in Watertown, New York.



Pastor Robert Mikowski of Relevant Church sought permission to use the Dulles Office Building for Easter services, but was refused on the basis of “separation of church and state.” When the church took the city into federal court,³³ the city relented and permitted the services. As the attorney who represented the church explained: “Government officials do not have the right to discriminate against Christian groups by singling them out for exclusion. Once the state opens up a building for community groups to rent, state officials must be fair and allow equal access to all groups, including churches.”

(The church was represented by Joe Infranco of Alliance Defense Fund.)

Faith-Based Programs

The government has specific responsibilities toward its citizens, including in areas such as criminal justice, domestic programs, veteran’s care, etc. Years of experience have unequivocally proven that the government itself is often the least effective means of delivering its own services. Therefore, for the past several decades the government has aggressively pursued the free-market principle of outsourcing – of contracting with private sector entities that compete with each other to provide specific public services with the greatest efficiency and lowest cost. Statistics indicate that faith-based groups are some of the most effective service providers.



For example, the average cure rate in government-run drug rehab programs is under 20 percent,³⁴ but the cure rate for faith-based drug rehab programs such as those offered by Teen Challenge is over 70 percent.³⁵ Similarly, 67 percent of those released from government prisons (either state or federal) will return to prison within 2 years after their release,³⁶ while only 8 percent of those incarcerated in a faith-based prison will return³⁷ – a recidivism (relapse) rate almost ten times lower than the government rate.



The impact of these faith-based programs is substantial both in economic and human terms. That is, when there is a 90 percent reduction in inmates returning to prison, then there is a commensurate reduction in the economic amounts expended to fund law enforcement, courts, and prisons, thereby saving billions of dollars, reducing government spending, and substantially



decreasing the burden on taxpayers. However, beyond the economic considerations is the human factor. Nearly two million children have one parent incarcerated,³⁸ and seven million have a parent under state or federal correctional supervision;³⁹ statistics show that these children are seven times more likely to have trouble with the law, and that seventy percent of

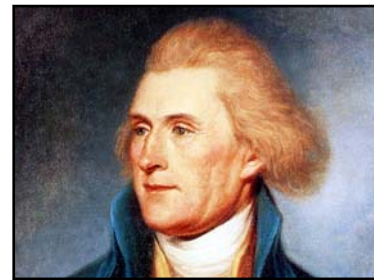


them will end up in prison.⁴⁰ But with faith-based prisons dramatically reducing the number of parents in prison, the family cycle of crime is more quickly broken, thereby reducing future crimes, crime victims, and criminal justice expenditures.

Faith-based programs work; but it must be clearly stated that the government does not seek out faith-based groups. When it seeks to provide a service, it simply releases the criterion for that particular program and then permits every provider, including faith-based ones, to compete together in the open marketplace to meet the requirements and provide that service. The proper concern of government is that its services be delivered, not whether the provider delivering the service is religious, secular, or anti-religious.

Two centuries ago Thomas Jefferson made this point in his 1781 work, *Notes on the State of Virginia*. He described the early British policy in America and how it began to change after the Revolution:

By our own act of [the Virginia] Assembly of 1705, if a person brought up in the Christian religion denies the being of a God, or the Trinity, or asserts there are more Gods than one, or denies the Christian religion to be true or the Scriptures to be of Divine authority, he is punishable on the first offence by incapacity to hold any office or employment ecclesiastical, civil, or military; on the second by disability to sue, to take any gift or legacy, to be guardian, executor, or administrator, and by three years imprisonment without bail. . . . But our rulers can have no authority over such natural rights only as we have submitted to them. The rights of [religious] conscience we never submitted – we could not submit. We are answerable for them to our God. *The legitimate powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbor to say there are twenty gods, or no god. It neither picks my pocket nor breaks my leg.*⁴¹ (emphasis added)



According to Jefferson, it is not appropriate for government to examine whether someone believes in God, or in twenty gods, for it is not the business of government to establish any religious orthodoxy – not even the anti-religious orthodoxy that secularists so fervently desire should become government policy. Yet, in the time of transition following the American Revolution, some early measures did wrongly focus on who an individual was rather than what he did.

[Click Here to Sign Up for our Newsletter!](#)

For example, provisions in the constitutions of Georgia, New York, Virginia, and other states contained a provision to the effect that “No clergyman of any denomination shall be allowed a seat in the legislature.”⁴² While those policy-makers believed that the work of ministers was too important to be sidetracked by serving in the legislature,⁴³ it was nevertheless a policy that treated a person differently simply because he was a minister. Several Founding Fathers vehemently denounced such policies – including Thomas Jefferson, who declared:

I observe . . . [in the Virginia] Constitution an abridgment of [a] right . . . I do not approve. It is the incapacitation of a clergyman from being elected.⁴⁴ (emphasis added)

Ironically, secularists today have adopted the very policy already rejected by the Founding Fathers – they believe that if someone is involved in ministry, then he should be disqualified from delivering government services. And although atheists and secularists should praise the work of faith-based groups because of the success they achieve both in economic and human



terms, they instead attempt to disqualify faith-based groups from providing even purely secular services such as feeding the homeless or manning hospices and AIDS shelters. Because of their unmitigated religious bigotry, secularists groups regularly file suit against the government and its faith-based providers.

For example, the U. S. Department of Health and Human Services (HHS) offers programs to strengthen marriages – for obvious reasons, including the fact that nearly 90 percent of the increase in violent crime between 1973 and 1995 was committed by those raised in a broken home, or a home where a mother and a father was not present.⁴⁵ Similarly, the murder rate is highest among children raised in those homes,⁴⁶ gang involvement is almost twice as high,⁴⁷ and 75 percent of juvenile criminals come from such homes.⁴⁸ Furthermore, those children are more likely:

- To be abused (abuse is up to 40 times more likely if children are in a home without a mother and a father)⁴⁹
- To end up in jail as adults⁵⁰
- To suffer depression, suffer mental illness, and need psychiatric treatment⁵¹
- To be expelled from school, repeat a grade, have behavior problems⁵²
- To use drugs and be sexually active⁵³

Additionally, the average annual income of an intact traditional family is \$48,000, while the average annual income of a single-parent (usually a mother) is only \$15,000,⁵⁴ thus producing what is termed the feminization of poverty.

Clearly, strong marriages reduce the need for federal spending in HHS programs by billions of dollars, not to mention the positive impact of strong marriages on children. For this reason, HHS offers grants for programs to strengthen marriage.



One group that received a federal grant for marriage-strengthening seminars was Northwest Marriage Institute (NMI) in the state of Washington. NMI offers both biblically-based and secular marriage education seminars, but with federal grant money, it offers only secular marriage workshops for low-income couples. In fact, the ads publicizing those workshops openly announce that “because [the seminars] are funded by the U.S. Department of Health and

Human Services, they will contain no religious indoctrination or scriptural references.” Yet, even though the seminars were completely secular, the radical group Americans United for Separation of Church and State (AU) filed suit against NMI simply because they were a faith-based group delivering secular services. AU’s suit demanded a payback of the federal grants that NMI had received as well as a prohibition against receiving any future grants, but federal judge Franklin

Burgess threw the suit out of court.⁵⁵ As confirmed by the attorney handling the case for NMI, the judge “quickly dismissed this latest attempt to prevent Christians from participating in publicly funded programs.”

(The case was handled by attorneys from the Alliance Defense Fund; Judge Franklin Burgess was appointed to the federal bench in 1993 by President Bill Clinton.)

— — — ◇ ◇ ◇ — — —

A similar law suit was filed against the faith-based activities and programs associated with the Veterans’ Administration. In assessing the needs of its patients (some 5.3 million veterans were treated at VA facilities last year), the VA asks a battery of questions, including some about whether faith has any role in its patient’s lives so that they can better identify the services needed. The VA (like the rest of the military) provides chaplains for their hospitals and those in out-patient care, and also offers the option of faith-based drug and alcohol treatment programs. In every case, the services are completely voluntary and used only by those who request them.

Yet, simply because these services were available on request, the Freedom From Religion Foundation (FFRF) filed suit to halt all the faith-based programs and services, including the use of chaplains. After initial hearings to consider the objections of FFRF, federal judge John Shabaz, like the judge in the faith-based marriage suit in Washington, dismissed the case, explaining: “The choice to receive spiritual or pastoral care, the choice to complete a spiritual assessment, and the choice to participate in a religious or spiritually based treatment program always remain the private choice of the veteran. Accordingly, there is no evidence of governmental indoctrination of religion.”⁵⁶ As the Associated Press noted, Judge Shabaz took the position that “religion can help patients heal, and is legal when done on a voluntary basis.”⁵⁷



(Judge John Shabaz was appointed to the federal bench in 1981 by President Ronald Reagan.)

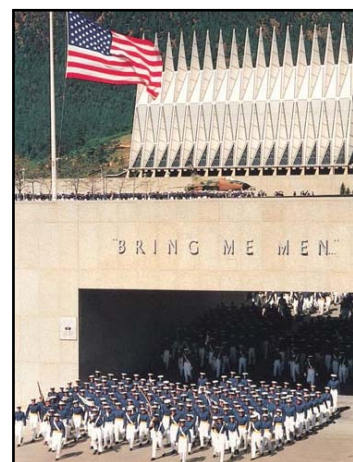
Military Academies

In 2005, secularist Mikey Weinstein, a 1977 graduate of the Air Force Academy, filed suit against the Academy, alleging that Christian chaplains there were coercing their beliefs on cadets, punishing those who would not comply, and threatening that if they did not attend Christian services, they would burn “in the fires of hell.” It was also claimed that cadets were forced to attend prayer meetings and that motivational speakers brought in to speak to cadets were religious individuals.



When the charges made national headlines, Air Force officials at the Pentagon panicked. Rather than waiting for an investigation to determine if the allegations were true, in August 2005 they quickly issued a new policy restricting when chaplains could pray, stipulating what could be said in their prayers, and

limiting their opportunities to interact with soldiers. Not surprisingly, this radical change was



met with great resistance by many Members of Congress (including Representatives Duncan Hunter, Todd Akin, Randy Forbes, Walter Jones, Marilyn Musgrave, and dozens of others). Late last year, those Members were successful in getting those restrictions rolled back and the First Amendment rights of military chaplains fully restored.



Meanwhile, despite the Pentagon's over-reaction to the press stories, the process began to work as it should. An official military review panel investigated the numerous charges and cleared the Academy. Noting that some cadets and staff members *might* have (*maybe*) made insensitive comments, the panel found no evidence of the systemic problem that had been alleged. (This is an illustration of the principle in Proverbs 18:17 that "Any story sounds true until someone tells the other side and sets the record straight.")

Despite the findings of the military panel, the civil lawsuit proceeded, but just weeks ago came to an abrupt end when federal judge James Parker dismissed the case against the Academy, noting that many of the charges were "simply conjectural and hypothetical" and that Weinstein not only had failed to identify when those alleged activities had occurred but also which, if any, cadets had been harmed by the alleged activities.⁵⁸ Major General Jack Rives, the head Air Force attorney (JAG), announced: "We believe Academy officials performed properly and that this litigation is one important step . . . in judicial recognition of that."⁵⁹

(Judge Parker was appointed to the federal district bench in 1987 by President Ronald Reagan.)

PROTECTING INNOCENT LIFE

Just as there have been many good-news judicial decisions in the area of religious expressions, so, too, have there also been many good decisions pertaining to the protection of innocent life. Significantly, there has been a steady growth in pro-life sentiment over recent years, and today, only 24 percent of Americans continue to support abortion on demand.⁶⁰ Furthermore, there is no longer any demographic group of women that remains pro-abortion,⁶¹ and only 19 percent of teens support abortion-on-demand.⁶²

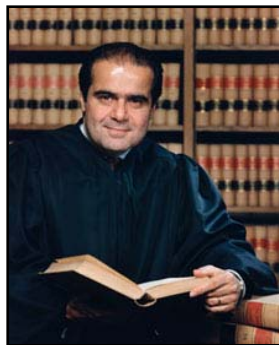
This steady rise in pro-life sentiment has been reflected in state and federal legislation. For example, a decade ago, virtually no state had laws requiring informed consent or laws banning partial-birth abortions,⁶³ yet today such laws are standard fare across the nation – as are parental notification/consent laws.



Many states also promote life and adoption through "Choose Life" license plates. In some states, the plates are made available through specific legislation authorizing the plates, and in other states by general legislation enabling the Secretary of State to issue specialty plates after receiving sufficient requests. The specialty plates, whether with logos of sports teams, environmental themes, or other messages, require citizens to pay up to \$70 extra to receive the special plate.

These plates clearly exist by means of legislative actions; and pro-abortion groups diligently fight against those plates throughout the legislative process but regularly lose because they are so far out of step with both citizens and lawmakers. Usually, when groups on the Left (whether secularists, pro-abortionists, or whatever) lose in the legislature, they frequently turn to the courts in an attempt to coerce on citizens what they were unable to do through the legitimate law-making process.

For example, atheist Michael Newdow (who filed suit to remove “under God” from the Pledge of Allegiance, “In God We Trust” from coins, and



prevent prayers at presidential inaugurations), acknowledged that he originally planned to pursue his agenda through the normal political process but recognized that he would lose at that level.⁶⁴ He therefore sued, acknowledging that court was the only place where he stood a chance of winning.⁶⁵



Supreme Court Justice Antonin Scalia is an outspoken critic of using courts to advance political agendas, believing that “deeply controversial issues like abortion and suicide rights have nothing to do with the Constitution, and unelected judges too often choose to find new rights at the expense of the democratic process.”⁶⁶ Scalia holds that “unelected judges have no place deciding politically charged questions when the Constitution is silent on those issues.”⁶⁷

Nevertheless, after pro-abortion forces lost the legislative fight to prevent “Choose Life” plates, they turned to the courts to stop what they had been unable to halt. As a result, judges in Arizona and South Carolina prohibited the plates, agreeing with pro-abortion forces that it was unconstitutional for the state to prefer one viewpoint (the pro-life position) over another (the pro-abortion position).⁶⁸ Apparently, those judges don’t recognize the obvious fact that each time a state passes a pro-life law, it is already expressing a pro-life position over the pro-abortion one, and that such expressions are regularly found to be legal and constitutional.

An attempt was made to prevent Illinois from issuing “Choose Life” plates. Illinois law allows the Secretary of State to issue those plates whenever there are a minimum number of requests, but he refused to do so, apparently siding with the judicial decisions in states such as Arizona and South Carolina. A group of pro-life citizens therefore filed suit to force the Secretary of State to follow state law and issue the plates. In a ruling contrary to others across the country, federal judge David Coar held that the Illinois “Choose Life” plates are constitutional, noting that even though its message was “politically controversial, . . . the First Amendment protects unpopular, even some hateful speech. The message conveyed by the proposed license plate is subject to First Amendment protection.”⁶⁹

As to the argument that the state is endorsing a pro-life message in preference to the abortion message, an attorney involved with the case lucidly observed: “If pro-abortion advocates do not like the message of life, then they have every legal right to develop their own plate – perhaps one that reads ‘Choose Death.’”⁷⁰

(The case for Choose Life Illinois was argued by attorney Tom Brejcha of the Thomas More Society, a conservative public interest law firm. Judge David Coar was appointed by to the federal district court in 1994 by President Bill Clinton. In 1998, he issued a sweeping nationwide injunction against pro-life protestors and in favor of abortion clinics but in 2003, the U. S.

[Click Here to Sign Up
for our Newsletter!](#)

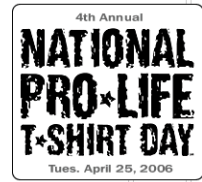
Supreme Court overruled him in an 8-1 decision, and then again in 2006 in an unanimous decision. In this instance, however, Judge Coar upheld the pro-life, pro-adoption plates.)

— — — ◇ ◇ — — —

On another pro-life front, a number of school officials have prevented students from wearing T-shirts with a pro-life message, or from distributing pro-life literature to their friends at school. Sometimes the students wear the shirts or pass out the literature simply because of their own



individual initiative; at other times, it may be part of a designated day – such as the January 22nd anniversary of the *Roe v. Wade* decision, or National Pro-Life T-Shirt Day in April. Regardless of the cause, school officials frequently prohibit students from expressing a pro-life message.



Such a prohibition might be permissible if school officials banned all T-shirts with a message, but they get into legal trouble when they single out just one message. For example, nearly one-fourth of schools observe the April pro-homosexual “Day of Silence”; other schools commemorate Earth Day or similar environmental observances; in such cases, they cannot then single out pro-life students to silence their message (nor can they single out students who wear T-shirts urging traditional marriage rather than homosexual rights). Nonetheless, many school officials still persist in their refusals.

Legal action was therefore recently brought on behalf of pro-life students in several states, including Virginia, Pennsylvania, New York, Michigan, etc. – and the students won. In fact, in Virginia, federal judge Samuel Wilson chided the Virginia school for stifling academic discourse and “trying to cut off written forms of communication,” even lecturing school officials on the meaning of the First Amendment and the fundamental rights it protects.⁷¹ The Michigan ruling struck down a similar school policy, permitting students to pass out pro-life literature and wear T-shirts with the message “Pray to End Abortion.”⁷²

As a result of such victories, other schools have begun changing their positions rather than face a court battle where they are almost guaranteed to lose. As one attorney representing the students correctly observed: “The courts stand firmly on the side of peaceful pro-life expression outside of class during school.”

(The action in behalf of the Virginia students was undertaken by Alliance Defense Fund attorney Matt Bowman; Judge Wilson was appointed to the federal bench in 1990 by President George H. W. Bush. The Michigan case was argued by attorney Delia van Loenen, also of the Alliance Defense Fund; it was decided by Judge Victoria Roberts, appointed to the federal bench in 1998 by President Bill Clinton.)

THE SUPREME COURT SETS A NEW TONE

These are just a few of the many positive decisions handed down with increasing frequency in the federal courts. What has contributed to this change? Two clear factors: (1) the recent changes in the makeup of the U. S. Supreme Court, and (2) the number of strict-constructionist judges who have recently been appointed to federal courts of appeals and federal district courts.

The addition of Chief Justice John Roberts and Associate Justice Samuel Alito has raised the number of strict-constructionists on the Court from three to four. (According to my colloquial count, there are currently four Justices who actually read the U. S. Constitution, four who would rather read the constitution of any other nation, and one big squish right in the middle who’s not sure which constitution he



should read.) Four solid Justices is a dramatic improvement of the Court’s composition over the past fifteen years, and in several important opinions, those four have been able to persuade at least one of the others to join with them, thus causing cases now to be won by a 5-4 vote that before were lost by the same margin.

Life

For example, the Supreme Court recently upheld the federal law banning partial-birth abortions by a 5-4 vote,⁷³ while only seven years ago in 2000, the Court struck down a partial-birth abortion ban by the same 5-4 margin.⁷⁴ This new ruling is the first time since *Roe v. Wade* in 1973 that the Court has upheld a complete ban on a specific type of abortion procedure.

This ruling culminates years of political efforts. After taking control of Congress in 1995, Republicans successfully passed two laws banning partial-birth abortions, but each was vetoed by President Clinton. Probably the most visible leader during those efforts was U. S. Senator Rick Santorum, who personally raised millions of dollars to run ads educating the American people on that barbaric procedure. As a result of such efforts, the percentage of Americans opposing that practice rose to seventy-six percent.⁷⁵ However, with Congress unable to override the presidential veto, states began instituting bans. Nebraska's ban was challenged and overturned by the U. S. Supreme Court in 2000, thus ending state efforts to ban the procedure.



Work was then begun anew in Congress to create a federal ban that would forever end the practice. In 2003, that federal ban was signed into law by President Bush, even establishing a two-year prison term for doctors who performed a partial-birth abortion. The ban was immediately challenged by the same abortion doctor who successfully challenged the Nebraska law in the 2000 case. Three federal courts promptly overturned the new federal ban, and three federal courts of appeals upheld those lower court decisions. However, by the time the

case reached the Supreme Court, two new Justices had been placed on the Court by President Bush, thus providing the votes necessary to reverse the Court's position from seven years earlier.

The recent ruling received both strong praise and condemnation. On the one hand, 2008 Democratic presidential candidates were unanimous in condemning the decision – including Senator Hillary Clinton, who voted for the ban in 2003. Additionally, liberals such as Ralph Neas of People for the American Way (PAW) saw the ruling as a harbinger of bad things to come – that Justice Alito had “brought the Court to the brink of judicial disaster”; and Democratic Senate Majority Leader Harry Reid – who also voted for the ban in 2003 – similarly denounced the Court, lamenting the addition of Alito. (Recent interviews reveal that some in the Senate who voted for the ban had counted on the Court overturning it, thus allowing them to appear mainstream without actually helping end the gruesome procedure.)

[Click Here to Make a Contribution to WallBuilders!](#)

On the other hand, 2008 Republican presidential contenders were unanimous in praising the decision. Additionally, former Senator Santorum, who had worked so fervently to see the ban become law, declared:

This is a great victory for humanity in this country. . . . [This] is the first step away from a society that looks at the life of an unwanted, unborn child as nothing more than a problem that needs to be disposed of, and the first step toward a society that respects and values all human li[ves] . . . [as] unique gifts from the Almighty to be welcomed and loved.



President Bush also praised the ruling:

I am pleased that the Supreme Court upheld a law that prohibits the abhorrent procedure of partial-birth abortion. . . . The Supreme Court's decision is an affirmation of the progress we have made over the past six years in protecting human dignity and upholding the sanctity of life. We will continue to work for the day when every child is welcomed in life and protected in law.

This ruling opens the door for further restrictions on abortion, including at the state level. In fact, states have already begun moving forward in introducing additional restrictions on abortion or resurrecting state bans previously struck down. (In what pro-life advocates hope is a prophetic statement, pro-abortion Justice Ginsburg angrily predicted that the Court's decision in this case was part of a movement that would "chip away" at the "constitutional" right to abortion.) This recent ruling is actually the second favorable decision delivered by the Court on the abortion issue; the other involved limiting the use of the Hobbs and RICO Acts.

In the 1980s, abortion clinics alleged that pro-life protesters who gathered outside abortion clinics peacefully to protest or to hold prayer vigils were obstructing their commerce and thus violating two federal anti-racketeering laws. The first was the 1946 Hobbs Act, outlawing the obstruction of



commerce "by robbery or extortion," and the second was the 1970 RICO Act (Racketeer Influenced and Corrupt Organizations Act), under which two violations of the Hobbs Act could be considered a "pattern of racketeering activity" that would entitle the "victims" (i.e., the abortion clinics) to triple damages. Clinics successfully persuaded police and courts to apply the Hobbs and RICO Acts against pro-life protesters,

resulting not only in arrest and jail time for protesters (even children) but also in personal bankruptcies as clinics were able to collect triple damages from protesters.



In 1994, the Supreme Court ruled that the Hobbs Act could be used against protesters, but in 2003, the Court reversed itself and held that the activity of pro-life protesters around clinics did not constitute extortion or the use of "force, violence, or fear" to obtain another's property. The Court therefore sent the case back to the lower Circuit Court to enter a final judgment, but rather than dismissing the case, that Circuit Court kept the case alive. The case just recently came back to the Supreme Court, and the Court held – again – that the Hobbs Act (and thus RICO) does not apply to pro-life protests against abortion or abortion clinics.⁷⁶ This ruling finally removes a sinister tool that pro-abortionists had used against pro-lifers exercising their specific First Amendment right to peaceably assemble and petition for a redress of their grievances, not to mention their general First Amendment right to free speech.

[Click Here to Sign Up
for our Newsletter!](#)

Marriage

In another favorable action by the Supreme Court, it refused to pick up a lower court decision challenging the federal protection of marriage. California was one of the states in 2004 in which officials such as the mayor of San Francisco were involved in permitting homosexual marriages in violation of California Prop 22, which declares that marriage is the union of one man and one woman. Additionally, the federal DOMA (Defense Of Marriage Act) applied to California and allowed the state to reject same-sex marriages from other states. Homosexual activists filed suit



against the two measures, and lower courts upheld both. In fact, in the DOMA case, federal judge Gary Taylor declared that there was no fundamental right to same-sex marriage.⁷⁷ Homosexual activists therefore appealed both losses – their loss on the California statute to the State Supreme Court (which upheld Prop 22), and their loss on the federal statute to the U. S. Supreme Court, which declined to hear the case, thus leaving judge Taylor’s ruling as the final word in the Ninth Circuit, which exercises jurisdiction over seven states and fifty-four million Americans.

(Judge Taylor was appointed to the federal bench in 1990 by President George H. W. Bush.)

Religious Expressions

Last year after Justice Roberts was placed on the Court (but before Justice Alito arrived), two Ten Commandments cases came before the Court, one challenging Texas’ display of the Ten Commandments outside the state capitol and the other challenging a display of the Ten Commandments among a group of documents in a Kentucky courtroom. The Supreme Court ruled 5-4 in favor of the Texas display, and 5-4 against the Kentucky display. (Providentially, the deciding vote in favor of the Texas Ten Commandments display was cast by Justice Stephen Breyer, who had no prior history of supporting public religious expressions.)

The Supreme Court’s decision in favor of the Texas Ten Commandments display (its first favorable ruling on the Ten Commandments since 1980) allowed lower courts to follow suit and issue favorable rulings on similar displays. As one national article observed: “Public displays of the Ten Commandments have enjoyed unprecedented favor in both the courts and the legislatures since the two Ten Commandments cases were argued at the Supreme Court last year.”⁷⁸ Such truly has been the case.



For example, since the Supreme Court’s favorable decision, the Seventh Circuit Court of Appeals (with jurisdiction over the states of Illinois, Indiana, and Wisconsin) upheld a Ten Commandments display⁷⁹ – as did the Sixth Circuit Court of Appeals (with jurisdiction over Kentucky, Ohio, Tennessee, and Michigan)⁸⁰ and also the Eighth Circuit Court of Appeals (with jurisdiction over Arkansas, Iowa, Missouri, Minnesota, Nebraska, North Dakota, and South Dakota).⁸¹ Additionally, federal district courts are also now upholding Ten Commandments displays.⁸² In short, instead of losing most of the cases on this issue, virtually every Ten Commandments display has been upheld over the past two years. And Georgia Governor Sonny

Purdue just signed a bill permitting Ten Commandments displays in their public buildings, as did Kentucky Governor Ernie Fletcher.

Clearly, in the areas of life, marriage, and religious expressions, the Supreme Court has definitely set a new tone; and the 266 new strict constructionist judges placed on the lower federal courts over the past six years (now accounting for almost one-third of the total federal judiciary ⁸³) have also accelerated the many positive changes.

CONCLUSION

The significant change currently underway in the federal judiciary is actually the direct result of increased evangelical voter turnout in recent elections. Regrettably, those numbers steadily fell for almost a decade until by the 2000 election, of the 60 million estimated evangelical voters in America, only 15 million voted – and 24 million were not even registered to vote. However, in 2002, that trend reversed and there was an upturn in evangelical voter that directly produced a 7 percent national advantage for federal pro-life candidates. As a result, of the 54 Freshmen elected to the U. S. House in that election, 36 were pro-life (a 67 percent pro-life class), and of the ten



Freshmen elected to the U. S. Senate that election, eight were pro-life (an 80 percent pro-life class – and the Senate is where the help is most needed). The 2004 elections continued the increase in evangelical voter turnout, with numbers rising from 15 million evangelicals voting in 2000 to 28.9 million in 2004. (Although this is nearly double the numbers of four years earlier, it is still less than half of evangelicals voting.) This second increase resulted in a 12 percent national advantage for pro-life federal candidates. Consequently, of the 40 Freshmen elected to the U. S.

House in 2004, 25 were pro-life (a 63 percent pro-life class), and of the nine Freshmen elected to the U. S. Senate, seven – or 77 percent – were pro-life. The pro-life congressmen elected over those two elections quickly became instrumental in the passage of Congress' first four major pro-life federal laws that were free standing bills (previous pro-life victories were typically riders attached to funding bills, such as the famous Hyde Amendment which prohibited federal funds from being used to perform abortions). America's first four stand-alone pro-life laws were: (1) the Infant Born-Alive Protection Act, (2) the Unborn Victims of Violence Act, (3) the Partial-Birth Abortion Ban, and (4) the Fetal Farming Ban.

Additionally, the election of fifteen pro-life U. S. Senators into the Senate over those two elections resulted in the confirmation of two pro-life Supreme Court justices and dozens of lower federal court judges, thus producing the changes that are now becoming evident.

Regrettably, in the 2006 elections, there was a dramatic fall in evangelical voter turnout, with numbers plummeting from 28.9 million in 2004 to 20.5 million in 2006 – a drop of 8.4 million evangelical voters and a decline of 30 percent. As a result, of the 54 Freshmen elected to the U. S. House in 2006, only 17 were pro-life (a 31 percent pro-life class), and of the ten Freshmen elected to the U. S. Senate, only two were pro-life (a 20 percent pro-life class – and one of those two has declared opposition to preserving marriage as the union of one man and one woman).

Clearly, there is a direct correlation between evangelical voter turnout and electing leaders who reflect basic Judeo-Christian values. Therefore, while Christians may not always see the immediate tangible results of their vote on the evening news, nevertheless, their vote does have a

significant impact. Consequently, even if Christians are frustrated over the direction of Congress (or its lack of spending restraints, or moving forward highly publicized legislation, or whatever), they must always remember that elections *do* have a direct impact on so many issues rarely mentioned by the media, such as pro-family legislation and the confirmation of judges. So, regardless of whatever else may be discussed in the upcoming presidential election, citizens should vote with an awareness that the Supreme Court needs just one more strict-constructionist Justice to have five solid votes on the Court, thus potentially ending the federal judicial element of the culture war.

Christians must therefore remain faithfully involved at the ballot box. As the Rev. Matthias Burnet reminded Christian citizens in his day:

Finally, ye . . . whose high prerogative it is to . . . invest with office and authority or to withhold them and in whose power it is to save or destroy your country, consider well the important trust . . . which God . . . [has] put into your hands. To God and posterity you are accountable for them. . . . Let not your children have reason to curse you for giving up those rights and prostrating those institutions which your fathers delivered to you.⁸⁴



Click Here to Make a
Contribution to WallBuilders!



¹ James Madison, *The Papers of James Madison*, Henry D. Gilpin, editor (Washington: Langtree & O'Sullivan, 1840), Vol. II, p. 783, Elbridge Gerry at the Constitutional Convention, June 4, 1787.

² Madison, *Papers*, Vol. II, p. 1166, Luther Martin at the Constitutional Convention, July 21, 1787.

³ Foxnews.com, "Courts Driving Religion Out of Public Life; Christianity Under Attack" (at <http://www.foxnews.com/story/0,2933,177355,00.html>).

⁴ See *Furley v. Aledo Indep. Sch. Dist.*, No. 4:99-CV-0416-A (N.D. Tex. Oct. 21, 1999).

⁵ *Roberts v. Madigan*, 702 F. Supp. 1505 (D. Colo. 1989), *aff'd*, 921 F.2d 1047 (10th Cir. 1990).

⁶ *Skoros v. City of New York*, 437 F.3d 1 (2d Cir. 2006).

⁷ See, for example, AgapePress, "At Issue: 'Religious Accommodation' in Public Schools" (at <http://headlines.agapepress.org/archive/9/afa/292006d.asp>); WorldNetDaily, "Another student penalized for pro-life shirt" (at http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=30861); Pacific Justice Institute, "Students Suspended for Expressing Religious Beliefs" (at <http://www.pacificjustice.org/resources/news/focusdetails.cfm?ID=PR060502a>); *Hearn v. Muskogee Pub. Sch. Dist.*

020, civ-03-598-s (E.D. Okla. 2004); *M.G. v. Bush and Shenendehowa Cent. Sch. Dist.*, No. 1:07-cv-00007-LEK-RFT (N.D. N.Y. 2007).

⁸ WorldNetDaily, “Judicial Jihad: Judge Rules Islamic Education OK in California Classrooms” (at http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=36118); *Eklund v Byron Union Sch. Dist.*, No. CV-02-03004-PJH (N.D. Cal. Filed August 23, 2003), *aff’d*, 154 Fed. Appx. 654 (9th Cir. 2005) (unpublished), *cert. denied* (U.S. Oct 02, 2006) (NO. 05-1539).

⁹ *Newdow v. U.S. Congress*, 292 F.3d 597 (9th Cir. 2002).

¹⁰ See, for example, *Hinrichs v. Bosma*, 400 F. Supp. 2d 1103, 1120 (S.D. Ind. Nov. 30, 2005); *Bacus v. Palo Verde Unified Sch. Dist. Bd. Of Educ.*, 52 Fed. Appx. 335 (9th Cir. 2002); *Doe v. Tangipahoa Parish Sch. Bd.*, No. 05-30294 (5th Cir. Dec. 15, 2006); *Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369, (6th Cir. 1999); *Wynne v. Town of Great Falls*, 376 F.3d 292 (4th Cir. 2004); *Rubin v. City of Burbank*, 124 Cal. Rptr.2d 867 (Cal. Ct. App. 2002); etc.

¹¹ Human Events, “Is Justice O’Connor Chilling Protected Speech to Insulate Judges?” (at <http://www.humanevents.com/article.php?id=7187>).

¹² *The Boston Globe*, “SJC chief decries ‘attacks’ on judges; Marshall defends bench independence” (at http://www.boston.com/news/local/articles/2005/05/23/sjc_chief_decries_attacks_on_judges).

¹³ U.S. Courts, “Testimony of Joan Humphrey Lefkow, United States District Judge, Northern District of Illinois, before the Judiciary Committee of the United States Senate” (at http://www.uscourts.gov/Press_Releases/lefkowsenjudcom51705.htm).

¹⁴ Human Events, “Is Justice O’Connor Chilling Protected Speech to Insulate Judges?” (at <http://www.humanevents.com/article.php?id=7187>).

¹⁵ Thomas Jefferson, *Writings of Thomas Jefferson*, Albert Ellery Bergh, editor (Washington, DC: Thomas Jefferson Memorial Association, 1903), Vol. VII, pp. 422, to M. L’Abbe Arnoud, July 19, 1789.

¹⁶ Jefferson, *Writings*, Vol. XV, pp. 213-214, to Judge Spencer Roane, September 6, 1819.

¹⁷ Alliance for Justice, “Demographic Overview of the Federal Judiciary” (at http://www.afj.org/judicial/judicial_selection_resources/selection_database/byCourtRaceGender.asp).

¹⁸ U.S. Courts, “Federal Judges: When will the court reach a decision in my case?” (at <http://www.uscourts.gov/faq.html>).

¹⁹ *Borden v. East Brunswick Sch. Dist.*, No. 05-5923 (D. N.J. July 25, 2006).

²⁰ *Harris v. City of Zion*, 927 F.2d 1401 (7th Cir. 1991).

²¹ *Robinson v. City of Edmond*, 68 F.3d 1226 (10th Cir. 1995).

²² *Sacramento Bee*, “Marjie Lundstrom: At a crossroads for diversity, ACLU helps officials take right path” (at <http://dwb.sacbee.com/content/politics/story/9518766p-10442623c.html>).

²³ *Weinbaum v City of Las Cruces*, No. CIV 05-0996 RB/LAM (D. N.M. 2006).

²⁴ *M. B. v. Liverpool Cent. Sch. Dist.*, 5:04CV01255-NAM-GHL (N.D.N.Y. March 30, 2007).

²⁵ *Peck v. Baldwinsville Cent. Sch. Dist.* 426 F.3d 617 (2d Cir. 2005).

²⁶ *Doe v. Santa Fe Indep. Sch. Dist.*, Civil Action No. G-95-176 (S.D. Tex. 1995) (court transcription of verbal ruling by federal judge Samuel Kent, pp. 3-4).

²⁷ See *Furley v. Aledo Indep. Sch. Dist.*, No. 4:99-CV-0416-A (N.D. Tex. Oct. 21, 1999) (concluding that school district’s editorial control over sectarian references in student’s prayer were appropriate in light of Fifth Circuit precedent permitting only nonsectarian, nonproselytizing prayers to be presented at high school graduation ceremonies), *aff’d without opinion*, 218 F.3d 743 (5th Cir. 2000); *Corpus Christi Caller Times*, “5th Circuit dismisses case of edited graduation prayer” (at http://www.coastalbendhealth.com/2000/may/31/today/texas_me/1336.html); also *Amarillo Globe-News*, “Court of appeals dismisses school prayer case” (at www.amarillo.com/stories/053100/tex_LD0634.shtml), and “School district gets sued over prayer policy” (at www.amarillo.com/stories/052999/tex_LD0623.002.shtml); Levitt Letter, “October 1999: Standing ovation for taking a stand on faith” (at <http://www.levitt.com/newsletters/1999-10.html>).

²⁸ *Hinrichs v. Bosma*, 400 F. Supp. 2d 1103, 1120 (S.D. Ind. Nov. 30, 2005).

²⁹ *Bacus v. Palo Verde Unified Sch. Dist. Bd. of Educ.*, 52 Fed. Appx. 335 (9th Cir. 2002) (unpublished); *Doe v. Tangipahoa Parish Sch. Bd.*, No. 05-30294 (5th Cir. Dec. 15, 2006); *Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369, (6th Cir. 1999).

³⁰ *Wynne v. Town of Great Falls*, 376 F.3d 292 (4th Cir. 2004); *Rubin v. City of Burbank*, 124 Cal. Rptr. 2d 867 (Cal. Ct. App. 2002).

³¹ *The Washington Post*, “In Brief: Judge: Ga. County May Pray to Jesus” (at http://www.washingtonpost.com/wp-dyn/content/article/2006/09/15/AR2006091500976_pf.html). The case is *Pelphrey v. Cobb County*, 448 F. Supp. 2d 1357 (N.D. Ga. 2006).

-
- ³² *Westside Cmty. Bd. of Ed. v. Mergens*, 496 U.S. 226 (1990).
- ³³ *Relevant Church v Egan*, No. 7:2007cv00327 (N.D.N.Y. March 27, 2007); see Alliance Defense Fund, “New York officials agree to drop discriminatory ban on religious use of public buildings” (at <http://www.alliancedefensefund.org/news/story.aspx?cid=4113>).
- ³⁴ Mackinac Center for Public Policy, “Teen Challenge: Kicking Two Bad Habits” (at <http://www.mackinac.org/article.asp?ID=56>).
- ³⁵ U.S. House of Representatives, “Committee on Ways & Means: Statement of the Dave Batty” (at <http://waysandmeans.house.gov/legacy/humres/105cong/10-28-97/1028batt.htm>); Mackinac Center for Public Policy, “Teen Challenge: Kicking Two Bad Habits” (at <http://www.mackinac.org/article.asp?ID=56>).
- ³⁶ Townhall.com, “Chuck Colson: Give me that old-time religion—or else, January 14, 2005” (at http://www.townhall.com/columnists/ChuckColson/2005/01/14/give_me_that_old-time_religionor_else): “For example, Dr. Byron Johnson of the University of Pennsylvania studied graduates of Prison Fellowship’s InnerChange Freedom Initiative program for two years following their release. He found that they had a recidivism rate of only 8 percent compared to more than 20 percent for similar inmates and 67 percent nationally.”
- ³⁷ Townhall.com, “Chuck Colson: Give me that old-time religion—or else, January 14, 2005” (at http://www.townhall.com/columnists/ChuckColson/2005/01/14/give_me_that_old-time_religionor_else).
- ³⁸ North Carolina Division of Social Services, “Working with Children with Parents in Prison” (at http://ssw.unc.edu/fcrp/cspn/vol7_no1.htm); U.S. Department of Health and Human Services, “Administration for Children and Families: Working With Children of Prisoners” (at http://www.acf.hhs.gov/programs/fysb/content/aboutfysb/yes_prisoners.htm).
- ³⁹ U.S. Department of Health and Human Services, “Administration for Children and Families: Working With Children of Prisoners” (at http://www.acf.hhs.gov/programs/fysb/content/aboutfysb/yes_prisoners.htm).
- ⁴⁰ U.S. Department of Health and Human Services, “Statement by Joan E. Ohl, Commissioner Administration on Children Youth and Families” (at <http://www.hhs.gov/asl/testify/t060510.html>); National Crime Prevention Council, “The Need” (at http://www.ncpc.org/cms/cms-upload/ncpc/File/mentor_need.pdf); U.S. Department of Health and Human Services, “Administration for Children and Families: A Celebration of the Family” (at http://www.acf.hhs.gov/programs/family_celebration.htm).
- ⁴¹ Thomas Jefferson, *Notes on the State of Virginia*, (New York: M. L. & W. A. Davis, 1801), Query XVII, pp. 234-235.
- ⁴² 1777 Georgia Constitution, Article LXII; 1792 Kentucky Constitution, Article I, Section 24; 1776 Maryland Constitution, Article XXXVII; 1817 Mississippi Constitution, Article VI, Section 7; 1777 New York Constitution, Article XXXIX; 1778 South Carolina Constitution, Article XXI; 1796 Tennessee Constitution, Article VIII, Section 1; 1776 Virginia Constitution, “Form of Government.”
- ⁴³ See the 1817 Mississippi Constitution, Article VI, Section 7; the 1777 New York Constitution, Article XXXIX; the 1778 South Carolina Constitution, Article XXI; and the 1796 Tennessee Constitution, Article VIII, Section 1, that explain: “Ministers of the Gospel are by their profession dedicated to the service of God and the care of souls, and ought not to be diverted from the great duties of their function.”
- ⁴⁴ Thomas Jefferson, *The Works of Thomas Jefferson*, Paul Leicester Ford, editor (New York: G. P. Putnam’s Son’s, 1905), Vol. IX, p. 143, to Jeremiah Moor, August 14, 1800.
- ⁴⁵ *U. S. News & World Report*, “John Leo: All in the Family” (at <http://www.usnews.com/usnews/opinion/articles/051003/3john.htm>).
- ⁴⁶ MPACUK.org, “The Importance of the Father” (at <http://mpacuk.org/content/view/3539/35>); U.S. Department of Justice, “US Bureau of Justice Statistics: Survey of State Prison Inmates, 1991” (at <http://www.ojp.usdoj.gov/bjs/pub/pdf/sospi91.pdf>); see also David Lester, “Time-Series Versus Regional Correlates of Rates of Personal Violence,” *Death Studies* (1993): 529-534.
- ⁴⁷ *U. S. News & World Report*, “John Leo: All in the Family” (at <http://www.usnews.com/usnews/opinion/articles/051003/3john.htm>).
- ⁴⁸ Americans for Divorce Reform, “Children of Divorce: Crime Statistics” (at <http://www.divorcereform.org/crime.html>), citing from Ramsey Clark, *Crime in America: Observations on Its Nature, Causes, Prevention and Control* (New York: Pocket Books, 1970), p. 39; see also Boy Scouts of America, “Single-Parent Families at a Glance” (at <http://www.scoutreachbsa.org/resources/11-309/index.html>); etc.
- ⁴⁹ Wade Horn and Andrew Bush, *Fathers, Marriage, and Welfare Reform* (Hudson Institute, 1997).

⁵⁰ Cynthia Harper and Sara S. McLanahan, "Father Absence and Youth Incarceration" *Journal of Research on Adolescence*, Volume 14, Issue 3, p. 370. The study tracked a sample of 6,000 males aged 14-22 from 1979-93, finding that boys whose fathers were absent from the household had double the odds of being incarcerated.

⁵¹ The Hilltop, "Children in Single Parent Homes and Emotional Problems" (at <http://media.www.thehilltoponline.com/media/storage/paper590/news/2003/02/07/HealthAndFitness/Children.In.Single.Parent.Homes.And.Emotional.Problems-363327.shtml>); see also U.S. Department of Health and Human Services, National Center for Health Statistics, Survey on Child Health, Washington, DC, 1993; Nicholas Zill, Donna Morrison, and Mary Jo Coiro, "Long Term Effects of Parental Divorce on Parent-Child Relationships, Adjustment and Achievement in Young Adulthood." *Journal of Family Psychology* 7 (1993).

⁵² National Center for Policy Analysis, "Juvenile Crime Hotline: Illegitimacy" (at <http://www.ncpa.org/hotlines/juvcrm/tcc2d.html>); see also Boy Scouts of America, "Single-Parent Families at a Glance" (at <http://www.scoutreachbsa.org/resources/11-309/index.html>); MPACUK.org, "The Importance of the Father" (at <http://mpacuk.org/content/view/3539/35>).

⁵³ The Hilltop, "Children in Single Parent Homes and Emotional Problems" (at <http://media.www.thehilltoponline.com/media/storage/paper590/news/2003/02/07/HealthAndFitness/Children.In.Single.Parent.Homes.And.Emotional.Problems-363327.shtml>); Boy Scouts of America, "Single-Parent Families at a Glance" (at <http://www.scoutreachbsa.org/resources/11-309/index.html>); National Center for Fathering, "The Consequences of Fatherlessness" (at <http://www.fathers.com/research/consequences.html>).

⁵⁴ Heritage Foundation, "Family and Faith: The Roots of Prosperity, Stability and Freedom" (at <http://www.heritage.org/Research/Family/WM1.cfm>); see also U.S. Bureau of the Census, Money Income 1991, U.S. Government Printing Office, Washington, DC, May 1991; U.S. General Accounting Office, Families on Welfare: Teenage Mothers Least Likely to Become Self-Sufficient, U.S. Government Printing Office, Washington, DC, May 1994; U.S. Department of Health and Human Services, National Center for Health Statistics, Survey on Child Health, Washington, DC, 1993.

⁵⁵ *Christianson v. Leavitt*, case 3:06-cv-05520-FDB (W.D. Wash. March 20, 2007); see also Alliance Defense Fund, "ADF attorneys successfully defend faith-based marriage ministry in lawsuit over federal funds" (at <http://www.alliancedefensefund.org/news/pressrelease.aspx?cid=4043>).

⁵⁶ *Freedom From Religion Found. v. Nicholson*, 06-C-212-S (W.D. Wis. January 8, 2007).

⁵⁷ First Amendment Center, "Federal judge backs VA's use of religion in treating veterans" (at <http://www.firstamendmentcenter.org/news.aspx?id=17989>).

⁵⁸ *Weinstein v. United States Air Force*, 468 F. Supp. 2d 1366 (D. N.M. 2006); see also *The Washington Times*, "Suit against Air Force Academy dismissed" (at <http://www.washtimes.com/national/20061027-112923-9536r.htm>).

⁵⁹ Boston.com, "Case Against Air Force Academy Dismissed" (at http://www.boston.com/news/nation/washington/articles/2006/10/27/case_against_air_force_academy_dismissed).

⁶⁰ *The Wall Street Journal Online*, "The Harris Poll: Support for Roe v. Wade Hits New Low, Poll Shows" (at <http://online.wsj.com/article/SB114668092648642849.html>); see also PollingReport.com, "Abortion and Birth Control" (at <http://www.pollingreport.com/abortion.htm>).

⁶¹ *The Washington Times*, "Pro-life women shift to majority" (at <http://www.washtimes.com/national/20030701-115636-9509r.htm>).

⁶² Family Research Council, "In Focus: The Pro-Life Vote and the 2004 Senate Elections" (at <http://www.frc.org/get.cfm?i=IF04E02>); see also Michigan Christians for Life, "Majority of Americans are Pro-Life!" (at <http://www.nonprofitpages.com/mcfl/polls.html>).

⁶³ Heritage Foundation, "Analyzing the Effect of State Legislation on the Incidence of Abortion Among Minors" (at <http://www.heritage.org/Research/Family/cda07-01.cfm>).

⁶⁴ *Time*, "Talking with Michael Newdow" (at <http://www.time.com/time/nation/article/0,8599,267702,00.html>).

⁶⁵ *Time*, "Talking with Michael Newdow" (at <http://www.time.com/time/nation/article/0,8599,267702,00.html>).

⁶⁶ Breitbart.com, "Scalia Rips Judges on Abortion, Suicide" (at http://www.breitbart.com/article.php?id=D8KTBA5O0&show_article=1).

⁶⁷ CBS News, "Abortion Rights Not Constitutional" (at <http://www.cbsnews.com/stories/2006/10/16/supremecourt/main2090280.shtml>).

⁶⁸ *Arizona Life Coalition v. Stanton*, No. CV-03-1691-PHX-PGR, 2005 WL 2412811 (D. Ariz. Sept. 26, 2005); *Planned Parenthood of South Carolina v. Rose*, 236 F. Supp. 2d 564 (D. S.C. 2002), *aff'd*, No. 03-1118 (4th Cir. 2004).

⁶⁹ *Choose Life Illinois v. White*, 1:04-CV-04316 (N.D. Ill., January 19, 2007).

⁷⁰ OneNewsNow.com, "Pro-life activist welcomes federal judge's license plate ruling" (at http://www.onenewsnow.com/2007/01/prolife_activist_welcomes_fede.php).

⁷¹ Alliance Defense Fund, “Court grants ADF motion for preliminary injunction, orders school officials to lift pro-life speech ban” (at <http://www.alliancedefensefund.org/news/story.aspx?cid=3987>). The case is *Raker v. Frederick County Pub. Sch.*, No. 5:06-CV-00122 (W.D. Va. Jan. 19, 2007).

⁷² *M.A.L. v. Kinsland*, 2:07-cv-10391-VAR-SDP (E.D. Mich. January 30, 2007).

⁷³ *Gonzales v. Carhart*, No. 05-380, 550 U. S. ____ (2007), and *Gonzales v. Planned Parenthood Federation of America*, No. 05-1382, 550 U. S. ____ (2007).

⁷⁴ *Stenberg v. Carhart*, 530 U.S. 914 (2000).

⁷⁵ Lifenews.com, “Associated Press Story Misleads on Partial-Birth Abortion Polling” (at <http://www.lifenews.com/nat3047.html>): “A March 2005 Harris poll found that 72% of Americans said abortion should be illegal in the second three months of pregnancy, and 86% said abortion should be illegal in the last three months of pregnancy. A late July 2006 poll by Quinnipiac University found 76 percent of Americans believe partial-birth abortions should be illegal except when necessary to save the life of the mother.”; see also polls that place the percentage at about 70 percent: LifeSiteNews.com, “Gallup Poll Says 70% in Favor of Partial Birth Abortion Ban” (at <http://www.lifesite.net/ldn/2003/feb/03021705.html>); The Gallup Organization, “Americans Agree With Banning ‘Partial-Birth Abortion’” (at <http://www.galluppoll.com/content/?ci=9658&pg=1>).

⁷⁶ *Scheidler v. Nat’l Org. for Women and Operation Rescue v. NOW*, No. 04-1244, 547 U.S. ____ (2006).

⁷⁷ *Smelt v. County of Orange*, 374 F. Supp. 2d 861 (C.D. Cal. 2005).

⁷⁸ LifeSiteNews.com, “Ten Commandments Displays Roll to Victory in the Courts and the Legislatures” (at <http://www.lifesite.net/ldn/2006/apr/06042707.html>).

⁷⁹ *Books v. Elkhart County, Indiana*, 401 F.3d 857 (7th Cir. 2005).

⁸⁰ *ACLU of Kentucky v. Mercer County*, 432 F.3d 624 (6th Cir. 2005).

⁸¹ *ACLU Nebraska Found. v. City of Plattsmouth*, 419 F.3d 772 (8th Cir. 2005) (en banc).

⁸² See, for example, *ACLU of Ohio v. Bd. of Comm’rs*, No. 3:02CV7565 (N.D. Ohio, April 18, 2006).

⁸³ Alliance For Justice, “Federal Judiciary By Courts And Appointing President” (at http://www.afj.org/judicial/judicial_selection_resources/selection_database/byCourtAndAppPres.asp).

⁸⁴ Matthias Burnet, *An Election Sermon, Preached at Hartford, on the Day of the Anniversary Election, May 12, 1803* (Hartford: Hudson and Goodwin, 1803), pp. 26-27.