Traditional Values
SPECIAL REPORT June, 2005

Judges: Our Robed Masters

A Call To End Judicial Tyranny!

Renegade judges ignore the Constitution to impose their own political ideologies upon American citizens and culture. We must stop them.

On June 27, 2005, the U.S. Supreme Court issued two decisions on the public display of the Ten Commandments. One case involved the framed display of the Ten Commandments on the walls of court houses in Kentucky. The other case involved a Ten Commandments monument on display on government property in Texas.

In the Kentucky case, the court ruled 5-4 that the framed copies of the Ten Commandments implied an endorsement of religion and were unconstitutional.

In the Texas decision, the court ruled that the Ten Commandments monument on the grounds of the state capitol served a secular purpose and was thus legal.

These two decisions show how confused the court is over the issue of religious freedom and the public display of religious symbols. Supreme Court Justice Antonin Scalia, writing his dissent from the court on the Kentucky case said: *"What distinguishes the rule of law from the dictatorship of a shifting Supreme Court majority is the absolutely indispensable requirement that judicial opinions be grounded in consistently applied principle. That is what prevents judges from ruling now this way, now that—thumbs up or thumbs down—as their personal preferences dictate. Today's opinion forthrightly (or actually, somewhat less than forthrightly) admits that it does not rest upon consistently applied principle."*

Supreme Court Justices "are our masters in a way that no President, Congressman, governor, or other elected official is. They order our lives and we have no recourse, no means of resisting, no means of altering their ukases. They are indeed robed masters." **— Judge Robert Bork**

The June 27th decisions are examples of judicial tyranny in action and an irresponsible and out of control federal judiciary.

There are many more examples of judicial tyranny. Here are just a few of them:

Pledge Of Allegiance Ruled Unconstitutional

On June 26, 2002, the federal 9th Circuit Court of Appeals in San Francisco ruled in favor of atheist Michael Newdow that the words "One nation, under God" in the Pledge of Allegiance is unconstitutional.

The ruling was handed down by a three-judge panel with only two of them deciding the case. (The Supreme Court threw out this case on a technicality.)

Transgender 'Husband' Granted Custody Of Her Children

In February, 2003, Florida Circuit Judge Gerard O'Brien ruled that a female-to-male transgender is legally a man under state law and can adopt her ex-wife's teenage son.

According to Judge O'Brien, sex is determined by your mind, not by genetics or your DNA. In this deci-

sion, O'Brien has declared that maleness and femaleness are simply matters of opinion—not biological facts.

The Liberty Counsel, headed by Mathew Staver has come to the defense of the mother in this case. According to Staver, O'Brien's bizarre ruling *"could really undermine all objectivity within the legal system, and we believe that it has great importance to not only the legal system, but also to marriage and to many other classifications that we recognized as protected statuses, such as national origin or race and many others."* ("Transgender Cases Focuses on How Sex is Determined," CNSNews.com, July 24, 2003.)

In a Liberty Counsel press release, Staver observed: *"To accept the notion that gender is primarily psychological will create chaos and uncertainty within the law. Just as a Caucasian cannot think she is African-American, so a male cannot think he is a female."* ("Liberty Counsel Takes On Transgender Case Where Trial Judge Found That Gender Was Primarily A State Of Mind," Liberty Counsel Press Release, July 22, 2003.)

Judge O'Brien is a judicial tyrant who has ignored genetics and biological facts in making his ruling on gender and sex.

UPDATE: As of July 2004, a higher court ruled that this male-to-female person had no right to marry a real woman under Florida law.

Supreme Court Legalizes Sodomy

On June 26, 2003, the U.S. Supreme Court by a vote of 6-3 overturned laws against homosexual sodomy in 14 states. The decision was criticized by U.S. Supreme Court Justice Antonin Scalia in his dissenting opinion. According to Scalia, the Court's decision now calls into question state laws against bigamy, same-sex marriage, adult incest, prostitution, masturbation, adultery, fornication, bestiality, and obscenity. Scalia notes that the U.S. Supreme Court *"...has largely signed on to the so-called homosexual agenda, by which I mean the agenda promoted by some homosexual activists directed at eliminating the moral opprobrium that has traditionally attached to homosexual conduct."*

Dr. Judith Reisman, an expert on homosexuality and pornography has exposed the fact that the Court used Alfred Kinsey and Kinsey-influenced sources as the basis for its decision overturning state bans on sodomy. She writes that Justice Anthony Kennedy used bogus "science" from Kinsey's studies, plus references from the American Law Institute's Model Penal Code of 1955 to decriminalize sodomy. Reisman has exposed Kinsey's use of pedophiles and prisoners to develop his fraudulent research on homosexuality and sexual behavior in *Kinsey, Sex, And Fraud* and *Kinsey: Crimes & Consequences.* According to Reisman: *"The Court needs to revisit this decision in light of new facts displacing our ignorance: the knowledge that a duplicitous sexual deviant was the primary source used by the United States Supreme Court as their 'sex science' authority in* Lawrence v. Texas*."* (Dr. Judith Reisman, "Sodomy Decision Based On Fraudulent 'Science,' *Human Events,* August 19, 2003.)

> ***"When interpreting the Constitution and statutes, judges should seek the original understanding of the provision's text, if the meaning of that text is not readily apparent. …"— U.S. Supreme Court Justice Clarence Thomas***

Abortion On Demand

In 1973, the U.S. Supreme Court "discovered" a "right" within the Constitution that had remained hidden for nearly two centuries since our nation's founding: The "right" of women to kill their unborn children.

This "right" was created by the late Justice Harry Blackmun who discovered what he described as a "penumbra" (or shadow) of privacy rights in the 14th Amendment to the Constitution. This penumbra of privacy rights included the "right" of a woman to kill her unborn baby on demand.

In his strongly-worded dissent in *Roe v. Wade* Justice Byron White wrote that he *"could find nothing in the language or history of the Constitution to support the Court's judgment. The Court simply fashions and announces a new constitutional right for pregnant mothers, and with scarcely any reason or authority for its action, invests that right with sufficient substance to override most existing state abortion statutes."*

Because of this novel invention of a "penumbra" supposedly "emanating" from the 14th Amendment, more than 30 million babies have died since 1973.

The Myth Of Separation of Church and State

Raw judicial power and the ignoring or misinterpretation of the Constitution is also evident in cases involving the alleged separation of church and state.

The assault on religion in the public square began in earnest in 1947 in the *Everson v. Board of Education* case

before the U.S. Supreme Court. In this case, the Court declared that *"The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach."* The reference to "wall between church and state" is no where to be found in the Constitution. It was a phrase used by Thomas Jefferson in a letter to the Baptist Association of Danbury, Connecticut shortly after Jefferson became President. In the letter, Jefferson was assuring the Baptists that the federal government was barred by the First Amendment from interfering with the free exercise of religion in the new nation.

Oddly enough, the Supreme Court decided to use the President Jefferson's private letter to a private organization to justify creating a new policy that has been used for the past 50+ years to strip religion from the public square. The content of Jefferson's entire letter, however, expresses just the opposite sentiment. In it, Jefferson told the Baptists that the purpose of the First Amendment was to protect religion from threats from the federal government—not that the government was to strip all religious symbols and expressions from public life. He noted: *"...I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion or prohibiting the free exercise thereof,' thus building a wall of separation between Church and State."* (David Barton, The Separation of Church and State," Wallbuilders.com.)

The Supreme Court reversed the true meaning of Jefferson's comments and this decision has been the basis of dozens of similar cases during the past 50 years. Each subsequent case has been used to destroy religious freedom and strip our nation of its Christian heritage.

Year after year, in case after case, judges on the U.S. Supreme Court, federal courts, and state courts, have decided cases based upon their own personal opinions and political ideologies, not upon the written laws or the Constitution.

Professor Lino A. Graglia testified before a House Committee on the Courts and Intellectual Property on judicial misconduct on May 15, 1997. In his testimony, he said this about the Supreme Court: *"It has made itself the final arbiter on issues of literally of life and death, as in its abortion and capital punishment decisions, issues of sexual morality, as in its decisions on contraception, homosexuality, and the regulation of pornography, and issues of social order, as in its decisions on criminal procedure, street demonstrations, and vagrancy. … In sum, the issues that determine the nature of a civilization or culture and the quality of life in a society are no longer determined on a local basis by elected representatives, but for the nation as a whole by majority vote of a committee of nine lawyers unelected to office, unremovable by elections, and holding office essentially for life."*

In short, we live under what Judge Robert Bork has rightly called "Our Judicial Oligarchy." Our nation is not governed by a written Constitution or by laws passed by the U.S. Congress or state legislatures. We are ruled by as few as five or six unelected judges who act as our robed masters in Washington, DC.

History of Judicial Usurpation

How did this happen? It is essential that Americans understand two basic principles in law known as "original intent" and the "rule of law." Judges are to rule on laws based upon the "original intent" of the legislators who created the laws—not on their personal opinions or political agendas. They are also to respect the "rule of law," meaning that they are to make impartial judgments upon laws passed by local, state, or federal legislatures when these cases involve constitutional issues.

Liberal judges routinely ignore both of these principles when they create laws to fit their own political and social agendas.

INCORPORATION DOCTRINE: Judges have been aided in their usurpation of power by inventing novel legal theories such as the **"Incorporation Doctrine."**

This theory holds that after the 14th Amendment was passed to protect civil rights for blacks, the entire Bill of Rights (the First Ten Amendments) was incorporated into the 14th Amendment and that the Bill of Rights then also applied to individual states and to local governments.

This has allowed federal courts to intrude upon the rights of states to determine their own laws and has given federal courts, including the U.S. Supreme Court, unrestricted power.

Historically, the Bill of Rights was passed to restrict the power of the federal government to encroach upon the rights of states and individuals. It was never meant to apply to state governments. As late as 1922, the U.S. Supreme Court held that: "… neither the 14th Amendment nor any other provision of the Constitution of the United States imposes upon the states any

restrictions about 'freedom of speech.'" (Prudential Insurance Co. v. Cheek, 259 U.S. 530, 543 [1922].

Yet, in 1925, the U.S. Supreme Court began accepting the view that the Bill of Rights had been incorporated into the 14th Amendment. In *Gitlow v. New York,* the Court was asked to rule on a case involving Benjamin Gitlow, a Communist Party leader who had been convicted of violating New York's Criminal Anarchy Law. This law made it a crime to advocate the violent overthrow of our nation. Gitlow's attorneys argued that this law violated his free speech and that the First Amendment protection of free speech had been incorporated into the 14th Amendment.

From *Gitlow v. New York* until the present day, federal judges and the Supreme Court argue that the Bill of Rights applies to states as well as to the federal government. Yet, this was never the original intent of the Founding Fathers.

LIVING DOCUMENT DOCTRINE: A second related doctrine that has helped liberal judges rewrite and reinterpret the Constitution is the view that the Constitution is a "Living Document" that is subject to interpretation by judges without regard to the original intent of the writers. This view is promoted by liberal judges who reject the concept of deciding cases based on the clear meaning of the text in the Constitution or of laws they are asked to rule upon. Instead, these judges believe that they can create new interpretations of laws based upon their own beliefs or the latest political fad. U.S. Supreme Court Justice Antonin

Scalia has been a harsh critic of this "living document" belief among judges. He considers himself an "originalist" or "textualist" who believes that judges should interpret laws based upon the original intent of the writers—not their personal whims. "The Constitution is not an organism. It is a legal document," said Scalia. (Tom Kertscher, "Scalia slams 'living document,' philosophy," *Milwaukee Journal,* March 13, 2001)

Scalia says the Constitution must be protected from those who claim it is a living document because this gives them unrestricted power to issue decisions based upon majority opinion—not the original intent of the framers. U.S. Supreme Court Justice Clarence Thomas joins Scalia in defending the Constitution from those who would misuse it for their own political ends. Thomas has written: "When interpreting the Constitution and statutes, judges should seek the original understanding of the provision's text, if the meaning of that text is not readily apparent. … 'We the People' adopted a written Constitution precisely because it has fixed meaning, a meaning that does not change." (Clarence Thomas, American Enterprise Institute for Public Policy Research speech, February 13, 2001.)

Judge Robert Bork has noted that the U.S. Supreme Court Justices "are our masters in a way that no President, Congressman, governor, or other elected official is. They order our lives and we have no recourse, no means of resisting, no means of altering their ukases. They are indeed robed masters." (Robert Bork, "Our Judicial Oligarchy," *First Things,* November, 1996, pgs 21-24.)

How Do We Fight Judicial Tyranny?

FIRST: We must limit the appellate jurisdiction of the U.S. Supreme Court. The U.S. Constitution, Article III, Section 2, states that *"the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make."* Under this provision of the Constitution, Congress can pass a law or series of laws that prohibit the Court from cases involving such issues as abortion, homosexuality, school prayer, pornography, etc.

SECOND: Under Article III, Section 1 of the Constitution, Congress has the power to create or abolish federal courts. Congress can also cut off salaries to renegade judges and their staffs. Congress has the power to abolish federal judgeships if it wishes. Perhaps it should abolish a few judgeships to make it clear that judicial usurpation will not be allowed to continue. A judge who knew his position would be abolished might be more restrained in his rulings.

THIRD: The Constitution provides in Article III, Section 2, that judges can remain in power as long as they are on "good behavior." The Constitution provides for the impeachment of judges who fail to fulfill their duties. Grounds for impeachment are broad in the Constitution. We should urge impeachment proceedings against out-of-control judges.

FOURTH: State judges who are appointed, should be elected by the people in their states. They should not have lifetime positions. They should be forced to face the electorate so they will remain accountable.

FIFTH: We must elect local, state, and federal officials who respect the Constitution and who will curtail the power of renegade judges! *Currently, we do not live under a rule of law but the rule of tyrants.* **06/05**