From the Desk of:
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January 21, 2004

SUBJECT: Advisory Letter on The Imminent Legal Persecution of The Church And Christian Ministries in America

Dear Christian Leader:

I am writing to inform you of a serious situation facing the entire church in America. Because of recent Supreme Court opinions very serious changes have taken place in the law such that the legal persecution of the church in America is about to begin. The information I give you will demonstrate that we are now in a national church emergency. I am writing you because Christians and churches must not be caught by surprise.

Never in our lifetime has the church in America faced the emergency we are facing now and most pastors and Christian leaders do not even know the crisis exists. They are busy with ministry as they should be and do not read Supreme Court opinions to know these things. It is my duty to make sure they know so that they will have the chance to make decisions and prepare. I am also writing because there is still a little time, though not much, to change what is happening and alter the outcome. To do this will require the joint cooperation of every Christian leader, denomination, and individual Christian in this nation. That is why it is vital for you to know. It will also require the help of our Jewish friends and people of good will from other religious groups.

I have attached a document which will explain the basic situation, how it came about, and what must be done about it. Please do not put it aside but read it right away. It is divided into three parts. The first part (5 pages) gives a basic overview of the problem. Please read this part even if you are too busy to read the rest. The second part (5 pages) provides a summary in numbered outline form. The third part (15 pages) is a legal analysis demonstrating and documenting what was explained in parts one and two. If you read the first five pages you will read the whole document because you will see how serious this really is. You or your staff are welcome to contact me personally. Thank you and God bless you.

Sincerely,

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Part 1: Introduction

Dear Christian Church leader,

My name is Gary Amos. I am a constitutional lawyer from Virginia. I am writing to warn you of an imminent legal attack coming upon the whole American church. In my twenty years as a lawyer involved in Christian constitutionalism this is the most serious matter I have ever encountered.

Frankly, I would prefer not to write this letter. To some it will sound alarmist and to others extreme. But I trust God for his grace and favor as you read what I have written. In this instance the truth itself is alarming and I am responsible to tell you the truth regardless of how it may be perceived or received.

If I may use the analogy of a train, the Christian church in America has been traveling for generations in one direction on the railroad tracks. In June 2003 the U.S. Supreme Court put another train on the tracks going in the opposite direction. The two trains have not yet collided and consequently many people are not aware they are on a collision course. But the crash is coming. Unless someone acts in time to pull the handle and switch the wrong train off to the side there will be a train wreck and there will be destruction. There is about to be a train wreck between church and state in America with the church as the big loser. The destruction will be in the form of the legal persecution of the American church. We are probably only two years away. Here is why.

Last June the U.S. Supreme Court declared homosexual marriage a federally protected constitutional right, using language intended to apply to future cases. (The case – Lawrence v. Texas – was not about homosexual marriage so the language did not immediately take effect as a direct ruling. However, the language is now in place and is ready to be used.) All the Court has to do now is wait for a case on homosexual marriage so that it can use this new language as a direct ruling and impose homosexual marriage on all 50 states. When this happens Christian schools, colleges, and universities will begin losing their tax exempt status for failing to hire homosexuals. Christian non-profits will be sued by government civil rights departments or by private individuals for "discriminatory" hiring practices. The tithes and offerings of God's people will be awarded by state and federal courts to "activists" who sue Christian schools, ministries, and non-profits. Whole ministries will be bankrupted and driven out of existence.

In short, we are on the threshold of two new phenomena in America, homosexual marriage and the legal persecution of the Church in America and of Christians. The legal attack on the Church and Christians has not yet started but will begin shortly because of steps that have already been taken. Very few people understand this, that is why these developments will take most people by surprise and will happen very, very fast. That is also why I am doing all I can to reach people with information about what is happening so that they can take steps to deal with the situation.

Simply put, we are now in a constitutional crisis which very few people perceive or understand. The Supreme Court's Lawrence v. Texas opinion, combined with other opinions in other areas of the law, creates a situation of legal jeopardy for Christianity in America in a way previously unknown in our country's history.

The turning point came last November 18, 2003 when the Massachusetts Supreme Court ruled that homosexual marriage is a constitutional right in Massachusetts. The Massachusetts court was simply applying what the U.S. Supreme Court said in Lawrence v. Texas five months earlier. This caught many by surprise because Lawrence v. Texas was supposedly about whether Texas could make homosexual sodomy a crime. It was not about homosexual marriage. However, the U.S. Supreme Court did more than simply decide whether homosexual sodomy could be a crime. It decided the issue and then went further to announce a new principle, namely, constitutional protections for personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education apply equally to persons in homosexual relationships as they do to heterosexual persons. In other words, the U.S. Supreme Court has already announced a federal constitutional right for homosexual marriage but it will not go into effect in all 50 states until the Supreme Court gets a case on that issue. They will have the opportunity to make such a ruling in as little as one to two years. The Massachusetts Supreme Court ruled the way it did because the U.S. Supreme Court had already spoken. The outcome of the Massachusetts case was entirely predictable. No one should have been surprised.

The U.S. Supreme Court had already ruled in Romer v. Evans (1996) that homosexuals are a persecuted minority entitled to special minority status under the law. In Romer the Court treated sex like race and announced that homosexuals are entitled to the same kind of civil rights protections for their "sexual orientation" as black Americans are entitled on the basis of color or race. When the issue is racial discrimination, charities and non-profits lose their tax-exempt status if they discriminate on racial grounds. In Romer the Court adopted the dissenting opinion from Bowers v. Hardwick in 1986 which said that disapproving homosexual conduct is equivalent to "racial animus" (i.e., racial hatred). This sets a trap for Christian non-profits that refuse to hire homosexuals on morals grounds. It means that they can lose their tax exempt status for practicing "discrimination."

The 1986 Bowers v. Hardwick dissent, the 1996 Romer v. Evans majority, and the 2003 Lawrence v. Texas majority combine to create a new and alarming legal reality. If the U.S. Supreme Court remains consistent with what these cases have said, Christian organizations who are equal opportunity employers (Christian schools, colleges, universities, etc.) can be sued by government civil rights agencies, by state attorneys, or by private individuals on the grounds of discrimination for refusing to hire people involved in the homosexual lifestyle.

The scope of the Romer case in 1996 was somewhat limited, so this kind of attack on Christian organizations did not begin right away. Lawrence v. Texas has removed those limitations and opened the way for the legal persecution of Christian organizations to begin. The change is so recent that few people know about it. At the moment there are

no well-publicized law suits underway. But there has been a change and everything is now in place for the legal assault to begin, with or without a ruling on homosexual marriage. However, once the Court rules in favor of homosexual marriage as they have already indicated they will, the momentum will shift dramatically because a host of legal changes will occur overnight, particularly where civil rights laws are concerned, and the persecution of the American church will begin in earnest. This result will take place because of the way in which changes in one area of the law can dramatically affect other areas of the law. We are looking at one to two years, three at most if past experience is any indication.

The basis of these decisions (the Bowers v. Hardwick dissent, the Romer v. Evans majority, and the Lawrence v. Texas majority) is that **it is unconstitutional to have Judeo-Christian moral values as the foundation of marriage laws or any laws**. This principle was announced by the U.S. Supreme Court in Eisenstadt v. Baird in 1972. Prior to 1972 states could use marriage laws and public health laws to discourage fornication. After 1972 states could no longer have Judeo-Christian morals and family values as the basis of marriage laws and sexual regulations law. In the 1986 Bowers v. Hardwick dissent – which became the majority decision in Romer v. Evans and Lawrence v. Texas – Christian disapproval of homosexual conduct was equated by the Supreme Court with "racial animus" which can be punished by civil rights lawsuits and court-imposed money judgments.

For example, in 1983 Bob Jones University lost its tax exempt status for racial discrimination. BJU did not allow interracial dating, an expression of "racial animus" that violated "public policy." After June 2003 the same thing can happen for refusing to hire persons involved in the homosexual lifestyle. In the 1996 VMI dissent, Justice Scalia warned that the Court's new direction on "sex is like race" means that non-profits will lose their tax exempt status for discriminating sexually (i.e., disapproving homosexual conduct) the same as Bob Jones University did for discriminating racially. Lawrence v. Texas has created the very scenario that Justice Scalia predicted seven years ago. It is now possible to lose your tax exempt status for refusing to hire persons involved in the homosexual lifestyle because disapproving on Christian moral grounds is like racial hatred. To hold Christian moral values is to be a hater, so says the majority of the U.S. Supreme Court.

These are all results of the 1972 revolution where the Supreme Court removed Christian moral values from the law. Since 1972 the U.S. Supreme Court has been pushing the snowball up the hill. Last summer they reached the top of the hill in the Lawrence v. Texas case. Now the snowball will go down the other side very, very fast. Changes in this area could happen as quickly as they did between 1972 and 1973 when in 1972 unmarried individuals were granted a constitutional right to buy contraceptives, and only one year later were granted the right to choose abortion on demand as a form of contraception. We had Lawrence v. Texas this year. We do not know what we are facing next year as a result.

As a constitutional lawyer I have warned for years that these changes were coming and that once they began they would happen at lightning speed because no one, not even Christian attorneys, were opposing the Eisenstadt principle from 1972 which banned Judeo-Christian moral values from sexual relations law. Now the corrosive effect of the Supreme Court's 30 year war on Judeo-Christian values has reached its destructive critical mass. In case after case the Supreme Court has been adding new bricks to the wall excluding Christian values from the law, moving toward making homosexual marriage a federal constitutional right, and making it against the law to adhere to Judeo-Christian views of sexual morality. The majority opinion in Bowers v. Hardwick in 1986 was the principle exception, and it was also an anomaly in the stream of cases after 1972, meaning that it could not last. In one meeting of Christian attorneys when I warned that Bowers v. Hardwick (upholding Georgia's sodomy law) would be overturned within five years I was nearly laughed out of the room. It only took three. And now, because it was overturned in June 2003, adhering to Christian moral values can be punished as discrimination. We have now arrived at the doorstep of the legal persecution of the American church because nothing was done for 30 years to oppose the Eisenstadt principle. Any further delay and there will be no time left.

When the U.S. Supreme Court ruled last summer in Lawrence v. Texas that homosexual sodomy was both a constitutional right and a fundamental human right, and that homosexuals have the same constitutional protections as heterosexuals to marriage, procreation, contraception, family relationships, child rearing, etc., the Court in effect required lower federal courts and state courts to declare homosexual marriage a state constitutional right. The ruling in November 2003 by the Massachusetts Supreme Court simply did what the U.S. Supreme Court required them to do. Now regardless of what the Massachusetts state legislators, governor, or traditional family activists do, the issue will eventually make its way to the U.S. Supreme Court where the fix is already in. This scenario will be repeated in state after state no matter what the governors, legislators, and traditional family activists do at the state level. So there will be many opportunities for the U.S. Supreme Court to act, in addition to cases that already may be working their way through the appeals system. And the U.S. Supreme Court only needs one case from one state to complete their agenda. The harder the pro-family activists work, the quicker the U.S. Supreme Court will have the case it needs. That is why we are looking at only a handful of years at most before there will be a ruling from the U.S. Supreme Court.

Based on the language of the Bowers v. Hardwick dissent (1986), the Romer v. Evans majority (1996), the Lawrence v. Texas majority (2003), and a train of other cases going back to 1972, the U.S. Supreme Court MUST require all 50 states to recognize homosexual marriage. The new principle from Lawrence v. Texas is stated in terms that are crystal clear. The case sets forth the new public policy emphatically and unequivocally. This also means that the government MUST punish any Christian non-profit or tax exempt Christian organization who defies the new public policy. If the Court remains logically consistent with its holdings we are not talking possibility but inevitability. The current Court has a six vote majority firmly committed to the Lawrence principle while there were no dissenting opinions taking on the core issues. Justice Scalia's dissent simply argued that the majority had not said what it said.

The states are already barred from basing their marriage laws on Judeo-Christian moral principles. Judeo-Christian morality is openly ridiculed by the Court as bigotry and mean-spirited discrimination. Since the U.S. Supreme Court has specifically by direct reference eliminated Judeo-Christian morality from the law it is only a matter of time until polygamy, polyandry, and other forms of group marriage will have to be permitted as well. That may be a number of decades into the future. But it is the homosexual marriage issue and "sexual orientation" which provides the immediate context for the start of the legal persecution of the church in America. That is where we are.

There are many well-meaning efforts afoot to stop the homosexual marriage juggernaut and all that will proceed from it. Of the top three, two will not work. I am speaking of the efforts to defund the federal courts or in the alternative to remove the their appellate jurisdiction. Any success in these two areas will be temporary (can be undone by future congresses) and will leave unchanged the principles and language already pronounced by the Courts and binding on the states. Therefore, any political effect will be modest at best and the constitutional effect will be zero.

The third approach is to amend the Constitution. This is the most difficult option, the easiest to get wrong, but the only one that can command the Court to change its ways and require the Court to abide by fixed principles. The amendment getting the most attention and support is the Musgrave amendment (sponsored by Congresswoman Musgrave). It would restore as the permanent legal norm the one-man/one-woman marriage. Even if it passes, however, it does nothing to stop the imminent persecution of the American church. The Musgrave amendment reverses none of the Supreme Court language that equates Christian disapproval of homosexual fornication with racial bigotry. It does not remove the ban on Christian values from the law. It only addresses the narrow subject matter of homosexual marriage. It fixes none of the collateral issues that expose Christian non-profits and Christian ministries to legal persecution by way of "discrimination" lawsuits, etc. In other words, the Musgrave amendment needs to be part of a larger amendment or it will unwittingly sacrifice Christian schools, ministries, and organizations in order to save traditional marriage. The form will remain but the substance will still be lost in the overall social order and legal order.

Part 2: Summary of Key Issues

(1) We are in a national church emergency.

(2) In as little as 24 months the U.S. Supreme Court will rule that homosexual marriage is a federally protected constitutional right and will impose it on all 50 states. (The Court has already declared a constitutional right to homosexual marriage and now awaits the opportunity to make a direct ruling.)

(3) Simultaneously, or shortly thereafter, Christian schools, colleges, and universities will begin losing their tax exempt status for failing to hire homosexuals. Christian law schools will be threatened with loss of ABA accreditation for failing to hire homosexuals. Christian organizations, schools, ministries, etc., will be hit with an avalanche of "anti-discrimination" lawsuits filed by "aggrieved" homosexual activists. It is already possible, even without another Supreme Court ruling, for a "pro- gay rights" president to use the EEOC and the Office of Civil Rights of the Justice Department to make test cases of targeted Christian organizations. This would almost certainly take place under a democrat president in light of public statements made by most national democrat candidates. Lower federal courts are obligated to follow the U.S. Supreme Court and will therefore act against such organizations even if elected political officials refrain from doing so. This means that electing "pro-family" Republicans will not stop the persecution once it starts.

THE EMERGENCY: We have entered the countdown period for two new realities in America in as little as 24 months: (1) homosexual marriage and (2) the legal persecution of the Christian church and of Christians. We are on the threshold right now and have only a small amount of time to take the necessary steps to avert the changes that are coming.

(4) In terms of law and the structure of the American social order, the ONLY remedy for this situation is a constitutional amendment. There are no legislative answers that will work. Federal and state political activity calling for new laws in Congress or in the states WILL NOT WORK. The Supreme Court will overrule as unconstitutional any federal or state legislation that stands in the way or disagrees with the Court's new policy. Those who say otherwise do not understand constitutional law and do not understand the Supreme Court or its history. Passing laws that express the will of the people is important but will not stop the Supreme Court.

(5) The Musgrave amendment will not stop the wave of persecution and law suits that will come against churches, church schools, ministries and Christians. When it was being written, those who worked on it were not aware of the concerns raised here.

The Musgrave amendment seeks to prevent a ruling that has not yet happened. It does nothing about the rulings that have already taken place and does nothing about the Court's statement of principles that have brought us to this place.

For example, the Court's language equates Christian moral beliefs with racial animus and bigoted discrimination, and says that unmarried homosexual relationships are entitled to special constitutional protection. The Musgrave amendment leaves such language untouched. The

Musgrave amendment does not reverse the language of the Supreme Court in Lawrence v. Texas that homosexual sodomy and homosexual cohabitive relationships are a fundamental constitutional right and a fundamental human right. So even without homosexual marriage, unmarried homosexual cohabitation will continue to receive special constitutional protection where civil rights laws and other laws are concerned. Since the Musgrave amendment does not reverse the Court's view that Christian moral principles are equal to racial animus, it will not stop Christians from being in violation of civil rights laws merely for adhering to Judeo-Christian values regarding sexual misconduct and licentiousness where homosexual conduct is involved. Therefore, even if homosexual marriage is stopped with a narrowly worded amendment like the Musgrave amendment, it will not help the church defend itself from the other attacks that will follow. It leaves in place the highly charged Supreme Court language that creates the situation of legal peril for churches and Christians in the first place.

Such language from the Supreme Court binds all the lower federal courts who are required by law and legal duty to follow it. We know what lower federal courts can do in light of the Judge Roy Moore matter. His situation demonstrates very clearly just how deeply entrenched legal secularism has become both in federal and state legal systems such that the most basic statements of Judeo-Christian social norms are banned from the courthouse. Therefore, even if appellate jurisdiction were removed from federal courts (Art 3, Sect 2), the cases would go to state supreme courts who are duty bound to follow the same language. Removing appellate jurisdiction accomplishes nothing because the cases have to be heard in some court which will follow U.S. Supreme Court precedent. We know what state supreme courts can do in light of the recent ruling by the Massachusetts Supreme Court applying Lawrence v. Texas. That is why the only way out of this box is by a constitutional amendment. Every other solution allows the Court to stay on its current path continuing its current direction.

The Musgrave amendment in its present form would only prohibit homosexual marriage. It offers no protection to the Church or to Christians to shield them from the results of standing contrary to the new national public policy that already exists right now, even before homosexual marriage has been made the national policy. In the Bob Jones University case (May 1983), the university lost its tax exempt status for being at odds with national public policy on race discrimination. The Court has now equated sex with race and said that homosexuals deserve a protected minority status with special rights under the law, and that homosexual cohabitive unions are constitutionally protected. Disagreeing is equivalent to prohibited racial discrimination.

Therefore, every Bible believing church, every church sponsored school or college, and every Bible believing Christian ministry will on the wrong side of the new public policy and therefore subject to the legal consequences of going against that policy. The Court's recent ongoing misuse of the precedent in Davis v. Beason (1889) mandates that the government's new pro-homosexual policy must be followed and enforced regardless of whether people have sincerely held religious beliefs to the contrary. So even though people will expect to be protected by the First Amendment, they do not know that already there is no First Amendment protection of free exercise of religion in such a scenario. The Court has already eliminated First Amendment religious freedom as an argument that will be heard.

(6) Here is the history of Supreme Court's "30 Years War" against Christian values in the law.

1972–Eisenstadt v. Baird. The Supreme Court announces that Judeo-Christian moral beliefs can no longer be the basis for a state's sexual regulation policy. Prior to 1972 states could deter fornication and sexual promiscuity. But in 1972 with Eisenstadt v. Baird the Court said that unmarried persons have the same right as married persons to have sex. ["If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child."]

Eisenstadt v. Baird announced a new principle, that states cannot have an anti-fornication policy based on Christian values. States could not disapprove of unmarried sexual cohabitation. Logically this meant that there were no valid moral considerations to be made where sex was concerned. If there is an individual constitutional right to have sex whether one is married or not, and sex has no moral connotations of which the state can take notice, then the principle applies not only to unmarried heterosexuals but logically to unmarried homosexuals as well. Implicit in the Eisenstadt case in 1972 was the understanding that ultimately homosexual sex would receive the same constitutional protection as heterosexual sex. However, the Court would have to be patient enough to allow society to become comfortable with the idea before announcing it in some case.

1986–Bowers v. Hardwick. A Georgia law making homosexual sodomy a crime was challenged in federal court. One faction on the court intended to use this case as the opportunity to announce that homosexual sex was constitutionally protected as was unmarried heterosexual sex. However, Ronald Reagan had appointed Sandra Day O'Connor to the court. In a 5-4 ruling the law was upheld. Justice White's opinion tacitly admitted that by

upholding the sodomy law he was going against precedents that had arisen since 1972 with Eisenstadt v. Baird. Justice Blackmun wrote a stinging dissent, insisting that "The assertion that 'traditional Judeo-Christian values proscribe' the conduct involved . . . cannot provide an adequate justification for [the anti-sodomy law]. . . . A State can no more punish private behavior because of religious intolerance than it can punish such behavior because of racial animus."

The Blackmun dissent in Bowers Hardwick was written with the expectation that someday it would be the majority opinion. The Bowers v. Hardwick dissent became the majority opinion in Romer v. Evans (1996) and Lawrence v. Texas (2003). These cases stand for the proposition that a state cannot base its policies with regard to sexual relations on Judeo-Christian principles. States are not permitted to have Christian morality as the foundation for their laws regarding sex and cohabitation.

Summary: The Supreme Court began its assault on Christian values in the area of sexual regulation in 1972 with Eisenstadt v. Baird. That case made unmarried heterosexual cohabitation a constitutional right. It took 31 years to get to the place where the Court could declare homosexual cohabitation an equal constitutional right with heterosexual cohabitation as a constitutional right. Those who hold Christian values disapproving such conduct are derided by the Court as bigoted and prejudiced. The states are prohibited by the Court from relying on Judeo-Christian morality in laws dealing with sexual cohabitation. The next step is to use the equal protection clause and the due process clause to demand that the states provide full marital status to homosexual couples. Since according to the Court there can be no moral considerations where sex is concerned, and it is the right of the individual to decide how to define their own personal fulfillment through sexual union, it is only a matter of time until polygamy will be made legal again, along with bigamy, polyandry, group marriage, etc.

(7) The legal peril now facing Christians in America indicates that the time has come for entire denominations to declare a national church emergency. There should be citywide, regional, and statewide summit meetings of pastors and leaders across denominational lines to address this situation. State and federal legislators need to be made aware that Supreme Court language has placed American Christianity in legal jeopardy. State and federal legislators need to be made aware that their help is needed to call for an improved version of a constitutional amendment which will cover this entire situation, not just a part of it. As difficult as this seems there is no effective alternative. The alternatives only resolve parts of the problem, not the whole problem, and do not address the persecution question at all. At the moment the Church in America is on the defense, and in terms of momentum is on the losing side of a major social and

constitutional revolution. This cannot stand. The history of social revolutions indicates that another opportunity to solve this problem may not come again for decades or centuries if ever. That is why those concerned must act now or risk losing completely. Losing a battle this significant is not an option.

(8) We must have a constitutional amendment to stop this runaway train. There has to be a grassroots call for such an amendment. Without it the legal persecution of the American church will begin in earnest, beginning in the federal courts. The courts have already rejected Christian values in the law, and rejected Christians as bigots for adhering to traditional norms of sexual morality and decency. The federal courts will have no difficulty using the power of the courts to penalize Christians for not going along with the new national public policy. Lower courts follow the dictates of higher courts. State courts follow the dictates of federal courts.

Part 3: Analysis

Until 1972, states could use their marriage laws and public health laws to regulate sexual relations and to discourage fornication (unmarried sex between two individuals). More importantly, until 1972 the authority of states to discourage sexual immorality was tied to a state's authority to base its marriage laws and public health laws on Judeo-Christian moral norms. States were free to adopt a Judeo-Christian moral framework as the conceptual underpinning of sexual relations policy and of marriage law.

For example, as recently as 1965 when the Supreme Court issued its ruling in Griswold v. Connecticut about the right of married persons to obtain contraceptives, the Court based the right on the sacredness of the marital union between a husband and wife.

> This [Connecticut] law, however, operates directly on an **intimate relation of husband and wife**. . . . Would we allow the police to search the **sacred precincts of marital bedrooms** . . . ? The very idea is repulsive to the notions of privacy surrounding **the marriage relationship**. . . . We deal with a right of privacy older than the Bill of Rights--older than our political parties, older than our school system. **Marriage** is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being **sacred**. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.

Justice Goldberg's concurring opinion made much of the fact that the marriage relationship was the key to the existence of the constitutional right in Griswold, thus permitting the US Supreme Court to decide a case in an area of law previously left to the states.

> Although the Constitution does not speak in so many words of the **right of privacy in marriage**, I cannot believe that it offers these fundamental rights no protection. The fact that no particular provision of the Constitution explicitly forbids the State from disrupting the **traditional relation of the family--a relation as old and as fundamental as our entire civilization**--surely does not show that the Government was meant to have the power to do so. . . . While it may shock some of my Brethren that the Court today holds that the Constitution protects the **right of marital privacy**, in my view it is far more shocking to believe that the personal liberty guaranteed by the Constitution does not include protection. . . .

And as Justice Goldberg pointed out in his concurring opinion, Griswold v. Connecticut did not overturn the state's authority to base is laws on Judeo-Christian morality nor to use its laws to discourage fornication.

> Finally, it should be said of the Court's holding today that it in no way interferes with a **State's proper regulation of sexual promiscuity** or misconduct. As my Brother Harlan so well stated in his dissenting opinion in Poe v. Ullman, supra, 367 US at 553, 6 L ed 2d at 1025.
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> > "Adultery, homosexuality and the like are sexual intimacies which the state forbids . . . but the intimacy of husband and wife is necessarily an essential and accepted feature of the institution of marriage, an institution which the State not only must allow, but which always and in every age it has fostered and protected. It is one thing when the State exerts its power either to forbid extra-marital sexuality . . . or to say who may marry, but it is quite another when, having acknowledged a marriage and the intimacies inherent in it, it undertakes to regulate by means of the criminal law the details of that intimacy."

But seven short years later the US Supreme Court overturned these foundations in what can only be viewed as the most important constitutional revolution of the last century. In Eisenstadt v. Baird (1972) the Court said that a **Judeo-Christian view of sexual morality could no longer be part of the state's law**. And where marriage had been all important in 1965 to the constitutional rights in the case, now in 1972 marriage had nothing at all to do with those rights. In seven years this constitutional right of "marital privacy" based on the "intimate relation of husband and wife" and the "traditional relation of the family" "as old and as fundamental as our entire civilization" was no longer the foundation. Instead the US Supreme Court declared that unmarried fornicators were on an equal footing with married husbands and wives and there was nothing the states could do about it.

> The question for our determination in this case is whether there is some ground of difference that rationally explains the different treatment accorded married and unmarried persons under Massachusetts General Laws Ann, c. 272, 21 and 21A. For the reasons that follow, we conclude that **no such ground exists**. . . .
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> It is true that in Griswold the right of privacy in question inhered in the marital relationship. Yet the marital couple is not an independent entity with a mind and heart of its own, but an association of two individuals each with a separate intellectual and emotional makeup. **If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child**. . . . We hold that by providing dissimilar treatment for married and unmarried persons who are **similarly situated**, Massachusetts General Laws Ann, c. 272, 21 and 21A, violate the Equal Protection Clause.

It is true that on the surface Eisenstadt v. Baird was about access to contraceptives and not about a general constitutional right to unregulated fornication between unmarried heterosexuals. But this case is a perfect example of the chess game played by the Supreme Court when it undertakes to socially engineer a revolution in some area of the law. In 1972 the Supreme Court was not content to decide the issues in the case and stop there. Instead it went far beyond what was needed to decide the case and used extra language to introduce a revolutionary new principle in American constitutional law. After 1972 unmarried individuals were given an unrestricted right to sexual promiscuity and unmarried sex (states could not interfere by way of anti-fornication laws) and to choose to bear a child in the process or choose contraceptives so as not to bear a child. **This revolutionary change was possible because states could no longer base their laws regarding marriage and family or public health and fornication on Judeo-Christian precepts**. Judeo-Christian precepts were banned from the policy of the law.

In the face of this revolutionary shift of momentous proportions, overthrowing hundreds of years of American precedents and thousands of years of western culture, there was hardly a peep from the American legal community. With little fanfare or notice the US Supreme Court in 1972 elevated fornication to the status of a fundamental constitutional right, withdrew from the states the ability to base their laws on Judeo-Christian morality, and made the outrageously shocking statement that there was **not even a rational basis for treating married sex and unmarried sex differently in the law**. What was "as fundamental as our entire civilization" in 1965 (namely, the Judeo-Christian premise that sexual relations are reserved for a husband and wife in holy matrimony), was no longer even "rational" seven years later in 1972. Suddenly 2,000 years of Judeo-Christian sexual mores became "irrational" in 1972 just because five judges said so.

Eisenstadt v. Baird is also an example of what to expect when the Court undertakes to create a revolution in the law. In 1972 the Supreme Court found a constitutional right for unmarried persons to fornicate and purchase contraceptives (condoms, vaginal foam, and the like). One year later in Roe v. Wade, the Court applied Eisenstadt to say that this right included choosing abortion as a method of contraception. In one year we went from condoms to abortion all based on the language of Eisenstadt. So the newly invented right for unmarried fornicators to engage in extra-marital sexuality in 1972 became the right to kill babies in 1973. Constitutional revolutions are pretty serious matters. Things can change rapidly and dramatically. Lawyers and pundits who think that Supreme Court opinions are only about specific holdings and specific results in specific cases still do not get this point more than thirty years later. They are playing checkers while the Supreme Court plays chess.

Having decided that Judeo-Christian morality could no longer be the basis for sexual relations law, and by implication that there are no moral questions where sex is concerned (or at least none which the state can act upon), it was clear from the outset that traditional restrictions on same sex fornication would have to be eliminated as well. It was already pre-determined by the language of Eisenstadt in 1972 that the day would come where homosexual sodomy (homosexual fornication) would be given the same constitutional protections as unmarried heterosexual fornication. Eisenstadt stood for the principle that there are no moral considerations where sex is concerned and therefore unmarried persons have the same right to sexual relations as married persons. The logic of Eisenstadt also meant that if there are no moral considerations where sex is concerned, there can be no distinction between heterosexual intimacy and homosexual intimacy. Therefore unmarried persons who choose homosexual fornication have the same rights as unmarried persons who choose heterosexual fornication. The Supreme Court did not have to specifically mention homosexual sodomy in Eisenstadt, it was implied in the language and the logic of the opinion. That is how the Supreme Court plays chess.

The “anti-morals” faction of the US Supreme Court attempted to complete their revolution in 1986 with the Bowers v. Hardwick case involving a Georgia law against homosexual sodomy. Even though fourteen years had passed since the Eisenstadt decision, the state of Georgia still made homosexual sodomy a crime. Many expected that the Supreme Court would declare the law unconstitutional. Fourteen years of precedents all pointed in that direction. However, Ronald Reagan had recently appointed Sandra Day O’Connor to the court. In a 5-4 ruling the law was upheld and sodomy remained a crime. Justice White’s majority opinion tacitly admitted that by upholding the sodomy law he was going against the precedents that had arisen since 1972. But rather than revisiting Eisenstadt and correcting its outrageous assertions, White relied on the fiction that Eisenstadt dealt only with contraception. He was therefore content to write an opinion in Bowers that stood as an anomaly in the law – philosophically neutered of any legal theory – and a departure from the new direction the Court had been taking since 1972. So the Georgia law survived only because five justices pretended temporarily that the new and radically anti-moral direction the Court was taking had never really happened. White commented:

> The law, however, is constantly based on notions of morality, and if all laws representing essentially moral choices are to be invalidated under the Due Process Clause, the courts will be very busy indeed. Even respondent makes no such claim, but insists that majority sentiments about the morality of homosexuality should be declared inadequate. We do not agree, and are unpersuaded that the sodomy laws of some 25 States should be invalidated on this basis.

Chief Justice Burger's concurring opinion went further. He insisted that the history of western civilization and the two millennia during which Judeo-Christian moral standards had been interwoven into the law meant that opposition to homosexual fornication was firmly rooted in law and in tradition and therefore rightly part of American constitutional law. But the fact that his argument only made it into a concurring opinion showed how truly undermined Christian morality in law had become. Judeo-Christian moral precepts in the law had been reduced to a one judge concurrence. So it was clear that the Bowers majority failed to undo the damage that had already been done by Eisenstadt. The poison of Eisenstadt was left in the law.

The majority opinion in Bowers v. Hardwick stood isolated and alone in terms of constitutional legal theory, meaning it was only a matter of time before it would be overturned. Those who wanted to apply the Eisenstadt principle immediately and make homosexual fornication a constitutional right were furious. Justice Blackmun wrote a stinging dissent, insisting that "The assertion that 'traditional Judeo-Christian values proscribe' the conduct involved . . . cannot provide an adequate justification for [the anti-sodomy law]. . . . A State can no more punish private behavior because of religious intolerance than it can punish such behavior because of racial animus." Justice Blackmun could not have been clearer. To disapprove of homosexual fornication on the basis of Judeo-Christian moral precepts was not a good thing but a bad thing. It was so bad in fact as to be equivalent to racial hatred.

According to Blackmun, Judeo-Christian disapproval of homosexual fornication as immoral was nothing but prejudice plain and simple. He insisted that Christian views themselves should therefore not be tolerated:

> The Constitution cannot control such prejudices, but neither can it tolerate them. Private biases may be outside the reach of the law, but the law cannot, directly or indirectly give them effect.

With these words Blackmun made it blatantly obvious that in the eyes of the anti-morals faction of the US Supreme Court, **to hold Judeo-Christian moral views is to hate**. Holding Judeo-Christian moral views and hating are one and the same thing. They are "prejudices" rooted in "religious intolerance" equaling "racial animus" (racial hatred) and cannot be tolerated.

The Blackmun dissent in Bowers v. Hardwick was written with the expectation that someday it would become the majority opinion. It became the majority opinion in

Romer v. Evans (1996) and Lawrence v. Texas (2003). These cases stand for the proposition that a state cannot base its policies with regard to sexual relations on Judeo-Christian principles. States are not permitted to have Christian morality as the foundation for their laws regarding sex and cohabitation.

The Romer v. Evans (1996) case involved an amendment to the constitution of the state of Colorado. Several cities and towns had passed ordinances giving gays and lesbians special preferred status and special rights under the law. The voters of Colorado passed a constitutional amendment which said that gays and lesbians could only have the same kinds of rights enjoyed by other Coloradans.

> **Amendment 2. No Protected Status Based on Homosexual, Lesbian, or Bisexual Orientation**. Neither the State of Colorado, through any of its branches or departments, nor any of its agencies, political subdivisions, municipalities or school districts, shall enact, adopt or enforce any statute, regulation, ordinance or policy whereby homosexual, lesbian or bisexual orientation, conduct, practices or relationships shall constitute or otherwise be the basis of or entitle any person or class of persons to have or claim any minority status, quota preferences, protected status or claim of discrimination. This Section of the Constitution shall be in all respects self-executing.

The purpose of the law was to put gays and lesbians in the same position as all other persons. It simply meant that they were not to be given special rights in addition to the rights given to others who were not gay or lesbian. The amendment refused to give them the privileged status of being specially protected as a minority class in the law, a protected status for groups who have experienced historic discrimination. It was not an amendment to take away their rights. It was an amendment to refuse to give them special rights based on sexual orientation or sexual practice.

But the US Supreme Court refused to see it that way. The Court said that the refusal to promise homosexuals special rights and special status based on their sexual orientation or sexual practices <u>was itself a form of illegal discrimination</u>. As homosexuals they were entitled to special status under the law, special protections, and special rights that other people do not enjoy. The Romer opinion was based on a most bizarre legal argument which flagrantly violated the rules of logic. Justice Kennedy said that since several towns and municipalities in Colorado had already created special rights for homosexuals based on sexual orientation or practice, it would be a form of illegal discrimination for the state to take away those special rights and treat homosexuals equally with all other persons without taking their homosexual orientation into account. To make them equal was to make them unequal. Justice Kennedy argued in effect that taking away their special rights in order to make them equal with everyone else would be to deny them equal protection of the laws since taking away special rights in order <u>to make them equal made them unequal</u>. Where homosexuals are concerned, the Court said, they must be given special rights and special status under the law higher than everyone else in order to be equal to everyone else. In other words, <u>they must be unequal to be</u>

equal. In the convoluted logic of Justice Kennedy, "A" equals "not A" and 1+1=1. (Part of the explanation was based on the thinly transparent ruse by Justice Kennedy insisting that homosexuals in Colorado were not entitled to general rights like everyone else, therefore their only rights were homosexuality-based rights. Without those rights they had no rights. This was the Court's contrived justification for pretending that the opinion was only protecting equal rights rather than granting special rights. Justice Kennedy was in effect equating the legal situation of homosexuals in Colorado with blacks in America prior to the 1964 Civil Rights Act when black Americans did not enjoy equal general rights with white Americans, a completely ludicrous assertion.)

As Justice Kennedy intimated in the first paragraph of the Romer opinion where he quoted the dissent in Plessy v. Ferguson (1896), homosexuals were entitled to special rights because they have been a persecuted minority like blacks. Being black qualifies one to the special protections which are afforded by anti-discrimination laws. The Romer opinion puts homosexual orientation and practice on par with race. Therefore being homosexual entitles one to special status and rights under the law. That is why the Court labeled the Colorado amendment a malicious attempt to harm homosexuals. To make them equal is to try to harm them. To treat them like everyone else is to hate them. Kennedy wrote:

> A second and related point is that laws of the kind now before us raise the inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected. "[I]f the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare . . . desire to harm a politically unpopular group cannot constitute a legitimate governmental interest."

We have already seen from the Bowers v. Hardwick dissent (1986) that holding Judeo-Christian moral views disapproving of homosexual fornication was equated with "racial animus" or race hatred. Ten years later Justice Kennedy in Romer took up the same theme. To seek to treat homosexuals equally without giving them special rights or preferred status under the law and to disapprove of their sexual practices is "born of animosity" Kennedy says. To disapprove of homosexual fornication on moral grounds really comes from "a bare desire to harm" them. Kennedy concludes that refusing to give special protections to homosexuals is "irrational." So again we see in Romer that to hold Judeo-Christian views of morality is equated with race hatred and Christians are haters with a bare desire to harm homosexuals. To hold Christian moral values is "irrational."

Should anyone expect such a Court to protect Christians from the hammer that is about to hit the Church when the hammer is being wielded by the Court itself? To believe that the answer to this grave and perilous situation lies with the Court by sending in Christian lawyers to argue the case is naive, foolish, and cultural suicide. To try to change this by means of Christian litigators arguing in Court is like sending the Polish mounted cavalry on horseback to stop Werhmacht tanks and mechanized Waffen SS Panzer units. The Court has already clearly staked out its position that it regards people holding Judeo-Christian moral views as haters who cannot be tolerated by the law. The Supreme Court

does not say these things by accident, they write the rules to the chess game. Sending in Christian lawyers to play checkers while the Court plays chess is to lose.

The majority of the Court has accused all Christians adhering to traditional Judeo-Christian morality of ill-will and bad faith. Such an outlandish, intemperate, and undeserved attack on the American Church and indeed upon our whole American tradition can only come from someone speaking in bad faith. Therefore it is not Christians who are guilty of bad faith but the Court. The Church in America must face the reality that it is dealing with a Court dominated by a radical "anti-morals" faction who have expressed open animus towards us and who have said our views cannot be tolerated. Such a Court cannot be trusted to defend our sacred and imperishable rights. **This Court is not done with us.** It is time to wake up to that terrible fact.

The Lawrence v. Texas case from last summer (2003) should serve as a wake up call. That case completed the revolution started by Eisenstadt v. Baird in 1972. The question in Lawrence v. Texas was whether homosexual sodomy could remain a crime in Texas. The Court answered the question "no." As in the 1972 Eisenstadt case the Court was not content to resolve the issues in the case and stop there. After explaining the basic Eisenstadt principle the Court went further to state it in a new and amplified way. The Court declared explicitly what was already implicit in Eisenstadt in 1972. The new statement of the principle is that homosexual persons have the exact same constitutional rights and fundamental rights to marriage, procreation, contraception, family relationships, child rearing, and children's education as heterosexual persons. In short, as of six months ago the US Supreme Court has already declared a fundamental constitutional right and a fundamental human right to homosexual marriage, homosexual family structure, homosexual child rearing, and homosexual child education. Justice Kennedy wrote:

> The Casey decision again confirmed that our laws and tradition afford constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education. . . . Persons in a homosexual relationship may seek autonomy for these purposes, just as heterosexual persons do.

Justice Kennedy and the majority in Lawrence v. Texas specifically quoted Eisenstadt for the principle underlying their opinion. They explained Eisenstadt and relied on Eisenstadt in precisely the manner I have been predicting for years while my warnings have gone unnoticed and unheeded. For years I have tried to explain the agenda behind the 1972 Eisenstadt case to Christian attorneys in my circle of influence but to no avail. I was told that I was wrong and that what I was predicting could not happen. But what I was told could not happen has indeed happened most assuredly. Justice Kennedy explained that since Eisenstadt gives to unmarried heterosexuals the same constitutional protections for sexual intimacy and long term relational intimacy as married heterosexuals, the principle can no longer be limited only to heterosexuals. Under Eisenstadt whatever rights married heterosexuals have to sexual intimacy and intimate long-term cohabitation, unmarried heterosexuals have as well. These are constitutional

rights and fundamental human rights. Under Lawrence v. Texas, whatever rights married heterosexuals and unmarried heterosexuals have to sexual intimacy and intimate long-term cohabitation, homosexual persons have the same rights. These are constitutional rights and fundamental human rights. The entire quote reads:

> The Casey decision again confirmed that our laws and tradition afford constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education. Id., at 851. In explaining the respect the Constitution demands for the autonomy of the person in making these choices, we stated as follows:
>
> > These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.
>
> Persons in a homosexual relationship may seek autonomy for these purposes, just as heterosexual persons do.

If Lawrence v. Texas were only about decriminalizing homosexual sodomy the Court would not have used this bold language about equal constitutional rights to homosexual marriage. But if Lawrence v. Texas were only about decriminalizing homosexual sodomy or even about homosexual marriage, it would not cause me to take the drastic step of making a public spectacle of my opinions and analyses. Rather, it is what the Court has said about those who adhere to Judeo-Christian moral values that is cause for alarm. The "anti-morals" faction now controlling the US Supreme Court – rather than retreating from its extreme position in the Bowers v. Hardwick dissent in 1986 or the Romer v. Evans majority in 1996 – has reiterated Romer in 2003. The Court continues to say that disapproval of homosexual "orientation, conduct, practice, or relationship" is "born of animosity."

It is painfully evident from the language and logic of the Lawrence v. Texas decision that there has been no retreat from the Bowers v. Hardwick dissent or the Romer v. Evans majority. These cases dictate that the next one of this kind to come before the Court will be the occasion on which the Court formally mandates homosexual marriage on all fifty states, grants specially protected minority status under anti-discrimination law to persons claiming homosexual orientation or involved in homosexual conduct, and will open up the floodgates of lawsuits against Christian non-profits, Christian employers, and many Christian ministries. Even if the Court delays mandating homosexual marriage on all fifty states (which logically it cannot do in the face of the plainly stated Eisenstadt

principle), its is clear that beginning immediately, to continue to disapprove of homosexual fornication as immoral will be treated as illegal discrimination and a violation of public policy. The stage is now set for the legal persecution of the Church in America.

We should not expect the present Court to be timid however. It will mandate homosexual marriage on all fifty states. As the social earthquake proceeds from aftershock to aftershock, it is even conceivable that the day will come when Christian disapproval of homosexual conduct will be classified as a hate crime since the Court has already said that such views are equivalent to racial hatred.

The real issue here is not homosexual marriage but the persecution of the American church. From the Bowers v. Hardwick dissent, Romer v. Evans, and Lawrence v. Texas we learn where the "anti-morals" faction of the US Supreme Court is taking us. They believe that giving preferred rights and protected minority status under the law to persons who primarily identify themselves in terms of a sexual inclination is more important to society and civilization than institutions and a way of life built on Judeo-Christian moral precepts, which until thirty years ago were universally admitted to be the foundation of western civilization and the American social order. They are willing to label as "haters" all who remain committed to the Judeo-Christian moral framework. This involves not only Christians in America, but Jews, members of other religions who share the same values, and people of no religion who embrace those same values anyway. However, the target of persecution will be the American church because it represents the majority to be defeated in order to make the minority order the norm.

This line of cases stands for the proposition that homosexual "orientation" and homosexual conduct are being treated by the US Supreme Court as equivalent to race in the civil rights area. Part of this judicial revolution will be to give full equivalence of civil rights laws protections to "sexual orientation" as to skin color. This is already implicit in the cases and language being used by the Court and soon will be made explicit. This means that all federal laws and all state laws that previously punished people for discriminating on the basis of race will soon be used to punish people for "discriminating" against homosexuals by continuing simply to adhere to Judeo-Christian moral values disapproving of sexual immorality. This will be a lightning quick change when it happens because the laws are already written, they are already being enforced, and on a single day they will begin applying to anyone who disapproves of homosexual conduct on morals grounds. Then the floodgates of lawsuits will open against Christian organizations driving many of them out of existence.

Some of the actions against Christians will be at the hands of state and federal government agencies. Others will be by private individuals suing on the basis of our vast array of racial anti-discrimination laws converted to serve the purpose of crushing anyone who "discriminates" by continuing to adhere to Judeo-Christian moral values in the area of sexual conduct.

The Bob Jones University case of 1983 is an example where the university lost its tax exempt status and had to pay back taxes for the racially discriminatory practice of forbidding interracial dating. The cases on the horizon are those where the "discrimination" is in the area of forbidding homosexual relationships or failing to hire people who are out of the closet but whose job skills match those sought by the employer.

Federal regulations regarding tax exempt status list (1) eliminating prejudice and discrimination and (2) defending human and civil rights secured by law as two of the four tests for keeping tax exempt status as a 501(C)(3) organization. Now that Lawrence v. Texas has elevated homosexual orientation to the level of a federal civil right, Christian organizations are already in violation of those two tests. Revenue Ruling 75-384 says in part:

> As a matter of trust law, one of the main sources of the general law of charity, no trust can be created for a purpose which is illegal. The purpose is illegal if the trust property is to be used for an object which is in violation of the criminal law, or if the trust tends to induce the commission of crime, or if the accomplishment of the purpose is otherwise against public policy. IV. Scott on Trusts Sec. 377 (3d. ed. 1967). Thus, all charitable trusts (and by implication all charitable organizations, regardless of their form) are subject to the requirement that their purposes may not be illegal or contrary to public policy. See Rev. Rul. 71-447, 1971-2 C.B. 230; Restatement (Second), Trusts (1959) Sec. 377, Comment (c).

The "anti-morals" faction dominating the US Supreme Court has already made it clear that disapproval of homosexual activity is contrary to public policy and "cannot be tolerated." The cases we have reviewed make it crystal clear that Christian non-profits will very shortly find themselves on the wrong side of these regulations. The US Supreme Court has already stated in a number of cases that religious beliefs will have no effect on the outcome of these cases if the religious belief is contrary to public policy and fosters "discrimination."

People will ask what to do and what are the answers. First let us address what is not the answer. Appointing more Republican judges is not the answer. Justice Brennan, who wrote the Eisenstadt opinion, was appointed by Republican President Dwight Eisenhower. Three of the four dissenters in Bowers v. Hardwick (which equates Christian morals to hatred) were appointed by Republicans: Brennan by Eisenhower, Blackmun by Nixon, and Stevens by Ford. Of the six justices in the Romer v. Evans majority, Kennedy who wrote the opinion was appointed by Reagan, Stevens by Ford, O'Connor by Reagan, and Souter by George H.W. Bush. Only two of the six were appointed by democrat president Bill Clinton. In Lawrence v. Texas, Kennedy wrote the opinion joined by Stevens and Souter. O'Connor concurred. Only Ginsburg and Breyer, two of the six, were appointed by a democrat.

We are being told on every hand that the answer to a runaway Court is more republican judges. Many assume that all our problems would be solved if only President George W. Bush could appoint a few more republican judges. This is hardly the case.

Republican judges are the ones who ruined the interpretation of the 14th Amendment after the Civil War (e.g., Justices Miller, Waite, and Bradley). Republican judges are the ones who mangled our rights theory of the Constitution (Civil Rights Cases 1883). Republican judges are the ones who invented "separate but equal" which damned our country to racial turmoil in the 20th century (Justice Brown, Plessy Ferguson, 1896). It was a Republican president, Teddy Roosevelt, who gave us Justice Oliver Wendell Holmes, Jr., who said that retarded people have no rights ("three generations of imbeciles are enough" Buck v. Bell, 1927). Modern Republican judges generally are not discerning enough to realize they should not be following Holmes. Holmes is routinely quoted in opinions just about everywhere. Because of Republican judges we barely have a Constitution anymore. The Court itself has become the Constitution with Republican judges leading the parade.

As we said, Dwight Eisenhower, a republican, appointed William Brennan (a democrat), who gained notoriety as a liberal activist judge. Richard Nixon, a republican, appointed Harry Blackmun (1970) who was the architect of Roe v. Wade (Jan 1973) abortion on demand, with its companion case Doe v. Bolton which created a right to abortion on demand through all nine months of pregnancy if one doctor says okay. Nixon, a republican, also appointed Rehnquist who says that any money the government does not take from you in taxes is a subsidy (does that not mean he is an economic quasi-marxist?). Rehnquist follows the "Chicago school of economics" originated by Richard Posner (now a federal judge), the inventor of this conservative brand of neo-marxist economics which (inexplicably) is popular among vast numbers of republicans. In effect all your money belongs to the government, all your property belongs to the government, and anything the government lets you keep through exemptions or deductions is a subsidy because it is the government's money anyway, not yours. In Regan v. Taxation with Representation of Washington (May 1983), Rehnquist said:

> Both tax exemptions and tax deductibility are a form of subsidy that is administered through the tax system. A tax exemption has much the same effect as a cash grant to the organization of the amount of tax it would have to pay on its income.

Ford, a republican, appointed Stevens who joins the Court on every kind of deviation from the Constitution, and who has established himself as a leading judicial activist and an evolving-constitution-liberal. Reagan, a republican, appointed O'Connor who joined the majority in Romer in 1996 and wrote a concurring opinion in Lawrence v. Texas in 2003. Her concurring opinion said that since states were not stopping heterosexual fornication (because of Eisenstadt in 1972), it was a denial of equal protection to legislate against homosexual fornication.

As already noted, Reagan, a republican, appointed Anthony Kennedy who thinks that the Christian disapproval of homosexual sodomy on moral grounds is equivalent to racial animus and bigotry-based discrimination. He wrote the Romer decision (1996) saying that gays are entitled to a special persecuted minority status and deserve special rights above everyone else under the law. He also wrote the Lawrence v. Texas decision (2003) which said the traditional approach to marriage and family is obsolete, that we must follow what the European countries do, and laid the foundation for the next case which will impose homosexual marriage on all fifty states with gay couples having special rights higher than anyone else. Also, Christian colleges, schools, and universities will then begin losing their tax exempt status for failing to hire homosexual teachers or for publicly opposing the homosexual lifestyle as immoral. We will see all this within the next 24 months and Kennedy will be writing those opinions simply applying what he has already written. (When this happens even Rehnquist may have to agree if he still believes that a tax exemption is equal to a government subsidy, and the government cannot subsidize Christian non-profits, churches, and ministries who violate public policy.)

Bush the first, a republican, gave us Souter. This struck me as extremely odd since Souter's biggest supporters were Planned Parenthood and NOW, but Bush's advisors – John Sununu in particular – had him convinced that Souter would vote pro-life.

The Reagan/Bush legacy might turn out to be that they not only brought down the Evil Empire and the Berlin Wall, but through their judicial appointments brought down traditional marriage and put the American Church at risk. Kennedy, O'Connor and Souter are all Reagan/Bush republicans.

So when it is said that another republican, George W. Bush, needs to appoint more republican judges to solve these problems it only means that we still do not understand that republican judges have caused or helped to cause many of these problems. Someone might insist that the answer is to appoint only "conservative" republican judges. But conservative judges, in general, often have a lower view of the rights theory of the constitution than liberal judges do. On occasion liberal supreme court justices have been right when conservative ones have been wrong, and vice versa. Sometimes both liberal and conservative justices do exceptionally fine work. But when they get it wrong they can get it horribly wrong.

Ordinary citizens do not know that judicial conservatism and political conservatism are worlds apart. Conservative judges are a different breed from conservative legislators or conservative presidents and governors, at least where those eligible for Supreme Court appointments are concerned. (There are many brilliant judges in the lower courts, but they are obligated to follow the lead of the U.S. Supreme Court.) With few exceptions, Republican judges and democrat judges, conservative judges and liberal judges come from the same basic starting point. And when they take the job they are bound by oath to follow existing precedent. Left and right makes no difference here. That is why we are watching the dismantling of the Judeo-Christian heritage in this country right before our very eyes and Republican judges are the ones swinging the

wrecking ball. It is happening primarily at the hands of Republican judicial appointees. Another republican judge is not the answer. And even if a conservative judge could make a difference the collapse is happening much too quickly to hope that the answer lies in slowly appointing one new judge at a time when another one unexpectedly retires.

Similarly, the answer is not in token political maneuvers such as removing appellate jurisdiction from the federal courts. That is like taking the car keys from your grounded teenager but letting him keep his marijuana and smoke it in his room, and there is a bus stop in front of your house. There are too many ways around the appellate jurisdiction barricade. The answer is to change the undergirding premises and principles used by the judges on the Court. Since federal judges have life tenure there is only one practical way to do this, namely, a constitutional amendment for restoring our heritage and norms that they discarded beginning in 1972 with Eisenstadt. It must be an amendment that deals with the roots not merely with the leaves. An amendment that only fixes a single "result," namely, homosexual marriage, does not even come close to fixing the problem because it avoids the root entirely.

Any amendment that will protect the Church in America must repair the pillars that three decades of Supreme Court opinions have been pulling down. Anything less will mean that future generations of Christians in this country will be denizens – sub-citizens – in their own land. This is not about some slippery slope. It is about cause and effect. If we fail to understand how key language used by present day Supreme Court opinions are causes that lead to future effects, we will be caught by surprise by developments that were clearly predictable all along but we failed to see the signs of the times or read the writing on the wall.

Before I knew about the Musgrave amendment I authored a proposed amendment of my own. It is not perfect but will help you begin thinking about how to deal with the concerns I have raised. I include it here as an informational tool. The Internet address is:

http://www.28thamendment.us

This is an amendment to protect, defend, and preserve the American heritage which is being swept away before our eyes. So it covers other national issues besides marriage. This amendment (1) restores to states the authority to have a moral basis for laws, despite the Supreme Court's repeated assertions that states cannot have a moral basis for laws, (2) insulates states from having to accept homosexual marriages created in other states, (3) returns to states the authority to regulate and restrict pornography, (4) affirms the inalienable right to life of the unborn such that it is legally protectable by the states, (5) puts back in proper focus the constitutional way to handle inalienable rights and citizenship rights, including how to deal with aliens who are not citizens, and (6) creates for the first time a way for the states to exercise checks and balances against a runaway US Supreme Court.

The explanatory comments with the proposed Amendment are not yet complete, but see:

http://www.28thamendment.us/pages/comments.html

SUMMARY

The Supreme Court began its assault on Christian values in the area of sexual regulation in 1972 with Eisenstadt v. Baird where Christian principles were banned from the law. It took 31 years to get to the place where the Court could explicitly declare homosexual cohabitation an equal constitutional right with heterosexual cohabitation as a constitutional right (although the result was implicit in Eisenstadt in 1972). The "anti-morals" faction dominating the US Supreme Court has already declared homosexual marriage to be a constitutional right although most lawyers fail to understand this point and it was never reported on the national news. The Court will act sooner rather than later based on its new expanded statement of the Eisenstadt principle. When it does our country's vast array of civil rights laws will be converted overnight to serve the purposes of punishing those who disapprove of homosexual conduct as immoral. Those who hold Christian values disapproving of extra-marital sexual intimacy and homosexual fornication are still today derided by the Court as bigoted and prejudiced. The states are still prohibited from relying on Judeo-Christian morality in laws dealing with sexual cohabitation. Justice Thomas's glib dissent about the silliness of the Lawrence v. Texas case made no mark here at all.

Events will move very rapidly now that the new statement of principle is in place. The next step will be to use the equal protection clause and the due process clause to demand that the states provide full marital status to homosexual couples. This will likely occur within the next twenty-four months given the Court's posture and its docket. Simultaneously the legal persecution of the Church in America will begin in earnest starting with those who will not abandon Judeo-Christian moral precepts regarding sexual conduct, marriage and family. Since there can be no moral considerations in these matters according to the Court, and it is the right of the individual to decide how to define one's own personal fulfillment through sexual union, it is only a matter of time until polygamy will be made legal again, along with polyandry, group marriage, and so forth. There is limited time to respond to this imminent peril facing the Church in America. The only way to deal with the root of the problem is by Constitutional amendment. Any amendment that deals only with results rather than causes is not enough and will leave the Church in America vulnerable and exposed to legal persecution at the hands of the federal court system.

Respectfully,

Gary Amos