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"JUDGES AS THE ULTIMATE ARBITERS OF ALL CONSTITUTIONAL QUESTIONS IS A VERY DANGEROUS DOCTRINE":An Unconstitutional Judicial System

Unbeknownst to many Americans, a crime of monumental proportions has been committed. This travesty took place without the suddenness that would wake us from our stupor, yet it was nonetheless systematic and thorough. Like a thief prowling quietly in the shadows of darkness, this crime was initially carried out surreptitiously, later, more boldly. Now that the crime is complete, most of America's soul has been lost. Its religious underpinnings, which Alexis de Tocqueville believed set America apart from other nations, which he wrote had made America so great, are now gone. The crime of which we speak is that of robbery. It was not a fair and transparent taking based on informed consent; instead, it was based on fraud, underhandedness, and guile. America was systematically robbed of her legal heritage, a heritage that was the basis for our Constitution and a heritage that provided our ship of state with the only true anchor it had to the great principle of liberty which birthed our country.

The weapon used to secure the theft was a battle of ideas and worldviews that successfully supplanted the ideas and worldview that motivated our Founding Fathers. It is time for citizens to reclaim that treasure that is rightfully ours as Americans, by engaging in a similar battle. It won't be easy. It will take much time, toil, and effort in a cause where the odds are stacked against us. But then, our Founding Fathers knew a lot about such challenges,

for in their great struggle for liberty from Britain, they showed us that some things are worth the fight.

The writers of the Constitution intended the judicial role to be a limited one. Their documents reflect their intent, even in the amount of attention they gave to each branch. Consider that the Constitution devotes 255 lines of copy to the powers of Congress, 114 lines of copy to the powers of the President, and only 44 lines to the courts. The Founders did not envision a powerful judicial branch and thus did not feel the need to place extensive restraints on it. One of the few to anticipate future problems was Thomas Jefferson, although he was not a participant at the Constitutional Convention. His words of warning are quite accurate considering what has occurred:

> The germ of dissolution of our federal government is in the constitution of the federal judiciary; an irresponsible body working like gravity by night and by day, gaining a little today and a little tomorrow, and advancing its noiseless step like a thief, over the field of jurisdiction, until all shall be usurped from the states, and the judges as the ultimate arbiters of all constitutional questions is a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy...The Constitution has erected no such tribunal.[1]

A Reminder of What We Once Possessed

What our Founders worked so diligently to protect and guard, we have left unprotected and exposed. We failed to understand the value of what we had. Our Founders gave us a precious treasure in our legal heritage, yet we were blind to the gift.

We discussed earlier that America's legal system was based on the phrase "the law of nature and of nature's God" set forth in the Declaration of Independence.This "law of nature and of nature's God" standard provided the Founders and our nation with a legal heritage that was anchored to God's word. It was predictable, unchanging, and secure for all people at all times. This anchor is the only sure means of "securing the blessings of liberty," for it is the Bible that expressly ties God to liberty when it states, ". . . where the Spirit of the Lord is, there is liberty" (2 Corinthians 3:17). Our heritage stemmed from a commonly held Biblical worldview.

Without God's word as our anchor for law, we are ultimately governed by activist judges and their judicial whims. Under that standard, law is manipulated to correspond, regardless of the constitutional text, to what the judges think it should say rather than what it actually says. Such judicial activism allows a small, often unelected minority to hijack the law that was intended to be developed by legislatures accountable to the people. Law be-

comes whatever a few elitist judges say it is, even if that ruling is contrary to will of the majority. Such a conclusion was drawn by Charles Evans Hughes, the Supreme Court's Chief Justice from 1930-1941, when he said, "We are under a Constitution, but the Constitution is what the judges say it is." The ultimate arbiter of what is constitutional or not should never be left to a group of judges, nor should it be determined even by a majority of legislators. It should go back to the legal standard of our nation set forth in the Declaration, "the laws of nature and nature's God." All our elected officials and judges have a responsibility to secure the blessings of liberty by interpreting the Constitution in terms consistent with the Bible it is based on. Rights come from God, not man, so it should be God and His standard that defines those rights.

Without the Bible as our ultimate basis for law, our legal system has no anchor and the nation will drift ultimately into anarchy as small, yet powerful and active minority groups insist on their own way with their own interpretation of what the law is. Law needs an unchanging standard. Without it, America is at the mercy of whatever radical element is able to take over and convince a court of its point of view.

That is exactly what happened on February 3, 2004, when the Massachusetts Supreme Court, in a 4-3 decision in *Goodridge v. Dept. of Public Health*, ignored hundreds of years of legal precedent that had been clearly founded on God's higher law in the Bible, to rule for the first time in Massachusetts history that homosexuals have a right to marry. That decision will now affect the entire nation as homosexual couples married pursuant to that Massachusetts ruling go to other states to have their marriages validated and obtain other rights and privileges of their marital status. According to the Constitution, each state is required to recognize as valid marriages performed according to law in other states. Therefore, only four activist judges, who chose to ignore the law and create what they thought should be the law, have effectively impacted the laws of the entire nation.

Is that all there is to law? Whatever four judges say it is, regardless of legal precedent to the contrary, regardless of long-standing social institutions to the contrary, and regardless of the will of the people to the contrary? To conclude that that is enough for law to be enacted in this nation goes against every principle of liberty and justice upon which it was founded. Such a decision is not law, but rather judicial anarchy. Once we determine that we can make laws contrary to the Biblical standard and the legal standard set forth in prior judicial rulings, then our liberties will be lost. Those rights given by God and defined by God can become manipulated and perverted to whatever man thinks is right at the time. If all we need to do is convince a few judges to

overturn the will of large majorities and hundreds of years of legal precedent, then anything is possible in the law. Suddenly apartheid can be lawful, so long as someone can convince a few judges to so rule. It does not matter if that is consistent with prior precedent or higher law. Under today's perverted basis for law, the law is whatever has been imposed on the people by a court, regardless of whether that court followed the law or applied the correct law.

Example of Judicial Tyranny

The U.S. Supreme Court decision in *Lawrence v. Texas* illustrates today's judicial activism run amok. The issue before the Court in *Lawrence* was the validity of a Texas statute making it a crime for two persons of the same sex to engage in acts of sodomy.Both men were convicted and fined under the state criminal statute, but they appealed their convictions, asserting that their rights under the Equal Protection and Due Process Clauses of the Fourteenth Amendment had been violated. The *Lawrence* Court found in favor of the petitioners, but in doing so it had to (1) overturn a prior Supreme Court decision in *Bowers v. Hardwick,*rendered only 17 years prior, which found a similar statute constitutional; (2) ignore countless prior judicial decisions and legislative enactments that held that a state is constitutionally justified in regulating certain deviant sexual behavior as "immoral and unacceptable," and (3) seek refuge in similar rulings by the European Court of Human Rights and the views of "other nations!" Indeed, the Court also had to ignore another one of its decisions in *Barnes v. Glen Theatre, Inc*, which upheld Indiana's public indecency statute as furthering "a substantial government interest in protecting order and morality."

What is significant about the *Lawrence* decision is that the legal standard of proof necessary to uphold a state criminal statute when no fundamental right is involved that is "deeply rooted" in the nation's history and tradition (which the Court admitted did not exist in this case) is extremely minimal, yet the Court did not find that even that low standard had been met. Under traditional substantive due process analysis, all that is required to uphold a state criminal statute is a "rational basis" for the law. It has been an "ancient proposition" that the safeguarding of public morality "indisputably is a legitimate government interest under rational basis scrutiny." Yet even though those same "safeguarding of public morality" justifications were present in the *Lawrence* case, the Court dismissed them. It did so, incredibly enough, by noting the reasonings in "other nations" and the European Court of Human Rights, concluding, "[T]here has been no showing that in this country the governmental interest in circumscribing personal choice (as opposed to

"deviant sexual behavior") is somehow more legitimate or urgent." Justice Scalia, in his dissenting opinion, also found it hard to believe that the statute did not meet the "rational basis" test. According to Justice Scalia, "[T]his proposition is so out of accord with our jurisprudence — indeed, with the jurisprudence of any society we know — that it requires little discussion." Justice Scalia provided a dire warning of the consequences of the Court ignoring the longstanding moral basis of a statute:

> The Texas statute undeniably seeks to further the belief of its citizens that certain forms of sexual behavior are "immoral and unacceptable," (citation) — the same interest furthered by criminal laws against fornication, bigamy, adultery, adult incest, bestiality, and obscenity." *Bowers* held that this was a legitimate state interest. The Court today reaches the opposite conclusion. The Texas statute, it says, "furthers *no legitimate state interest* which can justify its intrusion into the personal and private life of the individual." [emphasis added] The Court embraces instead Justice Stevens' declaration in his *Bowers* dissent, that "the fact that the governing majority in a State has traditionally viewed a particular practice as immoral is not a sufficient reason for upholding a law prohibiting the practice." This effectively decrees the end of all morals legislation. If, as the Court asserts, the promotion of majoritarian sexual morality is not even a *legitimate* state interest, none of the above-mentioned laws can survive rational-basis review."

Justice Scalia's dissent includes his opinion that the *Lawrence* decision is a clear case of judicial activism. He notes that "[i]t is clear from this that the Court has taken sides in the culture war, departing from its role of assuring, as neutral observer, that the democratic rules of engagement are observed." An objective reading of the case shows the bias of the Court even in their framing of the issues. Rather than referring to the language in the criminal complaint describing the behavior at issue as "deviate sexual intercourse," the Court chose to legitimize the activity by referring to it as merely "private conduct." When you couple the way the Court characterized the behavior with the need to overturn its own decision in *Bowers* and ignore its own decision in *Barnes*, as well as to substitute hundreds of years of American judicial and legislative history for that of the "other nations" and the European Court of Human Rights, it is abundantly clear that in *Lawrence* the Supreme Court, sought to foster a pro-homosexual agenda and was determined to do so whatever the law might say to the contrary.

The *Lawrence* decision demonstrates the lengths to which activist judges will go to establish the law as they want it, regardless of precedent or societal sanction. If necessary, they will even ignore or actually overturn

prior decisions contrary to their personal agendas. Hence the danger to judicial stability and predictability crucial to order in a society. What is lawful today may be unlawful tomorrow. What was unlawful yesterday can become lawful today. The language of the Constitution becomes irrelevant. If it includes language contrary to the judge's agenda, the judge can simply ignore it. If it fails to include language consistent with the judge's agenda, the judge simply creates the desired right by asserting it is in there somewhere, as with the right to privacy mysteriously found in *Cantwell v. Connecticut* and used in *Roe v. Wade* (1973). There is no anchor to our law when it has no basis other than our ability to convince a few activist judges to accept it.

Conflicting Worldviews

What has happened to change our view of law? Many fancy, complex theories exist, but they all come down to a single reason. Simply put, our worldview has changed. We have discarded the Biblical worldview which our Founders maintained and which De Tocqueville recognized as making America great.

Little by little, our nation has consistently moved away from a recognition that God is its source of law to embrace a counterfeit idea that law is evolutionary and based in the people or in the state itself. This different legal philosophy has carried various labels — "relativism," "pragmatism," and "legal positivism"— but the idea is the same. It was introduced in the 1870s when Christopher Langdell, then Dean of Harvard Law School, introduced Darwin's ideas of evolution to the field of jurisprudence. Soon, our nation's law schools ignored Blackstone, Coke, and our Declaration principles in which America's law was rooted, and began to teach this new legal philosophy rooted in evolution. British scientist A. E. Wilder-Smith commented on this change of legal philosophy in his forward to *The Creation of Life*:

> Why have law and order deteriorated so rapidly in the United States? Simply because for many years it has been commonly taught that life is a random, accidental phenomenon with no meaning except the purely materialistic one. Laws are merely a matter of human expediency. Since humans are allegedly accidents, so are their laws. No wonder that the result of such teaching is a contempt for the courts and for all due order. The older supernatural views taught that life was a plan or code, which needed for its government a plan of supernaturally given codes or laws.

When the worldview in America changed in regard to the source of our laws, the theft of our legal heritage commenced. Since ideas have consequences, and the Biblical and evolutionary worldviews lead in opposite

directions, we cannot sit on the fence and hope for some compromise to resolve the problem. The Biblical worldview that was responsible for America's liberty and freedom also enabled espousal of the evolutionary worldview which now seeks to destroy it.

The latter is now consuming the former, and evolution has proven to be a very intolerant worldview, allowing for no other competing voice on its public stage. Scientists who dare claim that evolutionary ideas are counterfeit and who propose a creation-science perspective are quickly ridiculed and ostracized rather than respectfully debated in the marketplace of ideas. Through the subtleties of denying tenure or generating negative peer reviews of such professors, the evolutionists and secularists are able to chase out of the university arena anyone who challenges their orthodoxy. There is little tolerance for those holding a Biblical worldview. Public school teachers who desire to teach our children that we did not come from apes, but instead were created by a Supreme Being, are not given an equal opportunity to debate and discuss these ideas in the marketplace of free speech; instead they face lawsuits or loss of their jobs. We quickly hear the secularists cry how wrong it is to teach "religious" views to "impressionable young minds," yet those same secularists have no qualms about teaching the religious view of evolution to those same "impressionable young minds." The evolutionist worldview now dominates our culture, and it is a jealous god, proclaiming its tolerance, yet demonstrating just the opposite. Now the evolutionists and secularists have the stage, and America is suffering the consequences of its stolen heritage in a moral base that is rotting right before our eyes.

Many people argue that America has retained many of the blessings of liberty since becoming a nation dominated by the secular view. While that is true, the credit for those continuing liberties is not due to this secularism. For a time, our nation has been able to retain some of the blessings of our Biblical heritage, as we have maintained a remnant of that Biblical worldview. But as that worldview diminishes with each successive generation of Americans, so too does its influence on our nation and the liberties upon which they were founded. Our nation has lived off the liberties our religious heritage has brought us for several generations, but the more we remove the source of our liberties, the more intolerant and repressive our nation becomes toward people of religious faith. Surely if one were truly objective, he or she would recognize that had our nation been formed solely on secular principles, America would never have become the beacon of liberty it once was.

We should heed the warning of Thomas Jefferson, whose words have become hauntingly prophetic: "the liberties of a nation [cannot] be thought secure when we have removed their only firm basis, a conviction in the

minds of the people that their liberties are the gift of God." Today we are suffering from laws that are without an anchor, ever changing, and completely disconnected from any universal, unchanging principle of justice or liberty. Law's noble character has been destroyed by a legal system that bases its arguments on whatever it takes to convince the authorities to pass a law by a majority of lawmakers. There is no transcendent basis for justice and law anymore because our true legal heritage has been stolen. There isn't even a requirement that the laws be made in accordance with the consent of the governed, although that alone would not ensure that law be just and in conformance with the laws of God.

Selective Acceptance of the "law of nature and of nature's God"

Under the standard of the "law of nature and of nature's God," American law had to be consistent with Scripture. That alone ensured stability in the law. If a person could get a law passed that made it lawful to kill people over the age of 80 because they are an unnecessary burden on our economy, that law would be invalid under this standard since it is contrary to God's law, which places a supreme value on all human life, without qualification. It wouldn't matter if the legislature passed it, the media adored it, and the Supreme Court affirmed it; the law would be invalid and Americans would not be obligated to obey it. Indeed, they would have a duty to disobey it under America's legal heritage of Biblically based law. This is exactly the justification Martin Luther King Jr. and his followers invoked when they refused to obey segregation laws in the early 1960's. As he noted in his famous L*etter from the Birmingham Jail*, laws contrary to higher law, or the laws of nature, should not be obeyed.

In reality, we all subscribe to this theory of a higher law that must be followed, regardless of our political persuasions or religious beliefs. We all accept the idea that if a law is "wrong," it is unjust and we must not obey it. It's the last vestige of God's law of nature written on our hearts. Who can doubt that if someone could get the legislature and the states to pass a Constitutional Amendment that said African-Americans or Jews or any other group of people were not real people and thus have no rights or liberties, that such a law would be invalid? Even if the Supreme Court were to uphold the law, in our hearts and minds we would know that such a law would be wrong absolutely. But why? It is because of the law of nature written on our hearts. Our conscience knows there is a higher law — the law of our Creator.

The abortion issue reflects this recognition of a higher law by both supporters and opponents of the practice. Abortion opponents have asserted a

higher law in the value and protection of human life over that of personal choice by picketing against abortion clinics. They recognize, as did our Founding Fathers, that laws contrary to God's revealed law as reflected in the Scriptures, are not valid law. On the other hand, the former President of the National Organization for Women, declared that should the Supreme Court some day rule that abortion is unconstitutional, she would continue to advocate abortion and persuade others to violate the law. Why? Because she believes that there is a higher law that must be obeyed. Obviously, the two sides do not agree on the source of higher law, but nonetheless, they share the idea of the existence of a higher law. When college campuses were aflame in the 1970's with protests urging American corporations to stop doing business with South Africa because of its practice of apartheid, they, too, were appealing to a higher source of law that transcended the actual laws of South Africa. While they likely did not share the same idea of the source of that higher law either, they believed there existed some higher concept of justice than the law in South Africa. They had to, for otherwise they would have had no basis for their appeal. For an evolutionist worldview, it is intellectually difficult to accept the existence of a higher law, but they do so nonetheless, because God has written His law upon their hearts, even though they have chosen to disregard its source.

Court Interpretations Are No Longer Biblically Based

Our Founders believed strongly that legitimate law starts with God and His word spoken through the Bible. Such law was unchanging, absolute, and universal in nature. Hence, when the colonists declared their independence from England in the Declaration of Independence, they did so based expressly upon the power which "the laws of nature and of nature's God entitle them." They further relied on "self-evident" truths, truths that are universally accepted as true, among which are that we are endowed by our Creator with certain inalienable rights, which cannot be taken from us because they are given to us by God. Unlike man's laws, which change with the political whims of the times, God's laws and rights remain constant and absolute.

The Seventh Amendment, firmly rooted our Constitution in these unchanging absolutes by establishing our legal basis upon the early common law. Common law began around 1100 A.D. with the Anglo-Saxons, who established the right of "trial by jury," which was set forth in the Bible in Deuteronomy 19:15-19 and is now found in the Sixth and Seventh Amendments and Article III, Section 2, Paragraph 3 of our Constitution. The right to

a jury trial is a good example of a common law principle with a Biblical basis.

Over the course of hundreds of years, judicial decisions were made from the absolutes found in the Bible and from the moral base rooted in Christianity. These decisions became the common law, precedents for justice in future cases where the facts were substantially the same.

An early basis for our common law arose out of the Magna Carta in 1215. That English document recognized and established the rights of trail by jury and the principle of "habeas corpus," now found in our Constitution at Article I, Section 9, Paragraph 2. The habeas corpus provision of the Magna Carta, that "no man can be confined without inquiry," as well as the entire "due process" concept of which it is a part, were revolutionary thoughts at that time.

Common law principles were continued with the Englishman Sir Edward Coke, who emphasized them in his works, which were studied by such early American jurists as Chancellor Kent, John Marshall, and Joseph Story. Common Law and constitutional law were therefore both originally based upon what the Declaration of Independence defined as "the Laws of Nature and Nature's God."

The Judicial Tendency to Legislate

Moral and legal absolutes have taken a beating in recent years by judicial activists, but the truth is that law not founded upon absolutes is very dangerous to society. Consider that without absolutes, the Supreme Court has reversed itself over 100 separate times! Absent absolutes, the Court also has a tendency to expand its authority beyond well-defined legal limits.

For instance, in 1973, the Court ignored hundreds of years of judicial precedent in order to invent a new constitutional right – choice – which they deemed so paramount, that it could override one of our original inalienable rights – life. Thus, in *Roe v. Wade*, the Supreme Court started down a judicially created path that now allows a mother to choose to take the life of her own baby, so long as she chooses before it is born. In fact, the mother's choice is the primary determination as to whether a law is broken when the baby is killed. If the mother chooses not to keep the child, the baby is magically renamed a "fetus," and the act of deliberate killing of the child is likewise renamed "abortion" rather than "murder". Because it ignored the moral absolutes that law had always been founded upon, the Court was free to say what the law was without regard to past precedents or moral standards. As a result, today choice has become a more valued principle than life itself.

The Supreme Court did this by introducing the artificial concept of "viability," meaning that once a "fetus" or baby has reached sufficient growth to be able to sustain itself, then it is "viable" and cannot be aborted, but prior to reaching "viability" a baby can be legally aborted. This legal invention was not derived from the express language of the Constitution, which places legal limits upon what kinds of issues the Court is authorized to decide. Nor was the concept consistent with the Biblical spirit or founding intent behind the Constitution. It is completely contrary to both Biblical principle and the Constitution's separation of powers.

First, Biblical principles are clear on this point. The Bible teaches that God and only God creates life. It also teaches that God forms us while we are still in the womb, and that we have a distinctive personal identity even before birth (Psalm 139:13). Geneticists have confirmed that everything a person needs for life is in place at the moment of conception, not birth.[2] Life starts at conception, then through a process of growth that is initiated, directed, and controlled by God, results in a live birth of a baby. Even then, the growth of that life is not over. It continues throughout childhood, adolescence, and beyond. Under either common law or natural law founded on the Bible, abortion could never have been declared legal, let alone a constitutional right, since it is in direct conflict with God's revealed law. Moral and legal absolutes do not change with the latest fad; they are solid and constant, providing society with an anchor that maintains a strong culture. Yet we as a nation have discarded our Biblical anchor long ago, and so now we have lost the constitutional limitations upon which moral and legal absolutes rested.

Second, the Court's decision in *Roe v. Wade* transgresses the Founders' limitations on judicial power. Under the Constitution, it is the legislative branch that has the authority to make new laws, not the judicial branch. Once the Court found nothing in the Constitution to provide guidance, they should have indicated it was a question for the legislative branch and made no ruling against the status quo; then such a volatile issue would have been handled by the branch most responsive and accountable to the people, rather than the Supreme Court, which is completely unaccountable to anyone. Ideology should not have determined the result in *Roe v. Wade*, the Constitution should have. The end should never justify the means if we are to truly be a nation under the "rule of law."

The danger of an activist court not tied to constitutional limitations is that while a Court can create new rights, it can also take old rights away. Fifty years ago, abortion, homosexuality, and adultery were all illegal. Under the common law, rooted in Biblical truth, they would stay illegal. Under the evolutionary, evolving judicial standard of today, all these acts are now

legal. In fifty more years, perhaps they will be illegal again, or other rights that are legal now will become illegal, such as the free speech and free exercise right of a pastor to preach that homosexuality is a sin. Law becomes unpredictable without an anchor. Today's Court loss could be tomorrow's victory. Such judicial waffling to the Pied Piper of public opinion disposes the Court system to political influence and public demonstrations. Lady Justice is no longer blindfolded to the influences of the day, sacrificing long-standing judicial principles to ever-changing circumstances.

Herein lies the real danger of evolutionary, judicial activist courts. Judges are as fallible as anyone else. If what they say is the law of the land, regardless of a Biblical standard to the contrary, or a Constitution to the contrary, then the judicial branch has become a place of legal tyranny. The Founders were concerned about the powers of the judicial branch becoming too great, because it is the only branch that does not have direct accountability to the public. Judges at the federal level are appointed for life, and impeachment, the only mechanism for holding them accountable, is rarely invoked.

Activist Courts Ignore the Separation of Powers

By ignoring constitutional restraints, the Supreme Court has also usurped the power of the legislature, thereby violating the separation of powers principle. Examine what the Supreme Court did in *Griswold v. Connecticut*.[3] The Court searched mightily to find a right to privacy in the Constitution. In spite of their efforts, Justice William O. Douglas, who authored the majority opinion, admitted that the right of privacy could not be found in the Constitution, but, the majority on the Court clearly wanted to find such a right and were determined to sanction it regardless of whether it could actually be found. That is the action of an unconstitutional activist court. Ultimately, the Court concluded that the right to privacy was to be found in the "penumbra" of other constitutional guarantees.[4] According to Webster's Dictionary, a "penumbra" is a partial shade or obscurity on the margin of the perfect shade of a shadow. In other words, the Supreme Court found a constitutional right lurking in a fuzzy shadow. This was a desperate Court decision that stretched far beyond the bounds of judicial authority and reason.

Instead of being intellectually honest and concluding that there was no right of privacy in the Constitution, the Court decided the right should exist, so they created it themselves. Such an "end justifies the means" type of attitude has made a mockery of our constitutional separation of powers

framework. Properly, where there is no right explicitly mentioned in the Constitution, yet no prohibition on such a right, the legislative branch is free to act. If they wanted a constitutionally protected right to privacy, they could have proposed an amendment to the Constitution, following appropriate democratic procedure.. There were several constitutional and legal options available to provide for a right to privacy, but none of those legal options involved the courts acting as a legislative body.

There is an ironic twist to the Court's action to find a right of privacy in *Griswold v. Connecticut*. Had the judicial branch not previously forsaken our common law heritage that recognized Scripture as the source and authority for all law, the justices would have found more than a "fuzzy shadow" or "penumbra" to rely on. With its principles of the dignity of man made in the image of God, examples such as Noah's son's sin in publicizing to his brothers his father's nakedness while asleep in his tent, and other perspectives, the Bible could have helped them find the right to privacy they desired. However, had it been rooted in the Bible as it properly should have been,[5] the right would likewise have been appropriately limited to support activities consistent with other Biblical principles. The legislative branch could have then used that basis as found by the court to pass laws that would have been constitutionally supported, while retaining the integrity of the separation of powers principle.

Holding the Judicial Branch in Check

The judicial branch itself is not above the law, any more than the executive or legislative branches. Therefore, when acting unconstitutionally, the Court must be checked by Congress if we are to preserve a true republic. Congress has been given the power to impeach members of the judiciary when they are found guilty of undermining the Constitution. Congress also has the power to restrict the Court's jurisdiction.

There is one final limitation Congress possesses once a judge is appointed. Under Article III, Section 1, judges can only continue to hold their office "during good behavior," a broadly defined term that is meant to provide Congress with optimum discretionary authority. Unfortunately, Congress has only invoked this power twice in the last 210 plus years – once for drunkenness and once for disloyalty during the Civil War.

Of course, another check upon such unconstitutional actions by any of the three branches of government can be exercised by the people through their state legislatures. Amendments to the Constitution can be proposed by a convention called by two-thirds of the state legislatures and then ratified by

three-fourths of them,but this procedure has never been exercised by the states since the Bill of Rights was added to the Constitution; all of the 17 subsequent amendments to the Constitution have been proposed by Congress.

Amendments to the Constitution should be cautiously proposed, however, since not all amendments are necessarily beneficial. For example, as discussed earlier, the Fourteenth, Sixteenth and Seventeenth Amendments altered our form of government for the worse, despite the good intentions of those who proposed and voted for them. Many times amendments can be poorly worded, allowing evolutionary minded courts to construe the words in ways that further expand the powers of the national government. When not drafted by people who clearly understand and support our constitutional, republican form of government, amendments will more likely create mischief than solve problems.

Yet in the hands of godly men and women who do understand our originally intended form of government, the state initiated amendment process can be a precious power left to the discretion of the American people as a means of restoring our national heritage as a true republic.