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We Must Reject the Rule of Judges

The **Constitution Restoration Act** is the vehicle to restore the Separation of Powers designed by our great United States Constitution and to rid us of the un-American notion of judicial supremacy. The original sponsors of S. 2082 are Senators Richard Shelby, Zell Miller, Sam Brownback, and Lindsey Graham, and the original sponsors of the companion bill H.R. 3799 are Representatives Robert Aderholt and Mike Pence.

This legislation would clarify that the federal courts do **not** have jurisdiction to hear cases brought against a federal, state or local government or officer for acknowledging God. The bill is in response to cases that have been filed all over the country asking federal judges to declare the recitation in public schools of the **Pledge of Allegiance** unconstitutional because it includes the words "under God," or asking that the display of the **Ten Commandments** in public buildings or parks be held unconstitutional.

The bill's sponsors believe that the federal courts should have no authority to hear such cases or render such a decision. These lawsuits are initiated under the pretense that they violate the First Amendment which states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The acknowledgment of God in the Pledge of Allegiance and the Ten Commandments is not an "establishment of religion." The U.S. Constitution delegates "all legislative powers" to the Congress (none to the courts), and Congress has never passed any law banning the acknowledgment of God.

For decades, the Pledge of Allegiance has been recited daily by hundreds of thousands of schoolchildren, and depictions of the Ten Commandments appear on thousands of public properties including the U.S. Supreme Court. Unelected judges are assaulting our national respect for God against the wishes of Congress, state legislatures, and the American people.

We hear whispers in courthouse cloakrooms that lawsuits may soon target other acknowledgments of God. Our national motto is "In God We Trust," and it's enshrined on our currency. In our national anthem, we sing "In God is our trust" and "Praise the Power that hath made and preserved us a Nation." Nobody is confused about Who that Power is.

All three branches of the federal government, as well as our military, have always acknowledged God. Congress opens each session with a prayer; the President ends his speeches with "God bless America"; and the U.S. Supreme Court opens each day with "God save the United States and this Honorable Court." All public officials, including the President and all judges, swear an oath to uphold the Constitution "so help me God." Most of us use that same oath when we swear to tell the truth.

In our nation's founding document, the Declaration of Independence, America acknowledges God as our Creator, Supreme Lawgiver, Supreme Judge, and Protector. Fortunately, we haven't yet heard of a lawsuit asking a judge to rewrite the Declaration.

God is specifically acknowledged in state constitutions. Among the powers reserved to the states under the Tenth Amendment is surely the power to write their own constitutions.

So how could a handful of activist judges in the last couple of years presume to ban the acknowledgment of God from documents, monuments, songs, expressions and practices that have been part of our culture throughout our history? The answer is that the federal courts, year by year, decision by decision, have been asserting judicial supremacy over the other branches of government — and Congress and the American people have been letting them get by with this unconstitutional grab for power.

These judicial supremacists have been systematically dismantling the architecture of our unique constitutional republic based on the Separation of Powers. James Madison believed that the preservation of liberty depends on the Separation of Powers, and that "its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places."

The Constitution Restoration Act affirms the Separation of Powers by reasserting the rule, properly observed by federal courts for two centuries, that they have no jurisdiction to consider cases involving the acknowledgment of God. As late as 1952 liberal Supreme Court Justice William O. Douglas declared: "We are a religious people whose institutions presuppose a Supreme Being."

Congress should mandate that federal courts may not

censor public acknowledgments of God, adding this to other "exceptions" and "regulations" to federal court jurisdiction. This is the way the framers of our Constitution intended that Congress would, as Alexander Hamilton wrote in *The Federalist*, keep the judiciary as the "least powerful" branch of government and see to it that "judges should be bound down by strict rules and precedents, which serve to define and point out their duty."

The Constitution Restoration Act also orders federal courts not to rely on foreign laws, administrative rules or court decisions. Americans have been shocked to learn that five U.S. Supreme Court Justices have cited foreign sources, even though it is self-evident that U.S. judges should be bound by the U.S. Constitution and U.S. laws, not foreign ones.

The Constitution Restoration Act also states that a judge who engages in any activity that exceeds the jurisdiction of the court thereby commits "a breach of the standard of good behavior" and may be removed by impeachment and conviction.

Don't Let Judges Sabotage Marriage

The judicial supremacists' attack on the acknowledgment of God in the Pledge of Allegiance and the Ten Commandments is paralleled by similar attacks on the institution of marriage by judges who invent a new "right" of same-sex "marriage." Out-of-control federal and state judges who believe in and advocate judicial supremacy over the other branches of government are trying to write new laws and to invalidate laws and practices that have been part of American life for centuries.

It's hard to find a more outrageous example of activist judges asserting judicial supremacy than the 4-3 decision by the Massachusetts supreme court on November 18, 2003 purporting to legalize same-sex "marriage." The Massachusetts state constitution was written by John Adams and adopted in 1780, and any notion that it intended to include same-sex marriage is absurd.

After acknowledging that for three centuries Massachusetts defined civil marriage as stated in Black's Law Dictionary — "the legal union of a man and woman as husband and wife" — the Massachusetts judicial supremacists declared that there is no "rational basis" for that definition, and ordered this new definition of marriage: "We construe civil marriage to mean the voluntary union of two persons as spouses, to the exclusion of all others."

The American people must **not** acquiesce in these grabs for power by federal and state judges. Congress must use every weapon at its disposal, including its Article III power to define the jurisdiction of federal courts, a constitutional amendment, regulations to enforce existing laws, and the withholding of taxpayers' money from the states.

If Congress can't stand up for the Ten Commandments, the Pledge of Allegiance, and the sanctity of marriage, what in the world does it stand for?

In 1996, Congress passed the **Defense of Marriage Act (DOMA)** by big majorities: 342-67 in the House, 85-14 in the Senate. This law was so popular that it was even signed by President Bill Clinton. DOMA does two things: it says that, (a) in everything that is touched by federal law, "marriage means only a legal union between one man and one woman as husband and wife," and (b) Congress uses its power under the "full faith and credit" provision of Article IV to prescribe that no state can be required to accept another state's definition of marriage.

DOMA is a splendid law. But pressure groups are threatening to file suit to declare this law unconstitutional, and lawyers are predicting that activist judges will declare it unconstitutional.

The easiest solution to this threat is the **Marriage Protection Act** (H.R. 3313) introduced by Rep. John Hostettler (R-IN). This bill would add a third section to DOMA to prevent the federal courts from hearing any challenge to this law. It's not only completely constitutional for Congress to take away from the courts the power to declare DOMA unconstitutional — it's Congress's constitutional duty to protect the American people from the judicial supremacists who might commit such an outrage. Don't let anybody tell you that Congress can't tell the federal courts what cases they can and can**not** hear. Just read the U.S. Constitution!

Article III, Section 1 states: "The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish." *Article I, Section 8* states: "The Congress shall have power ... to constitute tribunals inferior to the Supreme Court." Those two sections mean that all federal courts except the Supreme Court were created by Congress, which defined their powers and prescribed what kind of cases they can hear. Whatever Congress created it can uncreate, abolish, limit, or regulate.

Article III, Section 2 states: "The Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make." That section means that Congress can make "exceptions" to the types of cases that the Supreme Court can decide.

In this year's State of the Union Address, President Bush targeted "activist judges" as the enemy of traditional values and urged us to use "the constitutional process" to remedy the problem. Bush called on Americans to defend the sanctity of marriage against activist judges who force "their arbitrary will" by court order "without regard for the will of the people and their elected representatives." While spoken in the context of the threat to the traditional definition of marriage, Bush's State of the Union remarks are equally applicable to other institutions that are precious to Americans, such as the Pledge of Allegiance and the Ten Commandments.

It's not enough to press forward with the task of con-

firming nominees who will respect the Constitution; we must also deal with the problem of the activist judges who continue their mischief under the shield of life tenure. The federal judiciary is still peopled with Clinton-appointed, Carter-appointed, and even LBJ-appointed activist judges who are trying to abolish those sacred practices. Even some judges appointed by Reagan and Bush turned out to be judicial supremacists.

Congress has the duty to terminate their mischief. We don't trust the federal courts or the Supreme Court to decide the cases about the Pledge of Allegiance, the Ten Commandments, and Marriage. Congress should take away all power from the federal courts to impose the rule of judges over our rights of self-government.

Amending the federal DOMA by the Hostettler bill will not prevent state courts or state legislatures from legalizing same-sex marriage. However, state legislatures are usually far more responsive to their constituents than Congress, and many states are now aggressively moving to protect themselves against judicial supremacy. Already, 39 states have enacted their own state DOMA, and four states have put DOMA in their state constitutions. Nearly two dozen states are currently considering putting the prohibition against same-sex marriage in their state constitutions, and several states may have a constitutional amendment on their ballots this November.

State legislatures will also be far more willing and eager to impeach state judges who use judicial supremacy to rewrite state constitutions.

Stop the Mischief of Activist Judges

The enormous damage that activist judges have inflicted on America is described in the new book by Judge Robert H. Bork called *Coercing Virtue: The Worldwide Rule of Judges*. The title is rather misleading; the judicial oligarchy is not dictating virtue but enforcing a new ideology that he calls "lifestyle socialism."

The courts are now dominated by what Judge Bork calls faux intellectuals of the Left who, unable to persuade the people or the legislatures, "avoid the verdict of the ballot box" by engaging in "politics masquerading as law." We are "increasingly governed not by law or elected representatives, but by unelected, unrepresentative, unaccountable committees of lawyers applying no law other than their own will."

Americans generally believe that bloodless revolutions come only dressed in military garb, but Bork details how America has suffered a "coup d'etat" from the men and women in black robes who have changed us "from the rule of law to the rule of judges." He agrees with Justice Antonin Scalia that the Court "is busy designing a Constitution for a country I do not recognize."

Bork shows how "virulent judicial activism" has overturned constitutional law in so many areas. For example, "the suffocating vulgarity of popular culture is in large measure the work of the Court" because it repeatedly defeated the people's attempts to contain and minimize it.

The core value of the First Amendment's speech clause is the protection of political speech and, as late as 1942, a unanimous Supreme Court ruled that prohibiting the obscene, the profane, and insulting words was never thought to raise any constitutional problem because those are not political speech. But now the Court limits political speech in campaigns, while using the First Amendment to elevate pornography and other assaults on decency.

Activist judges are now so thoroughly secularized that "they not only reject personal belief but maintain an active hostility to religion and religious institutions." The Supreme Court "has almost succeeded in establishing a new religion: secular humanism."

Bork agrees with Chief Justice Rehnquist that the Court now "bristles with hostility to all things religious in public life." Under recent First Amendment decisions, nude dancing before football games would be a more acceptable form of expression than prayer.

Judge Bork ridicules all the pompous talk we hear about international law, which he says is "not law but politics." His critique of the International Criminal Court as "the latest international outrage" confirms President Bush's wise decision to "unsign" the International Criminal Court treaty (which Bill Clinton signed on his last New Year's Eve in the White House).

Bork criticizes the citing of foreign sources by seven Supreme Court justices to justify their unconstitutional decisions. Justice O'Connor, who has succumbed to what Bork calls "the insidious appeal of internationalism," predicts that "we will rely increasingly on international and foreign courts in examining domestic issues."

Bork describes the United Nations as not only useless but, "in fact, almost entirely detrimental to the interests of the United States." How can we possibly respect the authority of "an organization that routinely paints Israel as a fascistic, if not genocidal, aggressor in the Middle East, the United States as a ravening imperialistic power, and whose Human Rights Commission elected Libya as its head (by a vote of 33 to 3, with 17 abstentions)"?

Bork says the activist judges see their mission, not as upholding our Constitution, but as redefining it to coerce new behaviors on what they consider "a barbarian majority motivated by bigotry, racism, sexism, xenophobia, irrational sexual morality, and the like." It's Congress's duty to restore self-government under the U.S. Constitution and save self-government from the rule of judges.

Options for Dealing with Same-Sex 'Marriages'

The Defense of Marriage Act (DOMA) rested peacefully on the law books until this year. Recent events now place the monkey squarely on the back of President George W. Bush to do his constitutional duty to "take care that the laws be faithfully executed."

The General Accounting Office compiled a 58-page list of 1,049 federal rights and responsibilities that are contingent on DOMA's definition of marriage and spouse. The GAO report states that the man-woman marital relationship is "integral" to the Social Security system and "pervasive" to our system of taxation.

The widespread social and familial consequences of DOMA impact on adoption, child custody, veterans benefits, and sponsorship of a non-American spouse. DOMA's financial consequences include joint income tax returns, survivor's rights to Social Security benefits, and the tax-free inheritance of a spouse's estate. These laws are designed to prefer husbands and wives over single people because of society's consensus that it is right and economical for husbands and wives to raise their children, and for wives to be provided for after their husbands retire or die.

Even in the world of private industry, DOMA has a big impact. A third of Fortune 500 companies offer health insurance benefits to domestic partners, but employees must pay income tax on the value of such partner benefits because that insurance is not recognized by federal law as a deductible corporate expense.

The Internal Revenue Code has provided since 1948 that "a husband and wife may make a single return jointly of income taxes." If the highest court of a state declares that a valid marriage does not include "husband" and "wife," then whatever unions it creates are not real marriages, no matter what the state chooses to call them. A dog doesn't have five legs even if you call its tail a leg.

If Massachusetts law no longer recognizes the federal meaning of marriage, then all Massachusetts couples — including opposite-sex couples who are married after the new definition takes effect — will no longer be entitled to file a joint federal income tax return. Gay advocates want same-sex couples to claim the 1,049 benefits of marriage under federal law, but what is likely to happen instead is that opposite-sex couples married in Massachusetts will lose those same 1,049 federal benefits because federal laws recognize marriage as the union of "husband and wife," not the union of "two persons."

If opposite-sex couples, who are married in Massachusetts after the new definition takes effect, want to be recognized as married by the federal government and by the other 49 states, they should travel to another state to pronounce their marriage vows.

Gay activist groups are already starting to instruct same-sex couples to file joint income tax returns, so the Bush Administration should establish procedures right now in order that the bureaucracy will know how to handle the paperwork. The model is already in place.

In earlier times, our friendly Internal Revenue Service used to take our word for how many children we had when we claimed child exemptions, and most kids didn't get a Social Security number until they started their first job. Suspecting some hanky-panky in the matter of child exemptions, Congress required tax returns starting in 1988 to include the taxpayer identification number (usually the Social Security number) of each dependent age five or older. The age at which a child's Social Security number must be reported was subsequently reduced to age two, then to age one, then to birth. Most children now receive their Social Security number as newborns.

Millions of reported children disappeared as tax exemptions when the federal forms required this specific information. But everybody's used to it now, and parents don't get income-tax exemptions unless they report their children's Social Security numbers.

The Bush Administration should immediately instruct the Internal Revenue Service to prepare 2004 income tax forms with a line requiring joint returns to show the date and place of marriage, thereby enabling Internal Revenue to identify and reject joint returns claiming fake marriages.

The Social Security Administration has already told its offices nationwide not to accept marriage certificates from San Francisco as proof of identification for newlyweds wanting to change their names on Social Security cards. This new policy also applies to heterosexual couples who wed after February 12 in San Francisco because the legality of San Francisco licenses is now in question.

President Bush should immediately (1) instruct all federal agencies to prepare for energetic compliance with the 1,049 federal regulations impacted by DOMA, (2) investigate whether Internal Revenue will have to reject joint tax returns from all couples (same-sex or opposite-sex) who are married in any county, state or country where the legal definitions of marriage and spouse are changed, and (3) investigate how federal funds can be withheld from states that permit the travesty called same-sex marriage.

The battle against the judicial supremacists must proceed on all fronts including a constitutional amendment to protect marriage.

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