

**CONSERVATIVES SHOULD DEFY OUTRAGEOUS JUDICIAL
EDICTS by DON FEDER (originally published as part of a debate in Insight
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The courts have created a crisis in American government. The usurpations of federal judges have become so subversive to majority rule and the moral order on which our civilization rests that they must be opposed if liberty and Judeo-Christian values are to survive.

Alabama Chief Justice Roy Moore and his Ten Commandments monument have come to symbolize resistance to a runaway judiciary intent on rewriting U.S. history and imposing its will on the American people.

On August 1, 2001, Moore installed his 5,280-pound monument to Mosaic Law in the rotunda of the Alabama Judiciary Building. U.S. District Court Judge Myron Thompson ruled the monument was “nothing less than an obtrusive year-round religious display” (supposedly in violation of the 1st. Amendment’s establishment clause) and ordered it removed. The 11th. U.S. Circuit Court of Appeals upheld the ruling. When Moore courageously refused to submit, Thompson set a deadline for removal and threatened to fine the state \$5,000 for every day this affront to secularist sensibilities remained.

Eventually, Alabama's entire political establishment turned on Moore. The judge was suspended, pending a hearing by the state's judicial ethics panel, for failure to comply with a federal court order. On August 27, workers hauled the monument away to a storage room.

That same week, a Gallup poll showed 77 percent opposed Thompson's ruling.

Americans have always been a law-abiding people. Conservatives condemned the anarchy of the '60s New Left. But to defy the unlawful decree of an un-elected official isn't civil disobedience. Rather, it is fidelity to the Constitution, which exists independent of judicial whim.

As its victories over representative government mount, the judiciary is becoming increasingly brazen. On September 15, the U.S. 9th Circuit Appeals Court postponed the recall election for California's governor. In so doing, it abrogated the state's constitution and frustrated the will of the 900,000-plus voters who signed petitions demanding a recall within the 90 days, as provided by law. This is the same court which just last year declared it unconstitutional to recite the Pledge of Allegiance in public schools because it contains the words "one nation, under God."

For federal courts, nullifying popular sovereignty is nothing new. In 1994, 60 percent of California voters passed Proposition 187 – which denied most government services to illegal aliens, to save taxpayers from the Mexican inundation. A federal

district court judge declared the amendment unconstitutional. One man vetoed the democratic decision of 60 percent of voters.

In 1996, in *Romer v. Evans*, the U.S. Supreme Court overturned Colorado's Amendment 2, a voter-approved amendment to the state's constitution barring municipalities from enacting gay rights ordinances. The court reasoned that prohibiting local governments from passing these measures violated homosexuals' 14th Amendment equal protection rights – which now apparently include the right of deviants to force their sexual behavior on the normal majority.

Increasingly, the federal bench dispenses with even the pretense of applying constitutional principle.

In *Lawrence v. Texas*, handed down in June, the high court overturned the anti-homosexual sodomy laws of 14 states.

In his majority opinion, Associate Justice Anthony Kennedy invalidated these statutes based on his belief that gays were thereby denied their “dignity as free persons.” (Thus violating the Constitution's dignity-as-free-persons clause?)

Kennedy quoted himself in 1992's *Planned Parenthood v. Casey*, which upheld abortion on demand: “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” It's reached the

point where “constitutional law” consists of a justice’s dreamy musings on the mystery of life.

It’s likely that *Lawrence* will one day lead the court to invalidate the Defense of Marriage Act, defining marriage at the federal level as the union of a man and a woman. Indeed, it’s hard to see how any laws prohibiting adult sexual activity (prostitution, polygamy, incest) can meet the *Lawrence* test.

Another scary scenario looms in *Lawrence* – subjecting Americans to the jurisdiction of foreign tribunals and legislatures. In his majority opinion, Kennedy invoked the European Court of Human Rights to demonstrate that the right to homosexual sodomy is increasingly revered by “Western civilization.”

One wonders why the Founding Fathers bothered with their revolution, and wrote the Constitution, if our people are once again to be governed by Euro-trash – moreover, Frenchmen, Germans and Scandinavians who make George III seem sensible by comparison.

While discovering a non-existent right to anal intercourse in the 1st Amendment, in the University of Michigan cases, the Supreme Court ignored the 14th Amendment’s mandate of racial equality. Based on the principle – again, found nowhere in the Constitution -- that “effective participation by members of all racial and ethnic groups in

the civil life of the nation is essential if the dream of one nation indivisible is to be realized,” the court endorsed racial quotas, in defiance of “liberty and justice for all.”

Federal courts are levying taxes, ordering expenditures, overturning the results of ballot questions, postponing elections, defying clear constitutional mandates and delivering hammer blows to a millennia-old moral order. Government by the people is on the fast track to extinction. The day of Judge-ocracy has dawned.

Some conservatives condemn calls to defy even the most bizarre and constitutionally unnatural acts of our lords judiciary. Dr. Richard Land, of the Southern Baptist Convention, asks rhetorically: “Do evangelical Christians really want to say that this United States government is no longer a legitimate government that we are no longer obliged to obey its courts when we disagree with their rulings? If so, let us understand it for what it is. It is insurrection.”

But ignoring the unconstitutional rulings of blacked-robed autocrats isn’t civil disobedience, which implies opposition to lawful authority. What the federal courts are doing is neither lawful nor constitutional. They are not applying the Constitution but perverting it to serve their ideology. Opposition to unlawful authority is the highest duty of citizens of a free republic.

At some point, even Dr. Land must say enough. If the Supreme Court ordered every church that preaches a Biblical message on homosexuality closed until further

notice, would he join the revolution? If the court held that cities and counties must begin issuing marriage licenses to same-sex couples, would he then urge Christians to resist?

What is the alternative proposed by heed-and-obey conservatives?

Judicial nominations is the most popular remedy – electing conservative presidents who will then place advocates of original intent on the bench. There are two small problems here.

You don't always get what you vote for. Of the cultural Marxist majority in *Lawrence*, four of six were appointed by Republicans. Ronald Reagan thought he had found conservatives in Sandra O'Connor and Kennedy. Instead, he got a hesitant liberal and a judicial activist on steroids. George Bush Sr. thought he was helping to save constitutional government, when he tapped David Souter for the high court. He ended up adding a justice who's indistinguishable from Clinton's appointees – Ruth Bader Ginsburg and Stephen Bryer.

Conservative justices have a disturbing habit of “growing in office” – being socialized by CNN and The Washington Post.

Also, consider the fate of Bush's appellate court nominees. After their party lost control of the Senate in 2002, Democrat senators unilaterally changed the rules for confirmation. By staging permanent filibusters against conservative nominees, they've

created a situation where a super-majority (the 60 votes needed to cut off debate) now is required to confirm candidates they oppose, instead of a simple majority. On September 4th, Miguel Estrada, nominated for the DC Court of Appeals, asked that his nomination be withdrawn, after it languished in legislative limbo for 29 months.

While the president whines and demands “fairness” for his nominees, he refuses to do anything meaningful – like using interim appointments or insisting that Republican senators require a real filibuster with round-the-clock sessions.

Under Article III, Congress could withdraw jurisdiction on a given issue from lower federal courts, and appellate jurisdiction from the Supreme Court. But this would take more courage than the average congressional Republican can muster. Imagine the screams of outrage from the liberal media, which would treat this exercise of constitutional authority as a virtual coup d’etat. Senate Majority Bill Frist and his colleagues fear elitist opinion far more than the damage being done to representative government by judicial anarchists.

No, other than meekly accepting our enslavement, the only course open to conservatives is to resist the edicts of federal judges determined to make themselves our masters and abolish the moral order.

What form that resistance takes will depend on the opportunities at hand. Mississippi Gov. Ronnie Musgrove, a Democrat, has offered to display Moore’s

monument in his state capitol building. How would the federal courts stop him? Try to get Bush to federalize the Mississippi national guard to enforce their decision?

What if conservative school districts in the 9th Circuit had classes recite the Pledge with “one nation under God” in defiance of the court’s ruling? What if conservative governors, mayors and judges began erecting their own public displays of the Ten Commandments – hundreds, thousands of them all across the land? Recall the words of President Andrew Jackson after the Supreme Court ruled against him in a famous case: “ (*Chief Justice*) John Marshall has made his decision: Now, let him enforce it.”

What would conservative resistance accomplish? It would help to wake up the American people to a growing tyranny – one that’s far more of a threat to our freedom than foreign terrorists. If it proved popular, as I believe it would (witness poll support for Moore), congressional Republicans might finally get tough on judicial nominations and move on limiting the courts’ jurisdiction.

America was born in a revolution. It will take another to save it – a non-violent revolution and one that seeks to uphold the law, rather than overthrow it. We don’t need armies, only the will to say no. Just Say No To Judicial Tyranny – wouldn’t that look great on a bumper-sticker?