

July 14, 2005

The Honorable George W. Bush
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

With the resignation of Justice Sandra Day O'Connor, you will soon nominate her successor. We urge you to nominate a person who understands the difference between cherished liberty and ruinous license and who will not invalidate reasonable and necessary laws intended to protect society and children from obscenity and indecency.

Our nation's founding fathers viewed the First Amendment within a framework of *ordered* liberty – not as a license to publish pornography, to strip in public places for the purpose of sexually arousing patrons, to assault citizens in public spaces with indecent talk and pictures, and to commercially distribute entertainment that is harmful to minors *without any legal obligation* to adopt sensible measures to restrict children's access.

And throughout most of our nation's history, the Supreme Court agreed.

In *Near v. Minnesota*, 283 U.S. 697, at 716 (1931), the Supreme Court said, “the primary requirements of decency may be enforced against obscene publications.”

In *Chaplinsky v. New Hampshire*, 315 U.S. 568, at 571 (1942), the Supreme Court said, “There are certain...classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the...obscene.”

In *Roth v. United States*, 354 U.S. 476 (1957), the Supreme Court noted, “this Court has always assumed that obscenity is not protected by the freedoms of speech and press” (at 481) and held that obscenity is “not...constitutionally protected speech or press” (at 485).

In *Ginsberg v. New York*, 390 U.S. 629 (1968), the Supreme Court upheld a “Disseminating indecent materials to minors” law on the grounds that those responsible for children's well-being “are entitled to the support of laws designed to aid discharge of that responsibility” (at 639) and that the “State also has an independent interest in the well-being of its youth” (at 640).

In *Miller v. California*, 413 U.S. 15 (1973), the Court said, “This much has been categorically settled by the Court that obscene material is unprotected by the 1st Amendment” (at 23) and, “To equate the free and robust exchange of ideas and political debate with commercial exploitation of obscene material...is a ‘misuse of the great guarantees of free speech and free press’” (at 34-35).

In *Paris Adult Theatre I v. Slaton*, 413 U.S. 49 (1973) the Court held that there are legitimate governmental interests at stake in stemming the tide of commercialized obscenity, “*even assuming it is feasible to enforce effective safeguards against exposure to juveniles*” (at 57-58). These include “the public safety (at 58) and “the right...to maintain a decent society” (at 59). In *FCC v. Pacifica Foundation*, 438 U.S. 726, at 748-749 (1978), the Court upheld the federal broadcast indecency law, observing that broadcast indecency confronts citizens “not only in public, but also in the privacy of the home” and that “prior warnings cannot completely protect

the listener” and that broadcasting is “accessible to children, even those too young to read.”

In a later case, however, the Supreme Court allowed a lower federal Court decision to stand that limited the hours during which the federal broadcast indecency law can be enforced.

In recent decades, the Supreme Court has also:

1. Limited the reach of obscenity laws to “hardcore pornography”
2. Held that cities must provide “adult businesses” with a reasonable opportunity to open
3. Held that “nude dancing” enjoys First Amendment protection
4. Invalidated a law prohibiting “pseudo child porn”
5. Invalidated a law restricting children’s access to indecent material on the Internet
6. Invalidated a law restricting children’s access to pornography on cable TV

Other federal court cases are headed towards the Supreme Court that, if decided in favor of the pornography defenders, will push our nation ever closer to the brink of moral anarchy.

In Philadelphia, a U.S. Court of Appeals has ruled that a federal law restricting children’s access to Internet pornography is unconstitutional. In Pittsburgh, a federal judge has ruled that federal obscenity laws are now in large measure unenforceable. In New York City, petitioners have filed a suit in federal court arguing that a federal obscenity law cannot be applied on the Internet.

Not too long ago, the legal arguments made in the above three cases would have been laughed out of court, but in a “legal climate” where some Supreme Court Justices think they can construe the First Amendment any way they please – irrespective of the history of a provision, the will of the people, common sense and the Court’s own precedent – these cases must be taken seriously.

Because the Federal Communications Commission has finally begun to enforce the broadcast indecency law against TV networks (namely, NBC, CBS & FOX), one or more court challenges to this law are also expected in the near future. And, given the present makeup of the Supreme Court, media attorneys think the “High Court” may be ready to overturn *Pacifica*.

Mr. President, we realize that there is often a fine line between Justices properly *interpreting* the Constitution and in effect *rewriting* it, but if that line no longer exists and Justices are free to effectively *rewrite* the freedom of speech and of the press clause to reflect their own libertarian views, then ours is no longer a government of the people, by the people and for the people, as Lincoln aptly put it. What we have is a judicial oligarchy accountable to no one.

We therefore urge you to nominate a person who understands the importance and limitations of the Supreme Court and who will heed the warning enunciated in [Columbia Broadcasting System v. Democratic National Committee](#), 412 U.S. 94, at 102-103 (1973):

“Thus, in evaluating the First Amendment claims ... we must afford great weight to the decisions of Congress ... Professor Chafee aptly observed: ‘Once we get away from the bare words of the [First] Amendment, we must construe it as part of a Constitution which creates a government for the purpose of performing several very important tasks. The Amendment should be interpreted so as to not cripple the regular work of government.’”

We close with the following observation (and supporting evidence) and a prayer.

It isn't the American people who are clamoring for more pornography on the Internet and in their communities and for more sex (including pornography), vulgarity and violence on TV.

In March 2002 and March 2004, Morality in Media commissioned Wirthlin Worldwide to ask a question in a national survey about enforcement of federal Internet obscenity laws. 82% of adult Americans surveyed in March 2004 said federal laws against Internet obscenity should be *vigorously* enforced. In the March 2002 survey, 81% said yes to that question. In 1997, MIM also commissioned Wirthlin to ask a question about enforcement of *all* federal obscenity laws. 80% of adult Americans said Federal obscenity laws should be *vigorously* enforced.

In November 2003, the U.S. Senate, *by unanimous consent*, also passed Senate Concurrent Resolution 77, which states in part, "it is the sense of Congress that Federal obscenity laws should be vigorously enforced throughout the United States."

According to a poll conducted by Harris Interactive for Morality in Media (April 2005), 53% of adult Americans said the FCC is doing a "poor job" of maintaining community standards of decency on broadcast TV, particularly from 8 pm to 10 pm. More than twice as many adults believed the FCC is doing a "very poor" job (33%) versus a "very good" job (15%).

According to a Pew Research Center survey (April 2005), 75% of adults favored "stricter government enforcement of decency rules when children are more likely to be watching TV." According to a *Time* magazine poll (March 2005), 53% of adult Americans said that in controlling the amount of sex and violence on TV, "the government should be more strict."

May God give you wisdom as you make this decision so crucial for the well being of our nation.

Sincerely,

Robert Peters, President of Morality in Media
Phil Burress, President of Citizens for Community Values
Charlie Butts, Religion Editor, USA Radio Network
Gregory Carlin, Director of Irish Anti-Trafficking Coalition
Dr. Victor B. Cline, Psychologist and Professor Emeritus, University of Utah
Janet L. Folger, President of Faith2Action
Rabbi Hersh Ginsberg, Director of Union of Orthodox Rabbis of the United States & Canada
Joe Glover, President of Family Policy Network
Rabbi Abraham Hecht, President of Rabbinical Alliance of America
Donna M. Hughes, Ph.D., Professor of Women's Studies Program, University of Rhode Island
Dr. Dennis Jarrard, Former Chairperson, Archdiocese of Los Angeles Commission on Obscenity
Bill Johnson, President of American Decency Association
Bill Kelly, FBI Special Agent (retired), Obscenity Investigator
James Lambert, Author of *Porn In America*
Jan LaRue, Chief Counsel and Legal Studies Director of Concerned Women for America
Mary Ann Layden, Ph.D., Co-Director, Sexual Trauma Program, University of Pennsylvania
Laura Leder, Editor of Take Back the Night
Rabbi Yehuda Levin, Jews for Morality
Michael J. McManus, President of Marriage Savers, and a Columnist ("Ethics & Religion")
Tom Minnery, Vice President Government & Public Policy of Focus on the Family
Penny Nance, President of Kids First Coalition
Tony Nassif, Founder and President of Cedars Cultural & Educational Foundation

C. Preston Noell, President of Tradition, Family, Property, Inc.
Thomas R. Rodgers, Detective Lieutenant, Retired, Indianapolis Police Department
Rick Schatz, CEO and President of National Coalition for the Protection of Children & Families
Malcom E. Smith, Jr., Founder of Parents and Grandparents Alliance
Jack Thompson, Attorney
Patrick Trueman, Senior Legal Counsel, Family Research Council
Robert T. Walsh, Managing Editor of *Triumph* (national Catholic newspaper)
Richard R. Whidden, Jr., Executive Director of National Law Center for Protection of Children & Families
Rev. Donald Wildmon, Founder and Chairman of American Family Association
Tim Winter, Executive Director of Parents Television Council
Roger T. Young, FBI Special Agent (retired), Obscenity Investigator

State and Local Organizations

Paul Caprio, Family-Pac Illinois
Dorn Checkley, Director of Pittsburgh Coalition Against Pornography
Micah Clark, Executive Director of American Family Association of Indiana
Rita Covelle, President of Morality in Media of Massachusetts
Carl K. Crowe, State Director of American Family Association of New Jersey
Loretta Detamore, President of Morality in Media of Muskegon (Michigan)
William Devlin, Urban Family Council of New York City
Dallas D. Erickson, President of Montana Help Our Moral Environment
Michael Geer, President of Pennsylvania Family Institute
Gary Glenn, President of American Family Association of Michigan
Dom Gordon, President of Morality in Media of Wisconsin
Bruce Harpel, Senior Pastor of Maranatha Christian Church (Minneapolis)
Michael S. Heath, Executive Director of Christian Civic League of Maine
Jim Hill, President of American Family Association of Oregon
Harris Himes, Harris Himes, Chairman of Montana Family Coalition
Don Kohls, Chairman of Omaha for Decency (Nebraska)
Peter LaBarbera, Executive Director of Illinois Family Institute
Msgr. James P. Lisante, Pastor St. Thomas Apostle Church, (New York)
Christopher Manion, Ph.D., Founder of PURITY (Virginia)
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