

Once Again, U.S. Supreme Court Thinks It Knows Better Than Congress

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Introduction

I would have been pleasantly surprised had the Supreme Court in [*Ashcroft v. American Civil Liberties Union*](#) 124 S.Ct. 2783 (2004), upheld the Child Online Protection Act (COPA), a law intended to restrict children's access to commercial websites that distribute sex materials that are harmful to minors (i.e., obscene for minors). Minors are defined as children under age 17.

COPA prohibits the knowing posting, for commercial purposes, of World Wide Web content that is harmful to minors (i.e., obscene for minors). Like the "dial-a-porn" law, COPA provides an affirmative defense to content providers who restrict access to prohibited content by requiring a credit card or "any other reasonable measures that are feasible under available technology."

Instead, on June 29, the Supreme Court affirmed the decision of the ACLU-minded Court of Appeals in Philadelphia and remanded the case to the federal district court in that city to determine if there are less restrictive alternatives to COPA. In so doing, the Supreme Court noted that in the earlier proceeding granting a preliminary injunction, the "primary alternative" considered by the District Court was "blocking and filtering software" [124 S.Ct. at 2792].

In 1997, the Court in [*Reno v. American Civil Liberties Association*](#), 521 U.S. 844, also invalidated the Communications Decency Act (CDA), intended to restrict children's access to indecency on the Internet. In the CDA case, the Court stated [521 U.S. at 874, 877], in part:

"In order to deny minors access to potentially harmful speech, the CDC effectively suppresses a large amount of speech that adults have a constitutional right to receive and to address to one another. That burden on adult speech is unacceptable if less restrictive alternatives would be at least as effective in achieving the legitimate purposes of that the statute was enacted to serve...**the District Court found that 'despite its limitations, currently available user-based software suggests that a reasonably effective method by which parents can prevent their children from accessing sexually explicit and other material...will soon be widely available.'**" [Emphasis added]

The primary focus of this article is the Court's continuing belief that screening technology is or may be a "less restrictive means" to protect children from Internet obscenity. As a result of this belief, for over eight years—and counting—there has been no *legal* protection for children against the explosion of pornography (mostly hardcore pornography) on the Internet.

Parental Use of Screening Technology

Parental use of screening technology is, of course, *an important part* of the solution—especially for younger children. But as children get older, they have more and more opportunities outside the home to access the Internet, including computers at a friend or relative's home or at work or at a computer cafe. They also have access to laptops, palm computers and wireless phones connected to the Internet. Tech-savvy teens can also circumvent screening technology (and spread the news to others), and no screening technology blocks access to all pornography.

Furthermore, for a variety of reasons (including computer "illiteracy," cost of blocking technology, and parental ignorance, naïvete and indifference), many parents don't use screening technology. In *Ginsberg v. New York*, 390 U.S. 629, at 639-640 (1968), the Supreme Court held that *two* governmental interests justified the limitations that New York's harmful to minors law placed upon the availability of "sex materials" to minors:

"The legislature could properly conclude that parents and others, teachers for example, who have this primary responsibility for children's well-being are entitled to the support of laws designed to aid discharge of that responsibility...**The State also has an independent interest in the well-being of its youth...**[T]he knowledge that **parental control or guidance cannot always be provided and society's transcendent interest in protecting the welfare of children justify reasonable regulation of the sale of material to them**" [Emphasis added]

On July 8, 2004, the *New York Post* ("[Poverty figures rocket in NY public schools](#)") reported that the "New York City school system is grappling with a growing proportion of immigrant students whose primary language is not English. About 15 percent of students are learning English." All of these children will be introduced to computers. Many of their parents, however, are not now, and may never be, in a position to adequately supervise their children's use of computers.

Children, in large numbers, are being exposed to Internet obscenity

Screening technology has been around since before Congress enacted the Communications Decency Act of 1996. It has been promoted by, among others, governmental bodies, print media, telecommunications giants, parent groups and corporations that profit from its sale.

The record would seem clear, however, that screening technology, standing alone—and, in particular, *parental* use of screening technology—has not been effective in blocking children's access to Internet pornography, as the following surveys (among others) show.

According to a 1999 TIME /CNN teen poll, 44% of teens ages 13 to 17 said they had "seen websites that are X-rated or have sexual content." [*TIME*, 5/10/99]

According to a 1999 Yankelovich poll, 58% of teens ages 13 to 17 said they visited websites "containing pornography, offensive music lyrics, gambling or messages of violence and hate" ("Teens Unseemly Web Visits," *Newsday*, 9/7/99). Among teens with lower grades (C average or less) or poor attendance, the percentage rose to 78%.

According to a June 2001 Pew Internet & American Life survey, 15% of online teens ages 12 to 17 "say they have lied about their age to gain access to a Web site—an action that is often required in gaining access to pornographic sites. A fifth of all boys (19%) ages 12 to 17 have done this, compared to 11% of teen girls. One quarter of boys ages 15 to 17 have said they were older than they are in order to gain access to a Web site. Teens with several years of Internet experience are more likely...to have lied about their age to gain access to a Web site."

According to a December 2001 Kaiser Family Foundation study, 70% of teens ages 15-17 had "accidentally come across" pornography while on the Internet. Of these teens, 55% said "being exposed to pornography would have a serious impact on kids under 18."

According to February 2002 Nielsen/NetRatings, "nearly 16% of visitors to adult-oriented Web sites were under the age of 18."

According to a 2002 Girl Scout Research Institute survey, "most girls (ages 13 to 18) say they can get around parents' rules...Nearly half say they're able to...get into a porn site (42%)" [*USA TODAY*, 2/13/02]. According to an article about the same study published in the *NY Daily News* (3/3/02), "the girls report they also get unsolicited e-mails with porn links and often accidentally go to porn sites when looking for legitimate teen sites."

According to study published in the March 2003 Youth and Society (conducted by researchers at the University of New Hampshire's Crimes Against Children Research Center), in the course of a year 25% of children ages 10-17 who use the Internet regularly are exposed involuntarily to pornography (defined to include only pictorial material).

According to an Australian study released March 2003, 84% of boys ages 16 and 17 and 60% of girls ages 16 and 17 had "stumbled on" Internet sex sites and 38% of the boys "admit to having deliberately searched the Internet for pornography" (*Sydney Morning Herald*, 3/3/03).

What minors see when they visit Internet porn sites

Last year, I spoke with a mother who caught her pre-teen son using a computer, located in a common area of the home, to access porn sites. Having looked at some of the sites he visited, the mother said, "I was naïve about the Internet; I thought you had to pay for pornography."

The mother's discovery is supported by a survey described in the report *Youth, Pornography and the Internet* (National Research Council, at subsection 3-3, May 2002):

"In a survey of adult-oriented commercial sites, the majority of adult-oriented sites (about 74%) were found to display adult content on the first page (accessible to anyone who visits the page, often through the display of sexually explicit banner ads to other sites...about 25 percent employed practices that hindered the user from leaving the site (e.g., mousetrapping) and only 3 percent required a credit card or other 'adult check' to proceed past the first page of the site (that is, most sites allow the user to take a 'free preview' in which some additional content is provided.)"

The above survey is supported by the experience of two retired law enforcement agents who follow up on citizen complaints (mostly the result of "porn spam") submitted to MIM's www.obscuritycrimes.org website. A very large majority ("almost all") of the porn sites the retired agents observe depict *hardcore* sex free of charge.

To give the reader some idea of the variety of *hardcore* sex that children can observe free of charge on the Internet, examples of promotional material that the agents observed on pornographic websites reported to www.obscuritycrimes.org are reprinted here.

- "RAPE FANTASIES! WARNING! Uncensored Videos! All Extreme! All About Forced Sex!"
- "HOT YOUNG TEENS WITH DOGS, HORSES, COWS, CHICKEN, SHEEP, SNAKES, AND MORE..."
- "Next time you need a leak, don't use a urinal, use a urinal slut"... "The original human piss trough."
- "RAPED SCHOOL GIRLS"... "VIRGIN GIRLS RAPED"... "RAPE AN INNOCENT GIRL"
- "EXPLOITED BITCHES"... "Sometimes even the sweetest girls can really be disgusting bitches."
- "WATCH HOW BEAUTIFUL WOMEN ARE HELD DOWN BY FORCE, HUMILIATED AND DEGRADED"
- "REAL FAMILY INCEST SITE"... "THE BEST INCEST SITE IN THE ADULT WEB"
- "Barely Legal Teens in Live Sex Shows"... "INNOCENT BABYSITTERS"... "YOUNG SLUTS"
- "Teen Toilet Sex"... "Rape & Torture Porn"... "Scat [feces] Teen Bondage..."

The Results: sexual addiction, sexual assault, and sex *miseducation*

For those who need convincing that the *floodtide* of obscenity pouring into our nation's communities and homes is adversely affecting both children and adults, a good place to begin is Morality in Media's www.ObscenityCrimes.org website. Click to the [Help for Parents](#), [Porn Problem and Solutions](#) and [Help for Porn Victims and Addicts](#) pages for articles and links to other resources.

Supreme Court's *Playboy* decision

In May 2000, the Supreme Court in [U.S. v. Playboy](#) 529 U.S. 803, overturned a federal law that would have required cable TV operators to either *completely* scramble the signals for pay porn channels (so that the signals wouldn't "bleed" into TV sets of nonsubscribers) or to air the imperfectly scrambled signals only from 10 p.m. to 6 a.m.

The signal bleed law seemed reasonable. Not only was the law restricted to indecent content, it applied only to channels "primarily dedicated to sexually explicit programming." The Supreme Court had said in previous cases that similar content was at the "periphery of First Amendment concern" [*FCC v. Pacifica*, 438 U.S. 726, at 743 (1978); see also, *Young v. American Mini Theatres*, 427 U.S. 50, at 70 (1976); *Barnes v. Glen Theatre*, 501 US 560, at 565-566 (1991)].

It was technologically possible for cable operators to comply with the signal bleed law. Many cable systems already scrambled their signals. Other systems voluntarily restricted "adult programming" to the hours of 10 p.m. to 6 a.m. Costs and profits were an issue, but in *City of Renton v. Playtime Theatres*, 475 US 41, at 54 (1986), the Court said, "The inquiry for First Amendment purposes is not concerned with economic impact."

Unlike the law at issue in *Sable Communications v. FCC* 492 US 115 (1989), involving a total ban on indecent telephone communications, the signal bleed law did not ban the "expression." It said, in so many words, that the pornographic "garbage" must either be packaged so that it doesn't stink up someone else's home or be put on the street only after 10 p.m.

The question of whether children can be harmed by exposure to indecent material appeared settled by the Court [see, e.g., *Pacifica*, 438 U.S. at 749-750]. A description of some of the programming that was bleeding uninvited into millions of homes can be found in the Government's brief in the Playboy case, at page 5, note 2:

"The Spice network depicts such activities as 'female masturbation/external,' 'girl/girl sex,' 'oral sex/cunnilingus,' 'explicit language,' 'wide shot penis/flaccid,' and 'wide shot' vagina.'...[P]rogramming on the even more explicit Spice Hot network depicts 'female masturbation with penetration,' 'male masturbation,' 'medium shot penis/erect,' 'oral sex/fellatio,' 'vaginal penetration/objects,' 'vaginal penetration/penis,' and 'vaginal penetration/tongue.'"

One would have also thought that when the Justices balanced the claimed right to cablecast porn, at all hours of the day and night, into millions of homes that didn't subscribe to it *against* (1) the "individual's right to be left alone" in the privacy of the home [*Pacifica*, 438 U.S. at 748], (2) the government's interest in the "'well-being of its youth' and in supporting 'parents claim to authority in their own household'" [438 U.S. 749] and (3) the "right of the Nation...to 'maintain decent society'" [*Paris Adult Theatre I v. Slaton*, 413 U.S. 49, at 59-60 (1973)], a majority of the Justices would have come down on the side of the American people, children, and decency.

The Supreme Court, however, can no longer be counted on to defend the home, children, considerations of decency and morality, Court precedent, or separation of powers against the relentless assaults of pornographers and moral anarchists (i.e., the radical libertarians).

"The distinction between laws burdening and banning speech is but a matter of degree," wrote Justice Kennedy, who delivered the opinion of the Court in *Playboy*. "The government's content-based burdens must satisfy the same rigorous scrutiny

as its content-based bans." He added, "It is rare that a regulation restricting speech because of its content will ever be permissible."

What this means is that the Court now applies the same *nearly-impossible-to-meet* test it devised for laws that would *ban* speech (e.g., "hate speech") from the Internet to a law like COPA that is intended to restrict children's access to obscene for minors material on the Internet-because COPA, in the process of protecting kids, incidentally "burdens" adult access to such material.

The *Playboy* majority treated the official findings of a fellow judge in the federal district court as if they were "the truth," and, in the process, treated with disdain both the Congressional findings and the evidence submitted by the government during the trial. In response to the *Playboy* majority's conclusion that the Government "has not convinced us that [signal bleed] is a pervasive problem," Justice Breyer, dissenting, said:

"And if...the majority still believes the Government has not proved its case, then it imposes a burden...beyond that suggested in any other First Amendment case of which I am aware."

As far back as May 1983, the (then monthly) *MIM Newsletter* reported:

"Following is typical of letters received in the MIM offices every day, this from Norfolk, Virginia: 'We have a *Playboy* Channel that is not scrambled very well. I have seen a great deal of nudity just changing the stations. I have complained to my cable company and they said they would scramble it better. I watched the channel the other day to see if they had, and it was still so clear that I could follow the programming without subscribing to it....'"

During the 1990s, I personally responded to many citizen complaints about cable porn "signal bleed." I also wrote an article, "Hardcore Pornographic Films on Your Cable TV System," which appeared in the March 1995 *MIM Newsletter*. The article begins with the following:

"During the last two years, MIM has received many calls from individuals complaining that the unordered signal for...pornographic films was inadequately scrambled and could be viewed or heard on their cable TV sets...Many callers were parents, and in several instances children had been exposed to the films. When the individuals complained to their local cable operators, they were told they could obtain a device to block the offending channel. Such devices, however, didn't always block the signal."

After *Playboy* filed a lawsuit in federal court to block implementation of the new signal bleed law, I contacted the Justice Department to see if the information MIM had been compiling over the years might be of help in defending the law. A Justice Department attorney that was handling the case was more than happy to get the information. In most instances, however, there was no way to track down the person who complained about signal bleed. Presumably, other potential witnesses were unwilling or unable to testify. The potential benefits of obtaining a witness also had to be weighed against budgetary and time limitations.

In contrast, members of Congress read and listen to news reports and read other articles, studies, reports and books. They listen to constituents, special interest groups, and others. They listen to witnesses in committee hearings where restrictive rules of evidence don't apply.

Despite this, it is the "facts" determined by harried trial court judges—some of whom have their own ideological agendas and all of whom depend at least in part on partisan trial attorneys who are sometimes ill-prepared or unethical or both—that the High Court views as "gospel truth."

The *Playboy* majority also faulted the Government for failing to prove that a "less restrictive alternative"—i.e., "a well-promoted blocking provision"—was ineffective.

The *Playboy* majority did not explain how it expected the Government to prove that voluntary use of blocking technology doesn't work. Did the majority have in mind a field test in cooperation with cable operators? If so, how many children were to be used as guinea pigs—and for how long? What if a "well-promoted blocking provision" proved more effective in telling kids where the porn is than in prompting their parents to request blocking?

Nor did the *Playboy* majority explain why it apparently assumed that when Congress enacted the signal bleed law most parents were unaware of the availability of blocking technology, despite the facts that it had been available for more than a decade and had been publicized.

Nor did the *Playboy* majority explain why it apparently assumed that when Congress enacted the signal bleed law most parents were ignorant of the availability of blocking technology. Was the *Playboy* majority unaware that blocking technology had existed for many years and that it had already been promoted? For example, in November 1984, the *MIM Newsletter* reported:

"Playboy Channel is planning a lockout box that will use a rabbit-head key and sell for under \$10. The boxes will be tested soon...If successful, Rainbow Programming, which markets Playboy...will begin advertising the lockout box."

Was the *Playboy* majority unaware that in 1978 the Supreme Court upheld a ban on broadcast indecency, despite the availability of "a device which will permit them [parents] to 'program' their home television set in advance so that it will only receive material selected by the parent" (*Pacifica*, Brief for Respondent, p. 49, note 40)?

Why did the *Playboy* majority discount *Dial Info Services v. Barr* (2nd Cir. 1991), where the U.S. Court of Appeals determined that "voluntary blocking" would not be effective in restricting children's access to indecent dial-a-porn messages? Did the Supreme Court think that, for one reason or another, parents faced with signal bleed on their cable TV would behave differently than they did with dial-a-porn on their telephones?

As Justice Breyer pointed out in his *Playboy* dissent, the less restrictive means "test" employed by the Supreme Court can in fact be "no test at all." Rather, it becomes a means by which Justices "enable" themselves "to strike down legislation."

Supreme Court's *Ashcroft v. ACLU* decision

You may wonder why so much space has been devoted to the *Playboy* case. The answer is simple. The Supreme Court's *Playboy* decision in 2000, invalidating the cable TV signal bleed law, and the *Ashcroft v. ACLU* decision in 2004, invalidating COPA, were both decided on 5-4 votes, with Justice Kennedy writing both opinions, joined by the same four Justices. In *Ashcroft v. ACLU*, Justice Kennedy wrote [124 S.Ct. at 2793-2794]:

"COPA presumes that parents lack the ability, not the will, to monitor what their children see. By enacting programs to promote the use of filtering software, Congress could give parents that ability without subjecting protected speech to severe penalties. **The closest precedent on the general point is our decision in *Playboy Entertainment Group, Inc. v. Entertainment Group, Inc.*, like this case, involved a content-based restriction designed to protect minors from viewing harmful materials. The choice was between a blanket speech restriction and a more specific technological solution available to parents who chose to implement it. Absent a showing that the proposed less restrictive alternative would not be as effective, we concluded, the more restrictive option preferred by Congress could not survive strict scrutiny...In the instant case, too, the Government has failed to show, at this point, that the proposed less restrictive alternative will be less effective.**" [Emphasis added]

There are at least two problems with Justice Kennedy's majority-opinion analyses in both *Playboy* and *Ashcroft v. ACLU*. **In the first place**, he apparently assumes that if parents possess the *capability* to address the problem and are made aware of that capability, they will act on that knowledge. But even if they don't act, government must still "butt out." That flies in the face of common sense and the Supreme Court's holding in *Ginsberg*, 390 U.S. at 640, that:

"The State also has an independent interest in the well-being of its youth...[T]he knowledge that parental control or guidance cannot always be provided and society's transcendent interest in protecting the welfare of children justify reasonable regulation of the sale of material to them."

In the second place, Justice Kennedy apparently assumes that if parents correct a problem after it's discovered, there is no longer a problem. That flies in the face of both common sense and an observation made by Justice Stevens in the Court's *Pacifica* decision (438 U.S. at 748-749):

"Because the broadcast audience is constantly tuning in and out, prior warnings cannot completely protect the listener or viewer from unexpected program content. To say that one may avoid further offense by tuning off the radio when he hears indecent language is like saying that the remedy for an assault is to run away after the first blow."

With the cable porn signal bleed problem, many subscribers discovered the problem after they or their children were exposed to pornography, either because they were new subscribers or because a porn channel was added without notifying subscribers that the signal bleeds.

In March 2004, a citizen sent MIM a copy of a letter that she had sent to her state's Department of Telecommunications (Consumer Division) about a problem she had with her cable TV provider. The problem wasn't signal bleed, but her letter is nevertheless illuminating:

"I had no idea when [the cable TV provider] started signaling an ON DEMAND feed into my home, that it would give INSTANT ACCESS to Adult Movies...I never received information on how to block these films prior, nor was I even aware that this pornography was with my service and so accessible. It was not until I received my bill did I learn that my UNDERAGE son (13 years old), had gained easy access and ordered these movies by simply selecting them with a remote control...I am disputing these charges \$170.05 on the basis that [the cable TV provider] was irresponsible and with reckless abandon did not notify me in advance of easily accessible pornographic programming and did not notify me on how to block such programming on their ON DEMAND service."

As noted above, I spoke last year with a mother who caught her pre-teen son using the family computer—stationed in a common area—to access porn sites. The mother hadn't installed screening technology because, in her words, "I was naïve about the Internet; I thought you had to pay for pornography." The mother subsequently installed technology, but the damage was done. As the mother put it in [an article](#) published on MIM's www.obscenitycrimes.org website:

"It was a huge heart break for me to view the sites my son had seen. The pornographers stole my son's innocence and the horrible part is it happened in my own home! He saw more perverted sex on those sites than I have ever seen in my 51 years of living."

It would also appear that in grounding his *Ashcroft v. ACLU* decision in his prior *Playboy* decision, Justice Kennedy ignored a significant difference between cable TV and the Internet.

Apart from the problems that (1) parents may not discover a TV bleeding problem until after a child has been exposed to the porn, (2) the problem may not be promptly or adequately fixed after the cable provider is notified and (3) many parents won't block the signal even after the problem is discovered, it is *theoretically possible* to solve most of the cable TV signal bleed problem with technology. That's because most children do most of their TV watching at home.

With the Internet, however, many children spend much of their time connected to the Internet (or in the presence of other children connected to the Internet) outside the home. Parental use of screening technology on home computers cannot prevent children from stumbling into Internet porn or purposefully seeking it out, when they are away from home.

The Court in *Ashcroft v. ACLU* makes much of the fact that COPA, standing alone, can't completely protect children from Internet porn because, for example, COPA doesn't apply to websites located overseas. But as Justice Breyer explains in his dissent [124 S.Ct. at 2802], neither does screening technology, standing alone, "solve the 'child protection' problem:"

"Filtering software, as presently available, does not solve the 'child protection' problem. It suffers from four serious inadequacies that prompted Congress to pass the legislation instead of relying on its voluntary use. First, its filtering is faulty, allowing some pornographic material to pass through without hindrance...Second, filtering costs money. Not every family has the \$40 to install it...Third, filtering software depends upon parents willing to decide where children will surf the web and able to enforce that decision. As to millions of American families, that is not a reasonable possibility. Fourth, software blocking lacks precision, with the result that...it blocks a great deal of material that is valuable..."

To protect children from Internet pornography, *both law and technology will be necessary.*

There is also something troublesome about the Supreme Court's attempt to condition the exercise of Congress's power to protect children from Internet porn on whether other nations do their part. Presumably, if the U.S. gets serious about curbing obscenity here, most other nations will do what they can to curb obscenity within their own borders. But if some other nations refuse, does that mean Congress is helpless to address the problem within U.S. borders?

Our nation's entertainment media are currently engaged in a "full court press" to curb copyright violations on the Internet—through enforcement of existing laws, lobbying Congress to pass new laws, and public education (which includes "educating" parents about their responsibilities). To date, however, a number of other nations have refused, in whole or part, to cooperate. Should the Supreme Court now also invalidate U.S. copyright laws, at least as applied to the Internet?

Concluding thoughts

After the Court's *Playboy* decision, I was asked what the likely effect would be. I first said that while it would be a mistake to put the Supreme Court in a box, Justice Kennedy, who delivered the opinion of the Court in the *Playboy* case, did write: "It is rare that a regulation restricting speech because of its content will ever be permissible."

I then said that it would, therefore, seem a fair assessment to say that the majority's decision will make it difficult, if not impossible, for government to take effective steps to shield children from sex material on TV or the Internet unless the material is obscene for adults.

Clearly, the Constitution, as our nation's founding fathers understood the document and as the Supreme Court itself understood it for almost 200 years, was not

intended to cripple government's power to protect children or society from obscenity and indecency.

Increasingly, however, the Court is becoming stone deaf to 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.'"

Our nation's founding fathers viewed the First Amendment within a framework of ordered liberty—not as a license to publish pornography, to strip naked in public places for the purpose of sexually arousing patrons, or to commercially distribute material harmful to minors *without any legal obligation* to adopt sensible measures to restrict children's access to the smut.

Many among our nation's secular elite now espouse a *radically different* view of the First Amendment, and they have every right to do so. What they don't have a right to do is enlist accommodating Supreme Court Justices to effectively *rewrite* the First Amendment by means of specious decisions. The power to *amend* is reserved to the people and their representatives.

Admittedly, there is often a fine line between interpreting a Constitutional provision and in effect amending it to reflect the Justices' personal preferences or ideologies, irrespective of the history of a provision, the will of the American people, the Court's own precedent, and common sense.

But if that line no longer exists (as many elitists now brazenly inform us) and Supreme Court Justices are "at liberty" to interpret the Constitution in any way they please (and, in the process to "sit in judgment" over a wider and wider array of legislative and executive branch functions), then ours is no longer a government of the people, by the people and for the people, as Lincoln so aptly put it. What we have instead is a judicial oligarchy accountable to no one. The official amendment process is simply too cumbersome to be an effective check on a Court that is ever changing the meaning of our nation's relatively new "living" Constitution.

I will add that what I think the elitists envision for the United States is a modern day Sodom and Gomorrah. I also think the Apostle Paul got it right when he wrote, in his letter to the Romans about the elitists of his day (and ours), "Professing themselves to be wise, they became fools."