

# 'We the people' flaunted

When Ronald Reagan was called home, I had occasion to reflect upon my service as his constitutional legal counsel. Reagan often would say that the Constitution's three most important words were, "We the people."

This phrase captures vital aspects of our government: We are created equal under God — no one has an entitlement to govern. And ultimate questions of policy — how we are to live together — are to be decided in conversation with each other in legislative assembly.

Some matters will be self-evident. Jefferson included in this category the inalienable rights to life, liberty and the pursuit of happiness. As Catholics, the moral reality of life's origin in the divine directs us to affirm life at every stage and helps us see the line between liberty and license, crossed not only when we physically harm others but also when we degrade the human personality.

Not surprisingly, "we the people" in legislative chamber chose to ban partial-birth abortion and limit the commercial, Internet distribution of pornography.

Judges have substituted their judgment for that of the people's representatives. In the partial-birth case, a federal trial judge in San Francisco enjoined the enforcement of the ban and the U.S. Supreme Court has blocked enforcement of the Child Online Protection Act.



Douglas W. Kmiec

Besides running against common sense, these cases have disturbing aspects. First, the laws before the judges were repeat efforts of legislative bodies. Second, the judges gave virtually no deference to legislative fact-finding and policy.

Four years ago, the U.S. Supreme Court invalidated a Nebraska limitation on partial-birth abortion as too broad and maybe the law needs a health exception. Congress listened and drafted a new federal ban, signed by President Bush, which plainly described and banned only the singularly gruesome partial-birth procedure, and with ample medical evidence established that the procedure is never necessary to preserve a mother's life or health.

The judge's response: "Congress' legal conclusions ... is (sic) not entitled to deference by this court."

Having had an earlier effort to legislate against Internet porn declared unconstitutional as a violation of free speech, Congress followed the court's instruc-

tions on fixing the law. It narrowed the scope of the new law to those who knowingly use commercial Web sites to spread pornography to minors and fail to put this material behind age-verification screens. Scarcely different from keeping obscene magazines behind the pharmacy counter. And it narrowly defined material harmful to minors, such that anything that remotely could have literary, artistic, political or scientific value would be unaffected.

Not good enough, said the justices. Better for parents to buy software that filters out unwanted material.

Filters don't always work; they impose a cost 100 times greater than adult verification; there are more computers in the world than the one in your family room; and, from the standpoint of free speech, filters often stop too much.

No matter, said the court. If parents used filters the law would be unnecessary and "adults without children may gain access ... without having to identify themselves or provide ... credit-card information."

What happened to the inalienable right to life and the compelling interest to protect minors? Both, it seems, were jettisoned by an unfortunate judicial disregard for three important words.

Douglas W. Kmiec is a columnist for Catholic News Service.

## LETTERS

# Readers air views on Eucharist, politicians

**EDITOR'S NOTE:** The three letters that follow discuss Catholics in public life who support the legal right to abortion. In a June 18 statement, the U.S. Catholic bishops said politicians who act "consistently to support abortion on demand" risk "cooperating in evil and sinning against the common good."

"Those who formulate the law" are obliged in conscience "to work toward correcting morally defective laws," said the 1,000-word statement "Catholics in Political Life."

"The killing of an unborn child is always intrinsically evil. ... To make such intrinsically evil actions legal is itself wrong," they said.

Regarding the denial of Communion to Catholic politicians who support abortion on demand, the bishops said that "all must examine their consciences" about their worthiness to receive Communion, including with regard to "fidelity to the moral teaching of the church in personal and public life."

"(G)iven the wide range of circumstances involved in arriving at a prudential judgment" in that matter, the bishops said they "recognize that such decisions rest with the individual bishop in accord with estab-

lished canonical and pastoral principles."

They urged Catholics in public life to protect the unborn and oppose legal abortion, and said they would counsel Catholic politicians who consistently work against restrictions on abortion that their support for abortion on demand "risks making them cooperators in evil in a public manner."

On a related theme, the U.S. Conference of Catholic Bishops' Administrative Committee's quadrennial election-year statement "Faithful Citizenship: A Catholic Call to Political Responsibility" describes the USCCB positions on a range of public issues. The full texts of both documents are available on the Internet at [www.usccb.org](http://www.usccb.org).

## Where does burden rest on abortion?

**To the editor:**

I have been pondering for weeks whether I should, as a Catholic, voice my opinion concerning whether bishops of the Catholic Church should refuse Communion to a person who aborts a child or who votes to allow abortion to occur.

The question is not the right or wrong of bringing Communion to someone. The question should be reflected upon by each communicant, "Am I in the state of grace as I receive the Body and Blood of Jesus Christ?" If a person condones aborting a child, he/she is not in the state of grace they need to be to receive the Body and Blood of Jesus Christ. Therefore, the burden should not be placed on the minister as to whether the recipient is or is not in the state of grace to receive Communion.

However, is it not the responsibility of the Catholic bishops of the Universal Church to lead their flock

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