

# To Soften Their Obdurate Hearts: The Southern Baptist Convention and Marriage Equality

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## I. INTRODUCTION

“[T]he arc of the moral universe is long, but it bends toward justice.”<sup>1</sup>

—Reverend Martin Luther King, Jr.

The arc of American history is bending toward the acceptance of marriage equality.<sup>2</sup> Popular support for same-sex civil marriage has reached a majority, and more and more states have established legal regimes for same-sex partners to wed.<sup>3</sup> Such support is widespread, with majorities supporting marriage equality among Democrats and independents, liberals and moderates, and all people up to age fifty-four.<sup>4</sup>

Acceptance of marriage equality follows closely after acceptance of homosexuality. When asked whether homosexuality should be accepted by society or discouraged, a large majority of Americans favor acceptance.<sup>5</sup> Majorities for acceptance of homosexuality are present among men, women, whites, Hispanics, political independents, Democrats, and moderate or liberal Republicans; in all age groupings up to age sixty-five, and at all educational levels. Majorities of mainline Protestants, Catholics and the religiously unaffiliated favor acceptance. Pluralities for acceptance of homosexuality are present among Blacks and those over sixty-five.<sup>6</sup>

In only two groups do majorities believe that homosexuality should not be accepted by society: conservative Republicans and white evangelicals.<sup>7</sup>

This lack of acceptance of homosexuality among conservative Republicans and white evangelicals is consistent with the Southern Baptist Convention’s position on marriage equality: It is firmly and vocally opposed to same-sex civil marriage.<sup>8</sup> The position of the Southern Baptist Convention is bound to have weight in our national debate over marriage equality. With some sixteen million members, the Southern Baptist Convention is the largest Protestant denomination in the

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1. Martin Luther King, *Our God Is Marching On!*, MARTIN LUTHER KING ONLINE, <http://www.mlkonline.net/ourgod.html> (last visited Sept. 18, 2011).

2. *See infra* Parts I-II.

3. *See infra* Part 1.

4. *See infra* text accompanying notes 17-18.

5. Gallup Poll, *Same-Sex Marriage, Gay Rights*, POLLING REPORT (May 8-11, 2008), <http://www.pollingreport.com/civil.htm>.

6. *See infra* text accompanying notes 20-28.

7. *Most Say Homosexuality Should Be Accepted by Society*, PEW RES. CTR. (May 13, 2011), <http://pewresearch.org/pubs/1994/poll-support-for-acceptance-of-homosexuality-gay-parenting-marriage> [hereinafter *Acceptance of Homosexuality Poll*].

8. *See infra* Part III.A.

United States, second in size only to the Catholic Church among all denominations.<sup>9</sup>

It is appropriate to ask whether the Southern Baptists can be convinced to rethink their position and join the emerging national consensus in favor of marriage equality. While those who have been exposed to only a caricature of the denomination might dismiss the possibility out of hand, there are some tantalizing threads and episodes in Southern Baptist history that cause us to pause and carefully consider the question.

First, the Southern Baptist Convention was on the wrong side of the transcendent moral issue of the nineteenth century: slavery.<sup>10</sup> Many Southern Baptists were in error on the transcendent moral issue of the mid-twentieth century: civil rights.<sup>11</sup> These erroneous positions were based on assertions of Biblical authority.<sup>12</sup> But in time, the Southern Baptist Convention reflected on the issues of slavery, civil rights, and racism. The Convention recanted its Biblical errors, repented, and adopted scripture-based positions apologizing for its support of slavery, promising its support for civil rights, and pledging action to eradicate racism.<sup>13</sup> Might it repeat this process on the issues of homosexuality and marriage equality, admitting its Biblical error and joining the emerging national consensus?

Second, the Southern Baptist Convention has a long history of supporting the separation of church and state as a fundamental provision of its faith.<sup>14</sup> For example, although many Southern Baptists individually opposed racial integration in the mid-1950s, the Southern Baptist Convention leadership spoke in favor of acquiescence to the Supreme Court's decision in *Brown v. Board of Education*.<sup>15</sup> Might the Southern Baptists be convinced to defer to the courts on the matter of the equal protection analysis of same-sex civil marriage and to the voters on the legislative adoption of marriage equality, to abstain from the public debate on these issues?

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9. *About Us-Meet Southern Baptists*, S. BAPTIST CONVENTION, <http://www.sbc.net/aboutus/default.asp> (last visited Sept. 18, 2011) (indicating that the Southern Baptist Convention has over 16 million members); *U.S. Religious Landscape Survey*, PEW FORUM ON RELIGION & PUB. LIFE, <http://religions.pewforum.org/affiliations> (last visited Sept. 24, 2011) (indicating that the Southern Baptist Convention comprises 6.7% of the U.S. population; Catholic comprises 23.9%).

10. *See infra* Part III.A.

11. *See infra* Part III.B.

12. *See infra* Parts IV.A-B.

13. *See infra* Parts IV.C.

14. *See infra* Part IV.A.

15. *See infra* Part IV.B.

This discussion begins by briefly recounting where the nation is on the issue of marriage equality. I then trace the positions of the Southern Baptist Convention and other religious groups on the matter. Next, we look to the Southern Baptist Convention's history of error and redemption on slavery, racism, and civil rights, and ask whether it is possible that the denomination could repeat the process on the issue of marriage equality. Then the discussion chronicles the Southern Baptist Convention's long and distinguished history of supporting the separation of church and state as a fundamental provision of its faith, and asks whether this tradition might bring the Convention to defer to the courts and the voters on the issue of marriage equality. After, we look at how the worldview of the contemporary leadership of the Southern Baptist Convention affects the prospects for reconciliation on these issues. The discussion concludes with some observations we should take from the history of the Southern Baptist Convention on the issues of homosexuality and marriage equality, to use as we move forward.

## II. THE EMERGING NATIONAL CONSENSUS ON MARRIAGE EQUALITY

“[T]here will be a time when your grandchildren say: ‘What was the argument with gay marriage? Who cares?’”

—Congressman Jim Kolbe (R. Arizona)<sup>16</sup>

Public sentiment on marriage equality is evolving. Recent public opinion polls show that a majority of Americans now favor extending civil marriage to same-sex couples.<sup>17</sup> Such support is widespread, with

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16. Blake Morlock, *Kolbe: GOP on Wrong Path*, TUCSONCITIZEN.COM (Dec. 29, 2006), <http://tucsoncitizen.com/morgue/2006/12/29/37112-kolbe-gop-on-wrong-path/>. Former Arizona Republican Congressman Jim Kolbe was the only openly gay Republican member of Congress when he retired in 2007. *Id.*

17. The polling numbers are striking. See ABC News/Washington Post Poll, *Same Sex Marriage, Gay Rights*, POLLING REPORT (July 14-16, 2011), <http://www.pollingreport.com/civil.htm>. A Gallup poll taken May 5-8, 2011 shows 53% of American adults agree that “marriages between same-sex couples should . . . be recognized . . . with the same rights as traditional marriage.” Longitudinal polling by Gallup shows the “should” response trending upward since the polling group started asking the question on an annual basis: from 42% (2004) to 37% (2005) to 42% (2006) to 46% (2007) to 40% (2008) to 40% (2009) to 44% (2010) to 53% (2011). Earlier nonannual information fits the trend line: from 27% in 1996 to 35% in 1999. Frank Newport, *For First Time, Majority of Americans Favor Legal Marriage*, GALLUP (May 20, 2011), <http://www.gallup.com/poll/147662/first-time-majority-americans-favor-legal-gay-marriage.aspx>. A CNN/Opinion Research Corporation poll taken April 9-10, 2011 shows 51% of American adults agreed that “marriages between gay and lesbian couples should . . . be recognized by the law as valid, with the same rights as traditional marriages.” *CNN Opinion Research Poll*, CNN OPINION RES. CORP. (Apr. 9-10, 2011, 11:00 AM), <http://i2.cdn.turner.com/cnn/2011/images/04/19/rel6h.pdf>. An ABC News/Washington Post poll taken March 10-13, 2011, shows 53% of American adults agreed that “it should be legal . . . for gay and lesbian couples to get married.” *ABC News/Washington Post Poll: Gay Marriage*, ABC NEWS (Mar. 18,

majorities supporting marriage equality among Democrats (69%) and political independents (59%), liberals (78%) and moderates (65%), men (61%) and women (65%) age eighteen to forty-nine, and people generally age eighteen to thirty-four (70%) and from age thirty-five to fifty-four (53%).<sup>18</sup> A recent poll in Iowa, a state that has marriage equality, found 61.3% support same-sex marriage, 48.5% believe same-sex marriage has had a positive effect on the people of Iowa, and 62.5% did not support a constitutional amendment barring same-sex marriage.<sup>19</sup>

Public support for marriage equality moves with public support for the acceptance of homosexuality. When asked whether homosexuality should be accepted by society or discouraged, a large majority of Americans generally, 58% to 33%, favored acceptance.<sup>20</sup> The majority for acceptance of homosexuality holds among men,<sup>21</sup> women,<sup>22</sup> whites,<sup>23</sup> Hispanics,<sup>24</sup> independents,<sup>25</sup> and Democrats.<sup>26</sup> A majority for acceptance of homosexuality could be found in all age groupings up to age sixty-four, with the margin for acceptance growing the younger the cohort.<sup>27</sup> Majority support for acceptance is found in all educational levels and grows with increased education.<sup>28</sup>

At the same time as popular support for marriage equality has grown, a number of states have moved forward to offer same-sex civil marriage. Marriage equality is now the law in eight jurisdictions:

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2011, 6:00 AM), <http://abcnews.go.com/images/Politics/1121a6%20Gay%20Marriage.pdf>. A 2011 Pew study put the national numbers at equipoise, 45% in favor of allowing gays and lesbians to marry and 46% opposed. *Beyond Red vs. Blue: The Political Typology*, PEW RES. CTR. FOR PEOPLE & PRESS (May 4, 2011), <http://people-press.org/2011/05/04/section-8-domestic-issues-and-social-policy/>.

18. Newport, *supra* note 17.

19. Hayley Bruce, *Majority of Iowans Approve of Same-Sex Marriage, Survey Shows*, DAILY IOWAN, June 30, 2011, <http://www.dailyiowan.com/2011/06/30/Metro/23954.html>.

20. *Acceptance of Homosexuality Poll*, *supra* note 7.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. Among those aged eighteen to twenty-nine, support for acceptance over discouraging homosexuality is 69% to 26%; for those aged thirty to forty-nine it is 59% to 32%; for those aged fifty to sixty-five it is 55% to 37%. *Id.* Among those aged sixty-five and older the support for acceptance falls below a majority, to 47%, but acceptance still commands a plurality as the discouraging position is supported by only 42%. *Id.*

28. Those with a high school education or less generate a majority for acceptance, 51% to 40%, and that majority grows for those with some college, 62% to 28%, and grows again for those who are at least college graduates, 67% to 26%. *Id.*

Connecticut,<sup>29</sup> the District of Columbia,<sup>30</sup> Iowa,<sup>31</sup> Maryland,<sup>32</sup> Massachusetts,<sup>33</sup> New Hampshire,<sup>34</sup> New York,<sup>35</sup> Vermont,<sup>36</sup> and Washington.<sup>37</sup> California first allowed,<sup>38</sup> and then did not allow,<sup>39</sup> same-

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29. Connecticut adopted civil unions in 2005, but the Connecticut Supreme Court in *Kerrigan v. Commissioner of Public Health*, 957 A.2d 407 (Conn. 2008), found the equality and liberty rules in the Connecticut Constitution require same-sex marriage. The Connecticut legislature in 2009 changed the marriage statute to provide marriage equality. 2009 Conn. Acts 09-13.

30. The District of Columbia passed domestic partnerships in 1992, although implementation of the statute was held up by Congress until 2002. *Vital Records Division, F.A.Q.*, D.C. DEP'T OF HEALTH, [http://dchealth.dc.gov/doh/cwp/view,a,3,q,573324,dohNav\\_GID,1787,dohNav,%7C33110%7C33120%7C33139%7C.asp](http://dchealth.dc.gov/doh/cwp/view,a,3,q,573324,dohNav_GID,1787,dohNav,%7C33110%7C33120%7C33139%7C.asp) (last visited Mar. 24, 2012). In December of 2009, the City Council passed, and the Mayor signed, Equal Access to Marriage legislation establishing civil marriage equality in the District of Columbia. D.C. CODE § 46-401 (2011).

31. Iowa has same-sex civil marriage as a result of a 2009 decision of the Iowa Supreme Court. *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009).

32. Maryland adopted marriage equality in March of 2012, with the statute scheduled to become effective in January of 2013. A campaign is being mounted to repeal the statute by referendum in November of 2012. *Maryland Governor Signs Gay-Marriage Law*, WALL STREET J., Mar. 1, 2012, <http://online.swj.com/article/SB10001424052970203753704577255823365482782.html>.

33. In 2003, the Massachusetts Supreme Judicial Court held in *Goodridge v. Department of Public Health*, 798 N.E.2d 941 (Mass. 2003), that the state could not deny the benefits and protections of civil marriage to same-sex couples. The Legislature having failed to act, allowed same-sex couples to marry in Massachusetts as of May of 2004. Pam Belluck, *Massachusetts Arrives at Moment for Same-Sex Marriage*, N.Y. TIMES, May 17, 2004, <http://www.nytimes.com/2004/05/17/US/Massachusetts-arrives-at-moment-for-same-sex-marriage.html?pagewanted=all&src=pm>.

34. In 2009, the New Hampshire legislature passed, and the Governor signed Equal Access to Marriage legislation providing civil marriage equality, which became effective on January 1, 2010. N.H. REV. STAT. ANN. § 457:1-9 (2009), (“Marriage is the legally recognized union of 2 people. Any person who otherwise meets the eligibility requirements of this chapter may marry any other eligible person regardless of gender.”).

35. New York passed marriage equality in June of 2011. Nicholas Confessore & Michael Barbaro, *New York Allows Same-Sex Marriage, Becoming Largest State To Pass Law*, N.Y. TIMES, June 24, 2011, <http://www.nytimes.com/2011/06/25/nyregion/gay-marriage-approved-by-new-york-senate.html>.

36. In *Baker v. Vermont*, 744 A.2d 864 (Vt. 1999), the unanimous Vermont Supreme Court found the exclusion of same-sex couples from civil marriage violated the equal protection clause of the Vermont Constitution. The Vermont legislature instituted civil unions for same-sex couples in 2000, followed by civil marriage in 2009. VT. STAT. ANN. tit. 15, § 1 (2011), available at <http://www.michie.com/vermont/lpext.dll?f=templates&fn=main-h.htm&2.0> (“Marriage is the legally recognized union of two people.”). VT. STAT. ANN. tit. 15, §§ 1201-1207.

37. In early 2012, the state of Washington established same-sex marriage by a law adopted by the legislature and signed by the Governor. Andrew Garber, *Gay-Marriage Bill Passes House, Awaits Gregoire's Signature*, SEATTLE TIMES, Feb. 8, 2012, [http://seattletimes.nwsourc.com/html/localnews/2017459861\\_gaymarriage09.html](http://seattletimes.nwsourc.com/html/localnews/2017459861_gaymarriage09.html); *Washington State Makes 7: Governor Signs Gay Marriage Law*, L.A. TIMES, Feb. 13, 2012, <http://latimesblogs.latimes.com/nationnow/2012/02/washington-governor-signs-law-legalizing-same-sex-marriage.html>.

38. In May of 2008, the California Supreme Court, applying a strict scrutiny standard, held the state statutory limitation of marriage to opposite-sex couples violated the California

sex civil marriage, and the matter is still unresolved.<sup>40</sup> Ten states, California,<sup>41</sup> Delaware,<sup>42</sup> Hawaii,<sup>43</sup> Illinois,<sup>44</sup> Maine,<sup>45</sup> Nevada,<sup>46</sup> New Jersey,<sup>47</sup> Oregon,<sup>48</sup> Rhode Island,<sup>49</sup> <sup>50</sup> and Wisconsin,<sup>51</sup> have civil unions or domestic partnerships for same-sex couples.

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Constitution. *In re Marriage Cases*, 183 P.3d 384, 427 (Cal. 2008) (“In light of the fundamental nature of the substantive rights embodied in the right to marry—and their central importance to an individual’s opportunity to live a happy, meaningful, and satisfying life as a full member of society—the California Constitution properly must be interpreted to guarantee this basic civil right to *all* individuals and couples, without regard to their sexual orientation.”).

39. On November 4, 2008, the voters of California approved Proposition 8, which sought to overturn the California Supreme Court’s ruling in *In re Marriage Cases*. *Proposition 8: The Battle over Gay Marriage*, L.A. TIMES, <http://www.latimes.com/news/local/la-me-prop8-datapage,0,6345593.htmlstory> (last visited Mar. 24, 2012). In May of 2009, the California Supreme Court ruled on the effect of the passage of Proposition 8, holding that the voters had effectively carved out an exception to the equal protection guarantee of the California Constitution, thus rendering same-sex marriages unavailable in the future, but not undoing the same-sex marriages entered into prior to the passage of the proposition. *Strauss v. Horton*, 207 P.3d 48 (Cal. 2009).

40. The constitutionality of Proposition 8 was challenged. *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010). In 2010 the district court ruled that Proposition 8 violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Federal Constitution. *Id.* In February of 2012 the Ninth Circuit found that Proposition 8 violated the Equal Protection Clause. *Perry v. Brown*, Nos. 10-16696, 11-16577, 2012 WL 372713, at \*1 (9th Cir. Feb. 7, 2012).

41. As noted above, same-sex civil marriages in California are suspended, pending the outcome of litigation challenging the constitutionality of Proposition 8. *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010). Pending the outcome of that litigation, California same-sex couples can enter into domestic partnerships under California’s prior statutory framework.

42. As of January 1, 2012, Delaware has civil unions for same-sex couples. Delaware Civil Union and Equality Act, S.B. 30, 146 Gen. Assemb. (Del. 2011), *available at* <http://legis.delaware.gov/LIS/LIS146.nsf/vwLegislation/SB+30?Opendocument>.

43. As of January 1, 2012, Hawaii has civil unions for same-sex couples. SB 232 S.D.1 H.D.1, 26th Leg. Reg. Sess. (Haw. 2011), *available at* [http://www.capitol.hawaii.gov/session2011/bills/SB232\\_HD1\\_.pdf](http://www.capitol.hawaii.gov/session2011/bills/SB232_HD1_.pdf).

44. Illinois adopted civil unions in 2011. Public Act 096-1513, Illinois Religious Freedom Protection and Civil Union Act, ch. 750, ILL. COMP. STAT. 75, §§ 1-90 (2011), *available at* <http://www.ilga.gov/legislation/publicacts/fulltext.asp?name=096-1513&GA=96&SessionId=76&DocTypeId=SB&DocNum=1716&GAID=10&Session=>

45. Maine adopted domestic partnerships by statute, effective July 30, 2004. ME. REV. STAT. ANN. tit. 22, § 2710 (2004). In 2009, Maine enacted a same-sex marriage statute, but the statute was repealed by popular vote later that year, leaving the domestic partnership statute in effect. *Maine Voters Repeal Gay Marriage Law*, MSNBC (Nov. 4, 2009), [http://www.msnbc.com/id/33609492/ns/politics-more\\_politics/t/maine-voters-repeal-gay-marriage-law/#.TtLy-c2s5cE](http://www.msnbc.com/id/33609492/ns/politics-more_politics/t/maine-voters-repeal-gay-marriage-law/#.TtLy-c2s5cE).

46. Over a gubernatorial veto, Nevada passed the Nevada Domestic Partnership Act, NEV. REV. STAT. ANN. § 122A.010 (Lexis-Nexis 2011), *available at* <http://www.leg.state.nv.us/NRS/NRS-122A.html>.

47. New Jersey established domestic partnerships in 2004 and modified the provision in 2007. From 2004 to 2007, same-sex domestic partnerships were available for couples aged eighteen or older. *Benefits Under the Domestic Partnership Act*, N.J. DIV. PENSIONS & BENEFITS 1 n.1 (May 2011), <http://www.state.nj.us/treasury/pensions/epbam/exhibits/factsheets/fact71.pdf>. In 2007, this was raised to age sixty-two or older, where the age requirement had always been for

Between the states and jurisdictions that have marriage equality and those that have some form of civil unions or domestic partnerships, approximately 123 million Americans live where the emerging national consensus has already been given form.<sup>52</sup> That is approximately 40% of the population, and the number is steadily growing.<sup>53</sup>

### III. THE LACK OF CONSENSUS AMONG RELIGIONS ON HOMOSEXUALITY AND MARRIAGE EQUALITY

“In great contests each party claims to act in accordance with the will of God. Both may be, and one must be wrong.”

—Abraham Lincoln<sup>54</sup>

Although often not acknowledged in the public debate, there is a genuine diversity of thinking among American Christian religious groups and individuals on issues of homosexuality and marriage equality. When dealing with issues of homosexuality and marriage equality, for example, the Evangelical Lutheran Church in America has declared: “We understand that, in this discernment about ethics and church practice,

opposite-sex couples. N.J. 212th Leg., ch. 103, P.L. (2006), *available at* <http://www.state.nj.us/treasury/pensions/pdf/laws/chapt103.pdf>.

48. Starting in February of 2008, Oregon established domestic partnerships for same-sex couples. The Oregon Family Fairness Act, ORE. REV. STAT. ch. 106, §§ 106.300-.340 (2008).

49. Abby Goodnough, *Rhode Island Lawmakers Approve Civil Unions*, N.Y. TIMES, June 29, 2011, <http://www.nytimes.com/2011/06/30/us/30unions.html> (noting opposition from some leaders of the gay and lesbian community because the Rhode Island civil union statute falls short of full marriage equality).

50. Washington state adopted domestic partnerships in two phases, the first in 2007 (SB 5336) and the second in 2008 (HB 3104). WASH. REV. CODE ANN. § 26.60.015 (West 2009) (“It is the intent of the legislature that for all purposes under state law, state registered domestic partners shall be treated the same as married spouses.”).

51. In 2009, Wisconsin enacted a domestic partnership statute. WIS. STAT. ANN. § 770.12 (West 2011).

52. The nineteen jurisdictions, with the respective 2010 census populations are: California (37,253,956), Connecticut (3,574,097), Delaware (897,934), District of Columbia (601,723), Hawaii (1,360,301), Illinois (12,830,632), Iowa (3,046,355), Maine (1,328,361), Maryland (5,773,552), Massachusetts (6,547,629), Nevada (2,700,551), New Hampshire (1,316,470), New Jersey (8,791,894), New York (19,378,102), Oregon (3,831,074), Rhode Island (1,052,567), Vermont (625,741), Washington (6,724,540), and Wisconsin (5,686,986) for a total of 123,322,465 people. Paul Mackun & Steve Wilson, *Population Distribution and Change: 2000 to 2010*, U.S. CENSUS BUREAU (Mar. 2011), <http://www.census.gov/prod/cen2010/briefs/c2010br-01.pdf>.

53. The aggregate 2010 census population of those states with either marriage equality or some form of civil unions or domestic partnerships is 123,322,465 people. Given the 2010 census total U.S. population of 308,745,538, that places 39.94% of our national population in jurisdictions with some form of marriage equality or civil unions or domestic partnerships. *Id.*

54. Abraham Lincoln, *Meditation on the Divine Will*, BROWN U. LIBR. CTR. FOR DIGITAL INITIATIVES (1862), <http://dl.lib.brown.edu/catalog/catalog.php?verb=renderGid=12100123534375006colid=39>.

faithful people can and will come to different conclusions about the meaning of Scripture and about what constitutes responsible action.”<sup>55</sup> To get a sense of the diverse thinking on these issues, we look first to the Southern Baptist history and then to several other Christian religious groups.

A. *The Southern Baptist Convention’s Position on Marriage Equality*

“Any law, or any policy or regulation supporting a law, that legalizes homosexual marriage is and must be completely and thoroughly wicked according to God’s standards revealed in the Bible . . . .”

—Southern Baptist Convention, 1996<sup>56</sup>

The growing national acceptance of homosexuality and marriage equality is not reflected in the Southern Baptist Convention’s position: It is firmly and vocally opposed to homosexuality and same-sex civil marriage.<sup>57</sup>

The first Convention resolution on homosexuality came in 1976.<sup>58</sup> It was a remarkably moderate document in which the Convention noted, “homosexuality has become an open life-style for increasing numbers of persons,” and “while acknowledging the autonomy of the local church to ordain ministers, urge[d] churches and agencies not to afford the practice of homosexuality any degree of approval through ordination, employment, or other designations of normal life-style.”<sup>59</sup>

Subsequent resolutions were not so restrained. The next year the Convention commended “Anita Bryant and other Christians . . . for their courageous stand against the evils inherent in homosexuality” and noted that a “campaign is being waged to secure legal, social, and religious acceptance for homosexuality and deviant moral behavior at the expense of personal dignity,” and observed that the “radical scheme to subvert the sacred pattern of marriage in America has gained formidable momentum by portraying homosexuality as normal behavior.”<sup>60</sup>

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55. EVANGELICAL LUTHERAN CHURCH IN AMERICA, A SOCIAL STATEMENT ON HUMAN SEXUALITY: GIFT AND TRUST 19 (2009), <http://www.elca.org/What-We-Believe/Social-Issues/Social-Statements/JTF-Human-Sexuality.aspx> (footnote omitted) [hereinafter *ELCA Human Sexuality*].

56. *Resolution on Homosexual Marriage*, SBC.NET (June 1996), <http://www.sbc.net/resolutions/amResolution.asp?ID=614> [hereinafter *1996 Resolution on Homosexual Marriage*] (reproduced in Appendix C).

57. See *infra* Part V.

58. *Resolution on Homosexuality*, SBC.NET (June 1976), <http://www.sbc.net/resolutions/amResolution.asp?ID=606>.

59. *Id.*

60. *Resolution on Homosexuality*, SBC.NET (June 1977), <http://www.sbc.net/resolutions/amResolution.asp?ID=607>.

In all, the Convention passed nineteen resolutions touching on homosexuality over the thirty-four years between 1976 and 2011. They range from fairly straightforward, scripture-based condemnations of homosexuality,<sup>61</sup> to opposition to antidiscrimination and hate-crime protections for gays and lesbians,<sup>62</sup> to calls for private employers to not

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61. *Resolution on Homosexuality*, SBC.NET (June 1980), <http://www.sbc.net/resolutions/amResolution.asp?ID=608> (deploring “the proliferation of all homosexual practices, unnatural relations of any character, and sexual perversion whenever found in our society and reaffirm[ing] the traditional position of Southern Baptists that all such practices are sin and are condemned by the Word of God”); *Resolution on Homosexuality*, SBC.NET (June 1988), <http://www.sbc.net/resolutions/amResolution.asp?ID=610> [hereinafter *1988 Resolution on Homosexuality*] (arguing that the “erosion of moral sanity continues to be a major problem of modern society,” that “[h]omosexuality has become the chosen lifestyle of many in this moral decline,” that the “Bible is very clear in its teaching that homosexuality is a manifestation of a depraved nature,” that this “deviant behavior has wrought havoc in the lives of millions,” that “[h]omosexuals are justified and even glorified in our secular media,” that “[h]omosexual activity is the primary cause of the introduction and spread of AIDS in the United States which has not only affected those of the homosexual community, but also many innocent victims,” “deplor[ing] homosexuality as a perversion of divine standards and as a violation of nature and natural affections,” and maintaining “that while God loves the homosexual and offers salvation, homosexuality is not a normal lifestyle and is an abomination in the eyes of God”). *On Homosexuality and the United States Military*, SBC.NET (June 2010), <http://www.sbc.net/resolutions/amResolution.asp?ID=1208> (declaring that “[h]omosexual behavior cannot be normalized without rejecting God’s moral standards . . . and is contrary to moral standards held by nearly every civilized order in human history, including most societies in the world today,” finding that “[t]he Bible describes homosexual behavior as both a contributing cause . . . and a consequence of God’s judgment on nations and individuals,” and “affirm[ing] the Bible’s declaration that homosexual behavior is intrinsically disordered and sinful.”).

62. *Resolution on Homosexuality*, SBC.NET (June 1985), <http://www.sbc.net/resolutions/amResolution.asp?ID=609> (“deplor[ing] the proliferation of all homosexual practices, and reaffirm[ing] the biblical position of Southern Baptists that all such practices are sin and are condemned by the Bible [and] oppos[ing] the identification of homosexuality as a minority [status] with attendant benefits or advantages”); *Resolution on Homosexuality, Military Service and Civil Rights*, SBC.NET (June 1993), <http://www.sbc.net/resolutions/amResolution.asp?ID=613>. The Southern Baptist Convention declared:

Homosexuality is immoral, contrary to the Bible and contrary to traditional Judeo-Christian moral standards, and the open affirmation of homosexuality represents a sign of God’s surrendering a society to its perversions; and

....

... Homosexual politics is masquerading today as “civil rights,” in order to exploit the moral high ground of the civil rights movement even though homosexual conduct and other learned sexual deviance have nothing in common with the moral movement to stop discrimination against race and gender; and

... Government should not give special legal protection and endorsement to homosexuality, nor impose legal sanctions against those who believe homosexual conduct to be immoral.

... [W]e . . . affirm the biblical truth that homosexuality is sin . . . ; and

... [W]e oppose all effort to provide government endorsement, sanction, recognition, acceptance, or civil rights advantage on the basis of homosexuality; and

... [W]e oppose lifting the ban on homosexuals serving in the armed forces . . . ;

and

provide domestic partner benefits,<sup>63</sup> to calls for cutting federal funding to gay and lesbian groups,<sup>64</sup> to messages opposing marriage equality,<sup>65</sup> to messages supporting the Defense of Marriage Act,<sup>66</sup> to the petty and truly odd. In the petty category would be a call for President Clinton to rescind his Gay and Lesbian Pride Month proclamation,<sup>67</sup> and in the truly odd would be the massive, 737-word long resolution from 1996 which opines as to the psychology of homosexuality, quotes God as saying of gays and lesbians that “their blood will be on their own heads,” predicts that marriage equality will “jeopardize seriously the favor of Almighty God on whom the security, welfare and stability of every nation, even Gentile nations . . . ultimately depends,” and claims that the “legal recognition of homosexual marriage carries the potential use of force, a force that will likely be turned against those who do not or cannot accept the moral equivalence of homosexual marriages.”<sup>68</sup> The lengthy 1996 message and a shorter 2003 message on same-sex marriage<sup>69</sup> provide the most revealing comments on marriage equality.

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. . . [W]e deplore acts of hatred or violence committed by homosexuals against those who take a stand for traditional morality as well as acts of hatred or violence committed against homosexuals . . .

*Id.*; *Resolution in the President's Executive Order on Homosexual Federal Employees*, SBC.NET (June 1998), <http://www.sbc.net/resolutions/amResolution.asp?ID=616> (opposing executive order prohibiting discrimination based on sexual orientation in the federal civilian workforce, and arguing that “[w]hat God has established in His eternal law to be morally wrong, man should never assert in temporal laws as a legal right”); *On the Employment Non-Discrimination*, SBC.NET (June 2010), <http://www.sbc.net/resolutions/amResolution.asp?ID=1209> [hereinafter *2010 Resolution on the Employment Non-Discrimination Act*] (opposing “granting such things as sexual orientation the same employment protections as gender and race, placing these immoral and aberrant behaviors on the same level as the immutable traits of gender and ancestry,” but declaring that “[h]omosexual persons are not our enemies but our neighbors whom we love”); *On Hate Crimes Legislation*, SBC.NET (June 2007), <http://www.sbc.net/resolutions/amResolution.asp?ID=1170> (opposing federal hate crimes legislation protecting gays and lesbians).

63. *Resolution on Domestic Partner Benefits*, SBC.NET (June 1997), <http://www.sbc.net/resolutions/amResolution.asp?ID=615>.

64. *Resolution on the Use of Government Funds To Encourage Immoral Sexual Behavior*, SBC.NET (June 1991), <http://www.sbc.net/resolutions/amResolution.asp?ID=611>.

65. *On The California Supreme Court Decision To Allow Same-Sex Marriage*, SBC.NET (June 2008), <http://www.sbc.net/resolutions/amResolution.asp?ID=1190> [hereinafter *2008 Same-Sex Marriage*] (“Any action giving homosexual unions the legal status of marriage denies the fundamental immorality of homosexual behavior.”).

66. *On Protecting the Defense of Marriage Act*, SBC.NET (June 2011), <http://www.sbc.net/resolutions/amResolution.asp?ID=1212> [hereinafter *2011 Resolution on DOMA*].

67. *Resolution on President Clinton's Gay and Lesbian Pride Month Proclamation*, SBC.NET (June 1999), <http://www.sbc.net/resolutions/amResolution.asp?ID=617>.

68. *1996 Resolution on Homosexual Marriage*, *supra* note 56.

69. *On Same-Sex Marriage*, SBC.NET (June 2003), <http://www.sbc.net/resolutions/amResolution.asp?ID=1128> [hereinafter *2003 Resolution on Same-Sex Marriage*] (reproduced in Appendix A).

As to marriage equality, the Southern Baptist analysis is clear. The Baptists start with the proposition that “God . . . has stated in Scripture that homosexual conduct is always a gross abomination for all human beings, both men and women, in all circumstances, without exception.”<sup>70</sup> From the Convention’s condemnation of homosexuality, the transition to opposition to same-sex civil marriage is direct:

God makes it clear in Scripture that even desire to engage in a homosexual sexual relationship is always sinful, impure, degrading, shameful, unnatural, indecent and perverted . . . so any effort to extend the meaning of marriage in order to sanction the satisfaction of such desire must also be in every case sinful, impure, degrading, shameful, unnatural, indecent and perverted. . . .<sup>71</sup>

Lest anyone think that the Convention is talking about religious and not *civil* marriage, the Baptists make their position clear: “God . . . has explicitly ruled out any effort by homosexual couples . . . to claim their homosexual relationship deserves protected legal status. . . .”<sup>72</sup> Simply put, “any law, or any policy or regulation supporting a law, that legalizes homosexual marriage is and must be completely and thoroughly wicked according to God’s standards revealed in the Bible.”<sup>73</sup>

The Southern Baptists believe that the legalization of same-sex civil marriage “is an abominable sin calling for God’s swift judgment upon any such society,”<sup>74</sup> that the nation “will be placed at risk because no society can survive that does not recognize, protect, defend the unique importance of heterosexual marriage to its own health and stability,”<sup>75</sup> and that same-sex civil marriage will “jeopardize seriously the favor of Almighty God on whom the security, welfare and stability of every nation . . . ultimately depends.”<sup>76</sup>

#### *B. Marriage Equality and Religious Diversity.*

“This church . . . acknowledges that consensus does not exist concerning how to regard same-gender committed relationships, even after many years of thoughtful, respectful, and faithful study and conversation.”

—Evangelical Lutheran Church in America, 2009<sup>77</sup>

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70. *1996 Resolution on Homosexual Marriage*, *supra* note 56 (citing Leviticus 18:22, 20:13).

71. *Id.* (citing Romans 1:24-27).

72. *Id.* (citing Leviticus 20:13).

73. *Id.* (citing Daniel 3:17-18 and Acts 4:19).

74. *Id.* (citing Leviticus 18:22, 28; Isaiah 3:9).

75. *Id.*

76. *Id.* (citing Leviticus 18:24-25, 28; Psalms 2; Amos 1:3,6, 9, 11, 13; Isaiah 13-21).

77. *ELCA Human Sexuality*, *supra* note 55.

There is a diversity of thinking among and within American Christian religious groups as to homosexuality and marriage equality. Even as to the fundamental question of whether and to what degree the Bible condemns homosexuality, there is disagreement.<sup>78</sup>

As to marriage equality, the General Synod of the United Church of Christ passed a resolution affirming equal marriage rights for couples regardless of gender and urging the congregations of the church to consider adopting nondiscriminatory wedding policies and supporting marriage equality.<sup>79</sup> Unitarians ordain practicing gays and lesbians,<sup>80</sup> perform same-sex religious marriages,<sup>81</sup> and support full civil and legal equality.<sup>82</sup>

The Evangelical Lutheran Church in America (ELCA) acknowledges: “[A]t this time this church lacks consensus on this matter.”<sup>83</sup> The ELCA “recognizes that, with conviction and integrity,” various of its members support four different beliefs as to homosexuality, same-sex religious marriage and same-sex civil marriage.<sup>84</sup> Each of the four formulations is given equal status by the ELCA, one of them asserts that the Bible is silent on the issue of homosexuality and that Lutheran doctrine should support same-sex civil marriage:

On the basis of conscience-bound belief, some are convinced that the scriptural witness does not address the context of sexual orientation and

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78. Daniel A. Helminiak, *What the Bible Really Says About Homosexuality*, VISIONS OF DANIEL, <http://www.visionsofdaniel.net/bookWBRS.htm> (last visited Mar. 24, 2012) (“The Bible supplies no real basis for the condemnation of homosexuality, [and] the Bible is basically indifferent to homosexuality in itself.”). In 1997, some sixty-eight Christian clergy in Madison, Wisconsin, endorsed a statement that declared: “From our reading of scripture and from our pastoral experiences, we believe there is sufficient evidence to conclude that homosexuality is neither sickness nor sin.” *A Madison Affirmation: On Homosexuality and Christian Faith*, IWGONLINE.ORG (May 12, 1997), <http://www.iwgonline.org/docs/madison.html>.

79. *In Support of Equal Marriage Rights for All*, UCC.ORG (July 4, 2005), <http://www.ucc.org/assets/pdfs/2005-equal-marriage-rights-for-all-1.pdf>.

80. *Ordination*, UUA.ORG, <http://www.uua.org/beliefs/worship/ministers/6961.shtml> (last visited May 2, 2011).

81. *Marriage*, UUA.ORG, <http://www.uua.org/beliefs/worship/ceremonies/6973.shtml> (last visited May 2, 2011) (“In addition to blessing heterosexual unions, Unitarian Universalist congregations and ministers welcome the opportunity to bless same-sex marriages, even in the states where they are not yet legally recognized.”).

82. *Bisexual, Gay, Lesbian, and Transgender Community*, UUA.ORG, <http://www.uua.org/beliefs/justice/6252.shtml> (last visited May 2, 2011) (“We work to promote acceptance, inclusion, understanding, and equity for bisexual, gay, lesbian, and/or transgender persons of all colors, races, and ethnicities, both within the UUA and in society at large. We are committed to protecting the civil and legal rights of LGBT people and families across the country. Unitarian Universalists have been at the forefront of the same-sex marriage debates, advocating for the right for each person to marry the partner of his or her choice.”).

83. *ELCA Human Sexuality*, *supra* note 55.

84. *Id.*

committed relationships that we experience today. They believe that the neighbor and community are best served when same-gender relationships are lived out with lifelong and monogamous commitments that are held to the same rigorous standards, sexual ethics, and status as heterosexual marriage. They surround such couples and their lifelong commitments with prayer to live in ways that glorify God, find strength for the challenges that will be faced, and serve others. They believe same-gender couples should avail themselves of social and legal support for themselves, their children, and other dependents and seek the highest legal accountability available for their relationships.<sup>85</sup>

A 2010 study showed substantial differences among the members of Christian religious groups on the issue of same-sex civil marriage.<sup>86</sup> That study found that white mainline Protestants supported same-sex civil marriage by 48% to 38%, white Catholics by 49% to 41%, but white evangelicals—including Southern Baptists—opposed same-sex civil marriage by a margin of 22% to 71%.<sup>87</sup> There is also a clear division on the role of religion in people making up their minds on same-sex civil marriage. While 62% of white evangelicals said religion was the biggest influence in their decision on same-sex civil marriage, that figure was only 30% for white mainline Protestants and only 27% for white Catholics.<sup>88</sup>

Again, positions on marriage equality are related to positions on the acceptance of homosexuality. Among religious groupings, white mainline Protestants, Catholics, and those who are unaffiliated favor acceptance by very wide margins.<sup>89</sup> White evangelicals are the mirror image of their mainline Protestant counterparts: Only 29% of white evangelicals favor acceptance of homosexuality and 63% favor discouraging homosexuality.<sup>90</sup>

The split on same-sex civil marriage along denomination lines exists among clergy as well. Among ministers of the American Baptist Churches USA, the organizational descendent of the Northern Baptist Convention, only 52% oppose both same-sex civil marriage and civil

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85. *Id.*

86. *Few Say Religion Shapes Immigration, Environment Views, Homosexuality and Abortion*, PEW FORUM ON RELIGION & PUB. LIFE (Sept. 17, 2010), <http://pewforum.org/Politics-and-Elections/Few-Say-Religion-Shapes-Immigration-Environment-Views.aspx#3> [hereinafter *Few Say Religion*].

87. *Id.*

88. *Id.*

89. *Acceptance of Homosexuality Poll*, *supra* note 7.

90. Mainline Protestants favor acceptance by 65% to 28%, Catholics by 64% to 26%, and those who are unaffiliated by 79% to 15%. *Acceptance of Homosexuality Poll*, *supra* note 7.

unions.<sup>91</sup> The Southern Baptist position—opposition to both same-sex civil marriage and civil unions—is not broadly supported within the seven largest mainline Protestant denominations. Only 9% of United Church of Christ ministers, 13% of Episcopal ministers, 22% of Disciples of Christ ministers, 24% of Presbyterian Church USA ministers, 19% of Evangelical Lutheran Church in America ministers, 49% of United Methodist Church ministers, and 52% of American Baptist Churches USA ministers agree with the Southern Baptist position of opposing both same-sex civil marriage and civil unions.<sup>92</sup>

There is a diversity of thinking on homosexuality and marriage equality among Christian religious groups. Might the Southern Baptist Convention reexamine and change its position on marriage equality? In making that evaluation, it is helpful to look at another situation where the Convention changed its position in an arguably analogous situation. We turn now to the history of the Southern Baptist Convention on slavery, racism, and civil rights.

#### IV. REFLECT, RECANT, AND REPENT: THE SOUTHERN BAPTIST HISTORY ON SLAVERY, RACISM AND CIVIL RIGHTS

“[W]e apologize to all African-Americans for condoning and/or perpetuating individual and systemic racism in our lifetime . . . and . . . we ask forgiveness from our African-American brothers and sisters”

—The Southern Baptist Convention, 1995<sup>93</sup>

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91. *American Baptist Ministers Surveyed on Gay Rights*, BIG DADDY WEAVE (May 22, 2009), <http://www.thebigdaddyweave.com/2009/05/american-baptist-ministers-surveyed-on-gay-rights.html>. For a full evaluation, see Robert P. Jones & Daniel Cox, *Mainline Protestant Clergy Views on Theology and Gay and Lesbian Issues: Findings from the 2008 Clergy Voices Survey*, PUB. RELIGION RES. (May, 2009), <http://www.publicreligion.org/objects/uploads/fck/file/CVS%20Theology%20and%20LGBT.pdf> [hereinafter *Clergy Voices Survey*].

92. The complete survey results are: United Church of Christ ministers: 67% support same-sex civil marriage, 24% support civil unions, 9% support neither; Episcopal ministers: 49% support same-sex civil marriage, 38% support civil unions, 13% support neither; Disciples of Christ ministers: 42% support same-sex civil marriage, 36% support civil unions, 22% support neither; Presbyterian Church USA ministers: 38% support same-sex civil marriage, 38% support civil unions, 24% support neither; Evangelical Lutheran Church in America ministers: 37% support same-sex civil marriage, 44% support civil unions, 19% support neither; United Methodist Church ministers: 25% support same-sex civil marriage, 26% support civil unions, 49% support neither; American Baptist Churches USA ministers: 20% support same-sex civil marriage, 28% support civil unions, 52% support neither. *Clergy Voices Survey*, *supra* note 91, at 7-8.

93. *Resolution on Racial Reconciliation on the 150th Anniversary of the Southern Baptist Convention*, SBC.NET (June 1995), <http://www.sbc.net/resolutions/amResolution.asp?ID=899> [hereinafter *1995 Resolution on Race*] (reproduced in Appendix B). The 1995 Resolution on Race was reaffirmed by the Southern Baptist Convention in 2007. *On the 150th Anniversary of*

The Evangelical Lutheran Church in America voted in 2009 to allow noncelibate gays and lesbians in committed, monogamous relationships to be ministers,<sup>94</sup> and in 2010 recognized the inclusion on its clergy roster of seven gay and lesbian ministers who had previously been excluded. The ceremony included a “Rite of Reception” in which the church admitted that “[o]ur church of the reformation has been too long captive to bias and misinformation,” acknowledged past “cultural prejudice,” and admitted “[w]e have misused Scripture as a tool of discrimination.”<sup>95</sup>

Dr. R. Albert Mohler, Jr., President of The Southern Baptist Theological Seminary, was highly critical of the Lutherans:

“We have fallen short in honoring all people of God and being an instrument for that grace. . . . We have disciplined, censured and expelled when we should have listened, learned and included.”

That is right—the church actually confessed the “sin” of having once stood on biblical ground and the “sin” of exercising church discipline.

Given their new policy on homosexuality, it is the one who affirms the Bible’s teaching on homosexuality that is called to repent, rather than the unrepentant homosexual.

What would Martin Luther say? It would doubtless be colorful and thunderous. But here is something he did say that fits the situation perfectly:

“You should not believe your conscience and your feelings more than the word which the Lord who receives sinners preaches to you.”<sup>96</sup>

Dr. Mohler mocked the Lutherans for confessing that they had been a “captive to bias and misinformation” and to “cultural prejudice” such that they “misused Scripture as a tool of discrimination” and “hardened our hearts with bitterness and condescension.”<sup>97</sup> The irony here is that the Southern Baptists did much the same thing fifteen years earlier when they adopted their “Resolution on Racial Reconciliation.”<sup>98</sup>

*the Dred Scott Decision*, SBC.NET (June 2007), <http://www.sbc.net/resolutions/amResolution.asp?ID=1169>.

94. Laurie Goodstein, *Lutherans Offer Warm Welcome to Gay Pastors*, N.Y. TIMES, July 25, 2010, <http://www.nytimes.com/2010/07/26/us/26lutheran.html>.

95. *Eucharist & Rite of Reception/Reinstatement for the SPS7*, EVANGELICAL LUTHERAN CHURCH AM. (July 27, 2010), <http://sps7rite.blogspot.com/2010/07/blog-post.html> [hereinafter *ELCA Rite of Reception*].

96. R. Albert Mohler, Jr., *What Would Luther Say?—A Church Apologizes for Church Discipline*, ALBERTMOHLER.COM (Sept. 23, 2010), <http://www.albertmohler.com/2010/09/23/what-would-luther-say-a-church-apologizes-for-church-discipline/> (quoting *ELCA Rite of Reception*, *supra* note 95).

97. *Id.* (quoting *ELCA Rite of Reception*, *supra* note 95).

98. *1995 Resolution on Race*, *supra* note 93.

The Lutherans admitted that they had been “captive to bias and misinformation” and subject to “cultural prejudice.”<sup>99</sup> The Southern Baptists apologized “to all African-Americans for condoning and/or perpetuating individual and systemic racism in our lifetime” and repented “of racism of which we have been guilty, whether consciously . . . or unconsciously.”<sup>100</sup>

The Lutherans admitted that they “misused Scripture as a tool of discrimination.”<sup>101</sup> The Southern Baptists admitted “racism profoundly distorts our understanding of Christian morality, leading some Southern Baptists to believe that racial prejudice and discrimination are compatible with the Gospel.”<sup>102</sup>

The Lutherans admitted that their bias and prejudice “hardened our hearts with bitterness and condescension.”<sup>103</sup> The Southern Baptists admitted that “[r]acism has led to discrimination, oppression, injustice, and violence, both in the Civil War and throughout the history of our nation; and . . . has divided the body of Christ and Southern Baptists in particular, and separated us from our African-American brothers and sisters.”<sup>104</sup>

If the question is whether the Southern Baptist Convention might follow its own history on matters of slavery, discrimination and racism, to reflect, recant and repent on issues of homosexuality and marriage equality, it is necessary to get past Dr. Mohler’s dismissive tone and review the relevant history in some detail. It is an interesting story of fundamental error and eventual, if qualified, redemption. Truly, the history of the Southern Baptist Convention on matters of slavery, discrimination, and racism contains much for which to apologize.

#### A. *The Southern Baptist Convention and Slavery*

“[T]he right of holding slaves is clearly established by the Holy Scriptures.”

—Reverend Richard Furman<sup>105</sup>

Today, the Southern Baptist Convention knows that God opposes same-sex civil marriage. Time was, they knew that God favored slavery.

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99. *ELCA Rite of Reception, supra* note 95.

100. *1995 Resolution on Race, supra* note 93.

101. *ELCA Rite of Reception, supra* note 95.

102. *1995 Resolution on Race, supra* note 93.

103. *ELCA Rite of Reception, supra* note 95.

104. *1995 Resolution on Race, supra* note 93.

105. RICHARD FURMAN, EXPOSITION OF THE VIEWS OF BAPTISTS RELATIVE TO THE COLOURED POPULATION IN THE UNITED STATES IN A COMMUNICATION TO THE GOVERNOR OF SOUTH CAROLINA (2d ed., 1838), available at <http://history.furman.edu/~benson/docs/rcd-fmn1.htm>.

The denomination was founded in 1845 out of the schism of the national Baptist church over the issue of slavery.<sup>106</sup> The church has acknowledged “the role that slavery played in the formation of the Southern Baptist Convention.”<sup>107</sup>

The Baptist church in the South could have evolved differently. Earlier, at the end of the eighteenth century, “a moment of opportunity for a biracial religious order seemed fleetingly to present itself,” according to one historian.<sup>108</sup>

Whites and blacks in back country congregations worshiped together. They called each other by the respectful evangelical titles “brother” and “sister” and wept to each other’s exhortations. A few white Baptist ministers in Virginia declared slavery to be a sin, freed their own slaves, and advocated lifting restrictions on black men who wished to preach the Gospel in public.<sup>109</sup>

But the moment passed, as “white southern Christians erected a wall of separation between the realms of spiritual and temporal equality.”<sup>110</sup>

In 1814, the Baptist churches in the United States formed the Triennial Convention.<sup>111</sup> The Triennial Convention and the Home Mission Society took no position on slavery and included both abolitionists and pro-slavery individuals.<sup>112</sup> By the 1820s, the issue of slavery had become divisive in the Baptist community.<sup>113</sup> In 1822, one of the leading thinkers in the Baptist church, the Reverend Richard Furman of South Carolina, penned a famous Biblical defense of slavery:

[S]entiments in opposition to the holding of slaves have been attributed, by their advocates, to the Holy Scriptures, and to the genius of Christianity. These sentiments, the [Baptist] Convention . . . cannot think just, or well-founded: for the right of holding slaves is clearly established by the Holy Scriptures, both by precept and example.<sup>114</sup>

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106. PAUL HARVEY, REDEEMING THE SOUTH: RELIGIOUS CULTURES AND RACIAL IDENTITIES AMONG SOUTHERN BAPTISTS 1865-1925 6 (1997); BARRY HANKINS, UNEASY IN BABYLON: SOUTHERN BAPTIST CONSERVATIVES AND AMERICAN CULTURE 241 (2002); ALBERT HENRY NEWMAN, A HISTORY OF THE BAPTIST CHURCHES IN THE UNITED STATES 449-53 (1915).

107. MARK NEWMAN, GETTING RIGHT WITH GOD: SOUTHERN BAPTISTS AND DESEGREGATION 1945-1995 1 (2001); *1995 Resolution on Race*, *supra* note 93.

108. HARVEY, *supra* note 106, at 8.

109. *Id.*

110. *Id.* at 9.

111. SAMUEL S. HILL, JR. & ROBERT G. TORBET, BAPTIST NORTH AND SOUTH 18-19 (1964); NEWMAN, *supra* note 106, at 393.

112. NEWMAN, *supra* note 107, at 2; NEWMAN, *supra* note 106, at 443-44; HARVEY, *supra* note 106, at 240.

113. HARVEY, *supra* note 106, at 6, 9; HANKINS, *supra* note 106, at 240.

114. FURMAN, *supra* note 105, at 4.

Baptists continued to be deeply divided over the issue of slavery. Operationally, the issue came to the fore in deciding which members of the faith to approve for missionary positions.<sup>115</sup> There was a sense among the pro-slavery wing of the church that they were being discriminated against, that the Triennial Convention and the Home Mission Society would not select Baptists who approved of slavery for missionary positions.<sup>116</sup> In 1844, the issue of slavery came to a head when the Triennial Convention missionary wing, the Home Mission Society, refused to ordain James E. Reeve of Georgia as a missionary because he was a slaveholder.<sup>117</sup>

The internecine battle over slavery proved incapable of compromise and resulted in schism. The Southern Baptist Convention was formed in 1845 as a scripturally-based pro-slavery denomination.<sup>118</sup>

It should clearly be understood that the Southern Baptist Convention's defense of slavery was based on Biblical authority. Reverend Furman declared, "the right of holding slaves is clearly established by the Holy Scriptures, both by precept and example," and accused those who favored emancipation of the slaves of engaging in "a perversion of the Scriptural doctrine."<sup>119</sup> The crux of his argument was that if slavery had been against the will of God, his apostles would not have condoned it, which they did:

Had the holding of slaves been a moral evil, it cannot be supposed, that the inspired Apostles, who feared not the faces of men, and were ready to lay down their lives in the cause of their God, would have tolerated it, for a moment, in the Christian Church. If they had done so on a principle of accommodation, in cases where the masters remained heathen, to avoid offences and civil commotion; yet, surely, where both master and servant were Christian, as in the case before us, they would have enforced the law of Christ, and required, that the master should liberate his slave in the first

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115. NEWMAN, *supra* note 107, at 1-2; HANKINS, *supra* note 106, at 240-41.

116. NEWMAN, *supra* note 107, at 2; HANKINS, *supra* note 106, at 241.

117. NEWMAN, *supra* note 107, at 2.

118. The Baptists who supported slavery broke off from the national church in 1845 and formed the Southern Baptist Convention. The remaining Baptists continued to operate under the Triennial Convention, from which the Southern Baptist had withdrawn, until 1907 when they formed the Northern Baptist Convention, which was renamed the American Baptist Convention in 1950, and the American Baptist Churches USA in 1972. *American Baptist, A Brief History*, AM. BAPTIST CHURCHES USA, <http://www.abc-usa.org/WhoWeAre/OutHistory/tabid/80/Default.aspx> (last visited Mar. 24, 2012). The third component of the Baptist community, the African-American Baptists, formed their own congregations across the country, primarily in the South, many of which are associated with the historically black National Baptist Convention. *History of the National Baptist Convention, USA, Inc.*, NAT'L BAPTIST CONVENTION, <http://www.nationalbaptist.com/about-us/our-history/index.html> (last visited Mar. 24, 2012).

119. FURMAN, *supra* note 105, at 8.

instance. But, instead of this, they let the relationship remain untouched, as being lawful and right, and insist on the relative duties.<sup>120</sup>

Reverend Furman even “proved” based on scriptural authority that slaves had a Christian duty to be obedient, industrious, and faithful to their owners.<sup>121</sup>

*B. The Southern Baptist Convention, Racism and Civil Rights*

“Segregation yes, forever. God has so ordained.”

—E.D. Solomon, 1946<sup>122</sup>

In parallel with the Southern Baptist Convention’s history on the issue of slavery is its history on the issue of racial inclusiveness. Here, the history is somewhat more complicated than one might first imagine. Thus the Convention’s statement that “Blacks and other minorities have been an integral part of the Southern Baptist Convention since its organization in 1845” is both literally true and essentially misleading.<sup>123</sup>

While the antebellum Southern Baptist Convention was racist and pro-slavery, it was not segregated.<sup>124</sup> By the end of the Civil War, blacks comprised one-third of the membership of the Southern Baptist Convention, although their status was subordinate to that of whites.<sup>125</sup> Following defeat in the Civil War, the Southern Baptist Convention briefly considered its relationship with newly freed blacks, and some argued for equal participation, but by 1869 the decision was made to exclude blacks from membership.<sup>126</sup> “African Americans formed their own churches during Reconstruction, when whites refused to grant them equality within biracial churches.”<sup>127</sup> A few black members kept on, but by 1902 the Convention was all white, and a 1918 resolution accurately noted that the Southern Baptist Convention was an organization of

120. *Id.* at 5.

121. *Id.* (“That it is the positive duty of servants to reverence their master, to be obedient, industrious, faithful to him, and careful of his interests; and without being so, they can neither be the faithful servants of God, nor be held as regular members of the Christian Church.”).

122. NEWMAN, *supra* note 107, at 22 (quoting E.D. Solomon, untitled editorial, FLORIDA BAPTIST WITNESS, Feb. 28, 1946).

123. *Resolution on Involvement of Blacks and Other Minorities Southern Baptist Convention Life*, SBC.NET (June 1986), <http://www.sbc.net/resolutions/amResolution.asp?ID=896> (“The Southern Baptist Convention is a multi-racial and multi-cultural convention which allows its members to express themselves out of their ethnic-cultural heritage . . .”).

124. NEWMAN, *supra* note 107, at 2.

125. *Id.* at 1.

126. *Id.* at 3-4.

127. *Id.* at 1.

“white Baptists.”<sup>128</sup> Thus, after the Civil War the Southern Baptist Convention remained racist, became segregated, and remained that way for well over a century.

As they had with slavery, the Southern Baptists asserted a Biblical defense of segregation, as “[r]acial segregation had a long lineage in Southern Baptist thought and action.”<sup>129</sup> The Biblical basis for segregation typically asserted was Genesis 9:20-27, the so-called curse of Ham. The scriptural argument was often not terribly sophisticated:

[T]here is nothing more obvious than the fact that God created the races and set barriers of color, physical characteristics, and innate integrity between them for a purpose; and an intermingling and intermarriage (which is the definition for the word, integration) of the races God separated himself, is unthinkable, disgusting, and contrary to His divine plan!<sup>130</sup>

Under both antebellum racial hierarchy and the postwar segregation, Southern Baptists expressed concern from time to time that the religious education of the South’s African-American population was in need of attention. Indeed, the first meeting of the Convention in 1845 passed a resolution in support of “all prudent measures, for the religious instruction of our colored population.”<sup>131</sup> Shortly after the end of the Civil War, the Southern Baptist Convention passed a “Resolution on Colored People.”<sup>132</sup> Noting that the Convention had “reached a crisis in its history in which its future usefulness, and perhaps its very existence, will greatly depend on its prompt and decisive action on certain matters,” the group affirmed that “Providence clearly indicates, and Christian philanthropy admonishes us of our duty to put forth an earnest and organized effort for the religious instruction of the colored race in our midst.”<sup>133</sup>

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128. *Resolution on Chaplains*, SBC.NET (May 1918), <http://www.sbc.net/resolutions/amResolution.asp?ID=301>.

129. NEWMAN, *supra* note 107, at 1, 49 (“Southern Baptists endorsed segregation as God ordained, as they had once done slavery, and defended southern disfranchisement of African Americans.”).

130. *Id.* at 51 (quoting Mrs. Sam Fowler Stower’s letter to the *Baptist Standard* (Jan. 25, 1958)).

131. *Resolution on Colored Population*, SBC.NET (May 1845), <http://www.sbc.net/resolutions/amResolution.asp?ID=31>.

132. *Resolution on Colored People*, SBC.NET (May, 1868), <http://www.sbc.net/resolutions/amResolution.asp?ID=33> [hereinafter *1868 Resolution on Colored People*].

133. *Id.*

In 1939, after noting that there were “only” six lynchings the previous year and while acknowledging their racial component,<sup>134</sup> the Convention noted, as an indication of growing racial understanding and cooperation, “the fact that the white people of the South, especially our Baptist pastors and churches, are establishing and maintaining frequent contacts of a friendly and helpful nature with the Negro race . . .”<sup>135</sup> and in 1944 the Convention focused on the religious needs of the black population of the South, the “appalling spiritual need for an adequately developed ministry for the vast and perilously neglected Negro host within the bounds of our Southern Baptist Convention,” but in neither case did their concern extend to admitting blacks.<sup>136</sup> In 1950, the Convention went as far as endorsing simultaneous, but not shared, revival programs.<sup>137</sup>

The post-Civil War history of the Southern Baptist Convention on matters of public policy on race is complicated. It is so in part because the Southern Baptist denomination, due to its structure and beliefs, does not speak with a single voice. The Convention is not hierarchical in the sense of the Catholic Church, for example, where policy is made centrally and imposed upon local churches and individuals by mandate.<sup>138</sup> “Baptist democracy”<sup>139</sup> and the autonomy of local churches<sup>140</sup> are strong

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134. *Resolution Concerning Lynching and Race Relations*, SBC.NET (May 1939), <http://www.sbc.net/resolutions/amResolution.asp?ID=694> [hereinafter *1939 Resolution on Lynching*] (“[W]hile lynching is not due wholly to racial antipathies nor the victims of lynching limited to any one race, it is beyond doubt or question that racial antipathies are often one of the chief contributing causes . . .”).

135. *Id.* (stating “we urge our Baptist people everywhere to maintain and extend these friendly and helpful contacts and relations, remembering always the law of Christian obligation that the strong should bear the burdens of the weak, and yet doing this without any spirit of patronizing or air of condescending”).

136. *Resolution on Race*, SBC.NET (May 1944), <http://www.sbc.net/resolutions/amResolution.asp?ID=882> [hereinafter *1944 Resolution on Race*].

137. *Social Service Committee Recommendation Concerning Race Relations*, SBC.NET (May 1950), <http://www.sbc.net/resolutions/amResolution.asp?ID=885> [hereinafter *1950 Recommendation Concerning Race Relations*].

138. The catechism of the Catholic Church provides that the Pope is the vicar of Christ: “The Pope, Bishop of Rome and the Successor of Saint Peter, is the perpetual, visible source and foundation of the unity of the Church. He is the vicar of Christ, the head of the College of Bishops, and pastor of the universal Church over which he has by divine institution full, supreme, immediate, and universal power.” COMPENDIUM OF THE CATECHISM OF THE CATHOLIC CHURCH ch. 3, n.182 (2005), [http://www.vatican.va/archive/compendium\\_ccc/documents/archive\\_2005\\_compendium-ccc\\_en.html](http://www.vatican.va/archive/compendium_ccc/documents/archive_2005_compendium-ccc_en.html).

139. *Basic Beliefs*, SBC.NET, <http://www.sbc.net/aboutus/basicbeliefs.asp> (last visited Sept. 18, 2011) (“A New Testament church of the Lord Jesus Christ is an autonomous local congregation of baptized believers. . . . Each congregation operates under the Lordship of Christ through democratic processes. In such a congregation each member is responsible and accountable to Christ as Lord.”).

traditions. Thus one does not join the Southern Baptist Convention; one joins a local church, “one in friendly cooperation with the general Southern Baptist enterprise.”<sup>141</sup> Further, the Southern Baptist beliefs in “the priesthood of all believers”<sup>142</sup> and in “soul competency”<sup>143</sup> make individuals responsible for the interpretation of scripture and the consequences.

Nevertheless, policy statements are made from time to time by the conventions, both state and national, of the Southern Baptist community. Reinforcing the autonomy of the local churches, the individuals who vote at the conventions are termed “messengers” from their respective churches.<sup>144</sup> These policy statements are not binding on local churches or on individual Baptists, and should be considered only an imprecise measure of the contemporary sentiment of the Southern Baptist community.<sup>145</sup>

With the caveat that they are neither binding on or necessarily perfectly representative of the Southern Baptist community, the resolutions of the national Southern Baptist Convention on matters of race and civil rights policy in the post-Civil War era are interesting.

The Southern Baptists can point to a series of constructive statements on racial violence, race relations, and civil rights. The Convention opposed lynching, starting with a fairly tepid 1906

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140. *Statements*, SBC.NET, <http://www.sbc.net/aboutus/psautonomy.asp> (last visited Sept. 18, 2011) (“We affirm the autonomy of the local church. Each church is free to determine its own membership and to set its own course under the headship of Jesus. . . . The same is true for other Baptist bodies—local associations; state conventions; national conventions. They, too, may determine their membership and set their own course.”).

141. *About Us—Meet Southern Baptist*, SBC.NET, <http://www.sbc.net/aboutus/default.asp> (last visited Sept. 18, 2011).

142. *Priesthood of All Believers*, SBC.NET, <http://www.sbc.net/aboutus/pspriesthood.asp> (last visited Sept. 18, 2011) (“We affirm the priesthood of all believers. Laypersons have the same right as ordained ministers to communicate with God, interpret Scripture, and minister in Christ’s name.”).

143. *Soul Competency*, SBC.NET, <http://www.sbc.net/aboutus/pssoul.asp> (last visited Sept. 18, 2011) [hereinafter *Position Statement on Soul Competency*] (“We affirm soul competency, the accountability of each person before God. Your family cannot save you. Neither can your church. It comes down to you and God. Authorities can’t force belief or unbelief. They shouldn’t try.”).

144. *Constitution, art. III Membership*, SBC.NET, <http://www.sbc.net/aboutus/legal/constitution.asp> (last visited Mar. 24, 2012) (“The Convention shall consist of messengers who are members of missionary Baptist Churches cooperating with the Convention.”); HARVEY, *supra* note 106, at 7.

145. *Constitution, art. III Membership*, SBC.NET, <http://www.sbc.net/aboutus/legal/constitution.asp> (last visited Mar. 29, 2012).

condemnation<sup>146</sup> and continuing through the 1930s<sup>147</sup> and the 1940s<sup>148</sup> with unequivocal condemnations. In 1982 the Convention went “on record as strongly opposing the activities of the Ku Klux Klan and specifically their most recent attempts at membership recruitment and racial terrorism.”<sup>149</sup> While it might fairly be observed that these statements on racial violence were not timely, their substance at least was laudable.

As to matters of public policy on race relations and civil rights, the record is uneven. Right after the Civil War, in 1868, the Convention passed a “Resolution on Colored People” in which they considered, but deferred on the basis of cost, “measures to organize bodies of converted freedmen, and aid them in settling (sic) as missionary churches in Africa.”<sup>150</sup> The Convention did not speak again on matters of race for another sixty-nine years.

In 1937, the Convention went on record as deploring “the unchristian practices so widely prevalent in many of our racial relationships.”<sup>151</sup> Two years later, the Convention declared that “we are glad to believe and have many good reasons to believe that as between the white and colored races within the bounds of this Convention racial

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146. *Hillyer Resolutions*, SBC.NET (May 1906), <http://www.sbc.net/resolutions/amResolution.asp?ID=688>. This resolution speaks more to the desire for swift and sure retribution within the law than to the horror of lynching:

The law is very weak and imperfect. “We speak this to our shame.” But lynching is not the remedy. Lynching blunts the public conscience, undermines the foundations on which society stands, and if unchecked will bring on anarchy. We should not stop with merely writing and teaching and praying against the lynchers, leaving the helpless and innocent victims of crime with no adequate or sufficient protection. Our condemnation is due with equal emphasis, and in many cases with much greater emphasis, against the horrible crimes which cause the lynchings.

147. *Resolution on Lynching*, SBC.NET (May 1933), <http://www.sbc.net/resolutions/amResolution.asp?ID=689>; *Resolution on Lynching*, SBC.NET (May 1934), <http://www.sbc.net/resolutions/amResolution.asp?ID=690>; *Resolution on Lynching*, SBC.NET (May 1935), <http://www.sbc.net/resolutions/amResolution.asp?ID=691>; *Resolution on Lynching on Mob Violence*, SBC.NET (May 1936), <http://www.sbc.net/resolutions/amResolution.asp?ID=692>; *Resolution on Lynching and Mob Violence*, SBC.NET (May 1937), <http://www.sbc.net/resolutions/amResolution.asp?ID=693>; and *1939 Resolution on Lynching*, *supra* note 134.

148. *Resolution Concerning Race Relations*, SBC.NET (May 1940), <http://www.sbc.net/resolutions/amResolution.asp?ID=880> [hereinafter *1940 Resolution Concerning Race Relations*]; *Resolution Concerning Race Relations*, SBC.NET (May 1941), <http://www.sbc.net/resolutions/amResolution.asp?ID=881>.

149. *Resolution on Ku Klux Klan*, SBC.NET (June 1982), <http://www.sbc.net/resolutions/amResolution.asp?ID=894>.

150. *1868 Resolution on Colored People*, *supra* note 132.

151. *Resolution on Race*, SBC.NET (May 1937), <http://www.sbc.net/resolutions/amResolution.asp?ID=878>.

animosities are growing less and racial understanding and cooperation are increasing.”<sup>152</sup>

The 1939 statement illustrates an interesting thread of the modern Southern Baptist treatment of race and civil rights; an acknowledgement of racial inequalities and a public commitment to redress inequalities:

[W]e recognize the many inequalities and injustices which still exist in the dealings of organized society and of individuals with the Negro race and in the provision made for the advancement of the Negro race, such as the disproportionate distribute of public school funds, the lack of equal and impartial administration of justice in the courts, inadequate wages paid for Negro labor and the lack of adequate industrial and commercial opportunity for the Negro race as a whole.<sup>153</sup>

The 1939 resolution concluded with a commitment: “That we pledge ourselves as Christians and citizens to use our influence and give our efforts for the correction of these inequalities and for securing for the Negro opportunities for his full development in his educational, industrial and religious life.”<sup>154</sup> The 1940<sup>155</sup> and 1941<sup>156</sup> Conventions were similarly moved.

By 1944 the Convention’s pre-war optimism had given way to worry about “the increasing acuteness of the race problem within the nation, and especially in the South, and the danger which crouches at our doors,” but the group nevertheless acted to “reaffirm and lay upon the hearts of the Baptists of the South the resolutions adopted at the 1941 Convention.”<sup>157</sup> Following the Second World War, the Convention condemned those fomenting strife and division, formed a study committee, and lapsed into quiescence.<sup>158</sup>

In 1950, the Convention noted advances in secular institutions and thought about how such changes might change Baptist schools and social service agencies.<sup>159</sup> From 1950 until 1961, as America experienced a sea change in race relations, the Southern Baptist Convention was silent on matters of race.

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152. *1939 Resolution on Lynching*, *supra* note 134.

153. *Id.*

154. *Id.*

155. *1940 Resolution Concerning Race Relations*, *supra* note 148.

156. *Resolution Concerning Race Relations*, SBC.NET (May 1941), <http://www.sbc.net/resolutions/amResolution.asp?ID=881>.

157. *1944 Resolution on Race*, *supra* note 136.

158. *Resolution on Race*, SBC.NET (May 1946), <http://www.sbc.net/resolutions/amResolution.asp?ID=883>.

159. *1950 Recommendation Concerning Race Relations*, *supra* note 137.

When the Convention next spoke on civil rights and race relations, in its 1961 “Resolution on Race Relations,” it clearly spoke for—and to—a church in turmoil.<sup>160</sup> Noting that the Convention had in the past addressed race relations “clearly and positively,” the group addressed “the race problem.”<sup>161</sup> The group recognized “that members of our churches have sincere differences of opinion as to the best course of action in this matter” and asserted a truly offensive equivalency: “On solid scriptural grounds, however, we reject mob violence as an attempted means of solving this problem. We believe that both lawless violence on one hand and unwarranted provocation on the other are outside the demands of Christ upon us all.”<sup>162</sup> To characterize the civil rights movement as “unwarranted provocation” which was the equivalent of the lawless violence of the Ku Klux Klan and other rabid segregationists was particularly odious given the timing of the Convention meeting. The Southern Baptists met in convention in June of 1961, as Freedom Riders were being firebombed, beaten, and arrested for peacefully challenging the segregation of public facilities all across the South.<sup>163</sup> While acknowledging a special obligation because of their presence in the South, the Convention declared “that the race problem is

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160. *Resolution on Race Relations*, SBC.NET (June 1961), <http://www.sbc.net/resolutions/amResolution.asp?ID=886> [hereinafter *1961 Resolution on Race Relations*].

161. *1961 Resolution on Race Relations*, *supra* note 160; NEWMAN, *supra* note 107, at 121.

162. *1961 Resolution on Race Relations*, *supra* note 160.

163. The Freedom Riders project started as an effort by the Congress of Racial Equality and the Student Nonviolent Coordinating Committee to challenge the segregation of interstate transportation facilities in the South, including busses, waiting rooms and restaurants. Public facilities associated with interstate commerce had been ordered desegregated in *Boynton v. Commonwealth of Virginia*, 364 U.S. 454 (1960) under the authority of the Interstate Commerce Act, not the Constitution. The Interstate Commerce Commission had five years earlier ordered the desegregation of busses (*Sarah Keys v. Carolina Coach Co.*, 64 I.C.C. 769 (1955)) and trains (*NAACP v. St. Louis-S.F.R. Co.*, 297 I.C.C. 335 (1955)), but had declined to enforce its own rulings. The Freedom Riders attempted to ride interstate busses through the South to New Orleans for a rally. Starting in early May 1961, the peaceful demonstrators left Washington, D.C. The progress of the Freedom Riders across the South was marked with segregationist harassment, unjustified arrests, and mob violence against the demonstrators. Future Congressman John Lewis was beaten in South Carolina. A Freedom Rider bus was firebombed in Alabama; the mob attempted to kill the riders, many of whom were severely beaten. Freedom Riders on a second bus were beaten by segregationist mobs. When mob violence forced an end to the original rides, additional Freedom Riders were recruited and by the middle of May the campaign resumed. Mob violence continued and the Kennedy Administration finally intervened to attempt to protect the demonstrators, with limited success. When segregationist local authorities arrested demonstrators for violating local segregation ordinances, the demonstrators attempted to fill the jails in protest. The campaign continued throughout the Summer of 1961 across the South, and forms the background which makes the Southern Baptist Convention characterization of “unwarranted provocation” especially offensive.

a moral and spiritual as well as social problem” and failed to endorse any specific steps to meet the urgency of the day.<sup>164</sup>

The Convention did not act on civil rights or race relations again until 1965, when the Convention observed that the “progress made toward an easing of racial tensions and a Christian solution does not match the extreme urgency reflected in current crises,” and “pledge[d] . . . to provide positive leadership in our communities, seeking through conciliation and understanding to obtain peaceful compliance with laws assuring equal rights for all,” and “to go beyond these laws in the practice of Christian love.”<sup>165</sup> It was perhaps a sign of the times that the following language was added as an amendment from the floor by a delegate from Alabama: “We deplore the open and premeditated violation of civil laws, the destruction of property, the shedding of human blood, or the taking of life as a means of influencing legislation or changing the social and cultural patterns.”<sup>166</sup>

And then came 1968. Declaring that “[o]ur nation is enveloped in a social and cultural revolution,” the Convention in June of 1968 passed “A Statement Concerning the Crisis in Our Nation.”<sup>167</sup> The Statement reflected the urgency of the times. It was dated June 5th, the day Senator Robert Kennedy was assassinated, two months after the Reverend Martin Luther King, Jr. was assassinated, and six months after the Tet Offensive in Viet Nam. It addressed the question of race:

We are a nation that declares the equality and rights of persons irrespective of race. Yet, as a nation, we have allowed cultural patterns to persist that have deprived millions of black Americans, and other racial groups as well, of equality of recognition and opportunity in the areas of education, employment, citizenship, housing, and worship. Worse still, as a nation, we have condoned prejudices that have damaged the personhood of blacks and whites alike. We have seen a climate of racism and reactionism develop resulting in hostility, injustice, suspicion, faction, strife, and alarming potential for bitterness, division, destruction, and death.<sup>168</sup>

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164. *1961 Resolution on Race Relations*, *supra* note 160.

165. *Resolution on Human Relations*, SBC.NET (June 1965), <http://www.sbc.net/resolutions/amResolution.asp?ID=887> [hereinafter *1965 Resolution on Human Relations*].

166. *Id.*

167. *A Statement Concerning the Crisis in Our Nation*, SBC.NET (June 1968), [http://baptiststudiesonline.com/wp-content/uploads/2008/08/a-statement-concerning-the-crisis-in-our-nation-\\_1968\\_.pdf](http://baptiststudiesonline.com/wp-content/uploads/2008/08/a-statement-concerning-the-crisis-in-our-nation-_1968_.pdf) [hereinafter *1968 Statement on Crisis*].

168. *Id.*

Although the Statement mischaracterized the early history of the denomination on matters of race,<sup>169</sup> and disingenuously claimed “special ties” with Southern blacks, the Convention admitted that “we have come far short of our privilege in Christian brotherhood.”<sup>170</sup> Declaring that “[o]ur nation is at the crossroads,”<sup>171</sup> the Statement called for action:

Words will not suffice. The time has come for action. Our hope for healing and renewal is in the redemption of the whole of life. Let us call men to faith in Christ. Let us dare to accept the full demands of the love and lordship of Christ in human relationships and urgent ministry. Let us be identified with Christ in the reproach and suffering of the cross.<sup>172</sup>

The actions to which the Statement summoned Southern Baptists were sweeping:

We will strive to obtain and secure for every person equality of human and legal rights. We will undertake to secure opportunities in matters of citizenship, public services, education, employment, and personal habitation that every man may achieve his highest potential as a person.

We will accept and exercise our civic responsibility as Christians to defend people against injustice. We will strive to insure for all persons the full opportunity for achievement according to the endowments given by God.

We will refuse to be a party to any movement that fosters racism or violence or mob action.<sup>173</sup>

By the 1970s, the tenor of the Convention on matters of race and civil rights was shifting. In 1970, while stating that “Southern Baptists are aware of many areas of tension and misunderstanding between racial groups in our nation,” and “realize that economic, social, and educational conditions make these problems more serious,” the resolution contained the unspecific charge for “Christians to build bridges of good will on foundations of justice.”<sup>174</sup> Beyond that, the resolution merely claims with “gratitude to God . . . and . . . with thanksgiving” that progress is being made on integrating churches and cooperating with “individuals and

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169. *Id.* Given the historical record of support for slavery and racial exclusion, the assertion “[f]rom the beginning of the Southern Baptist Convention, and indeed in organized Baptist life, we have affirmed God’s love for all men of all continents and colors, of all regions and races” is remarkable. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. *Resolution on Race*, SBC.NET (June 1970), <http://www.sbc.net/resolutions/am/Resolution.asp?ID=889> [hereinafter *1970 Resolution on Race*].

groups who differ racially from us.”<sup>175</sup> Indeed, in 1971 the Convention did the nearly impossible feat of passing a “Resolution on Prejudice” which does not mention, and apparently excludes, race.<sup>176</sup>

After an eight-year hiatus, the Convention returned to the issue of race in 1978. Declaring that “[h]armony between the races and justice for all persons remain a goal for American society,” and that the “quest for racial justice and peace is a Christian concern,” the Convention found that the “civil rights progress of the 1960s has given way to new expressions of racism in the 1970s.”<sup>177</sup> In response, the resolution calls upon Southern Baptists to “seek to purge ourselves and our society of all forms of racism, and . . . pledge ourselves to a renewed commitment in applying the teachings of Jesus to the practical concerns of all minority persons.”<sup>178</sup>

### C. *The Southern Baptist Convention Recants and Repents*

“[W]e lament and repudiate historic acts of evil.”

—Southern Baptist Convention, 1995<sup>179</sup>

Over time, the more progressive elements in the Southern Baptist Convention leadership helped move the community toward change.<sup>180</sup> The scriptural support for segregation was challenged and church leaders, even conservative leaders, testified as to their changing personal beliefs.<sup>181</sup> For example, two-term Convention President W.A. Criswell abandoned his earlier segregationist stand and challenged the scriptural defense of segregation: “I don’t think that segregation could have been or was at any time intelligently, seriously supported by the Bible.”<sup>182</sup>

The Southern Baptist’s history on slavery, policy on race and civil rights, and inclusiveness was repudiated when, in June of 1995, the

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175. *Id.*

176. *Resolution on Prejudice*, SBC.NET (June 1971), <http://www.sbc.net/resolutions/am/Resolution.asp?ID=890> (noting different “ethnic, linguistic, national, and religious backgrounds,” decrying prejudice in those areas, and particularly noting and disavowing anti-Semitism).

177. *Resolution on Racism*, SBC.NET (June 1978), <http://www.sbc.net/resolutions/am/Resolution.asp?ID=892> [hereinafter *1978 Resolution on Racism*].

178. *Id.*

179. *1995 Resolution on Race*, *supra* note 93.

180. See NEWMAN, *supra* note 107, at 65-86.

181. *Id.* at 63, 84.

182. NEWMAN, *supra* note 107, at 63 (quoting W.A. Criswell, President of the Southern Baptist Convention from 1968 to 1970 and notable conservative leader). Reverend Criswell repudiated his earlier segregationist position. HANKINS, *supra* note 106, at 242 (“W.A. Criswell . . . said in an address to a South Carolina evangelism conference in 1956 that he favored both religious and racial segregation.”).

Convention passed its historic “*Resolution On Racial Reconciliation*.”<sup>183</sup> In it, the Southern Baptists renounced and apologized for their historical biblical defense of slavery and their lamentable record on race relations, civil rights, and inclusiveness.<sup>184</sup>

In their resolution the Southern Baptists acknowledged “the role that slavery played in the formation of the Southern Baptist Convention,” and noted that “[m]any of our Southern Baptist forbears defended the right to own slaves, and either participated in, supported, or acquiesced in the particularly inhumane nature of American slavery.”<sup>185</sup>

The resolution is organized around the central element of racism as the cause of slavery and on-going prejudice and discrimination: “Racism has led to discrimination, oppression, injustice, and violence, both in the Civil War and throughout the history of our nation.”<sup>186</sup> In the resolution the Southern Baptists “unwaveringly denounce racism, in all its forms, as deplorable sin” and “lament and repudiate historic acts of evil such as slavery from which we continue to reap a bitter harvest, and we recognize that the racism which yet plagues our culture today is inextricably tied to the past.”<sup>187</sup>

As to inclusiveness, the Convention acknowledged that “Racism has divided the body of Christ and Southern Baptists in particular, and separated us from our African-American brothers and sisters,” and that “[m]any of our congregations have intentionally and/or unintentionally excluded African-Americans from worship, membership, and leadership.”<sup>188</sup> At the same time, the Southern Baptists were called to “apologize to all African-Americans for condoning and/or perpetuating individual and systemic racism in our lifetime; and . . . genuinely repent of racism of which we have been guilty, whether consciously . . . or unconsciously,” and to “ask forgiveness from our African-American brothers and sisters, acknowledging that our own healing is at stake; and . . . commit ourselves to eradicate racism in all its forms from Southern Baptist life and ministry.”<sup>189</sup>

The resolution renounces the Southern Baptist historical biblical defense of slavery by declaring that “[r]acism profoundly distorts our understanding of Christian morality, leading some Southern Baptists to

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183. *1995 Resolution on Race*, *supra* note 93.

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*

believe that racial prejudice and discrimination are compatible with the Gospel.”<sup>190</sup>

It is difficult to know how to view the 1995 “Resolution on Racial Reconciliation.” It has been suggested that the adoption of the resolution was driven by membership considerations,<sup>191</sup> and that it is insufficient to atone for the Convention’s past.<sup>192</sup> If it is used by the Southern Baptist leadership to obscure their shameful past, and not to acknowledge and apologize for it, the resolution is mendacious. Consider, for example, the “Manhattan Declaration: A Call of Christian Conscience,” a 2009 document signed by a group of prominent religious leaders, including some from the Southern Baptist Convention.<sup>193</sup> The document, among other things, opposes marriage equality on religious grounds.<sup>194</sup> In the preamble, the signers assert their provenance: “[w]e claim the heritage of those Christians who” and then proceeds to claim the heritage of Christians who through the ages performed righteous acts.<sup>195</sup> These include the assertions that: “It was Christians who combated the evil of slavery” and “The great civil rights crusades of the 1950s and 60s were led by Christians claiming the Scriptures and asserting the glory of the

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190. *Id.* The Resolution contains Biblical references that are incompatible with the racism and the institution of slavery:

[W]e affirm the Bibles teaching that every human life is sacred, and is of equal and immeasurable worth, made in Gods image, regardless of race or ethnicity (Genesis 1:27), and that, with respect to salvation through Christ, there is neither Jew nor Greek, there is neither slave nor free, there is neither male nor female, for (we) are all one in Christ Jesus (Galatians 3:28).

*Id.*

191. Taunya Lovell Banks, *Exploring White Resistance to Racial Reconciliation in the United States*, 55 RUTGERS L. REV. 903, 918 (2003) (“Rather than view the Southern Baptist’s apology as a hopeful sign of racial reconciliation, a cynic might point to the increasing numbers of black congregations in the denomination, arguing that the apology was in the group’s best interest.”).

192. Stephen L. Carter, *The Free Exercise Thereof*, 38 WM. & MARY L. REV. 1627, 1645 (1997) (“Although the Southern Baptist Convention in 1995 adopted a resolution apologizing and asking forgiveness for its past support of racism, the fact remains that the SBC was founded before the Civil War precisely to enable the racist southern churches to escape the interference of northern Baptists who were pressing for an end to slavery.”).

193. Robert George, Timothy George & Chuck Colson, *Manhattan Declaration: A Call of Christian Conscience*, DEMOSSNEWS.COM (2009), [http://www.demosnews.com/manhattan-declaration/press-kit/manhattan\\_declaration\\_signers](http://www.demosnews.com/manhattan-declaration/press-kit/manhattan_declaration_signers) [hereinafter *Manhattan Declaration*]. The Manhattan Declaration was signed by Dr. R. Albert Mohler, Jr., and Dean Russell D. Moore, respectively the President and the Dean of the School of Theology of the Southern Baptist Theological Seminary, among other Baptist leaders.

194. *Id.*

195. *Id.* The claim of heritage does begin with a disclaimer: “While fully acknowledging the imperfections and shortcomings of Christian institutions and communities in all ages.” The inappropriateness of characterizing the Southern Baptist original sin of supporting slavery as a mere “imperfection” or a “shortcoming” is obvious. *Id.*

image of God in every human being regardless of race, religion, age or class.”<sup>196</sup> One hopes that the Southern Baptist signatories at least had the decency to blush as they affixed their signatures to the document, thereby attempting to purloin a righteous heritage to which they have no legitimate claim.

*D. Reflect, Recant, and Repent on Homosexuality and Marriage Equality: Might the Southern Baptist Convention Join the Emerging National Consensus?*

“I think it’s clear that something like same-sex marriage . . . is going to become normalized, legalized, and recognized in the culture.”

—Dr. R. Albert Mohler, Jr., President,  
The Southern Baptist Theological Seminary<sup>197</sup>

Given their record of error on the transcendent issues of slavery, civil rights, and racism, one might expect the Southern Baptists to approach issues of homosexuality and marriage equality with a sense of historical humility. One would certainly expect them to inquire into the causes of their scriptural errors on slavery, civil rights, and racism, so as to avoid such errors on other issues.

Dr. Russell D. Moore, the Dean of the School of Theology at The Southern Baptist Theological Seminary has written about the process by which Southern Baptists gained redemption on the issues of slavery and civil rights: “Previous generations of Southern Baptists . . . opposed interracial marriage, integrated churches, and even the abolition of human slavery precisely because they were historically-situated and culturally-shaped by prevailing notions of human nature and racial hierarchy.”<sup>198</sup> This observation, that Southern Baptists took positions that were culturally influenced on issues of great importance, would not strike most people as remarkable. But these positions were presented as having been scripture-based. The scriptures did not change between 1822 and 1995. Especially for those Southern Baptists who believe the scriptures to be the inerrant word of God, the change from 1822 to 1995 requires

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196. *Id.*

197. Interview by Jim Daly with Albert Mohler, President, South Baptist Theological Seminary, on Radio (Feb. 25, 2011), transcribed at *People for the American Way, Right Wing Watch*, AL MOHLER, <http://www.rightwingwatch.org/content/Mohler-its-inevitable-marriage-equality-will-be-normalized-legalized-and-recognized> (last visited Mar. 24, 2012) [hereinafter *Marriage Equality*].

198. Interview by Russell D. Moore with Tony Jones, Nat’l Coordinator of Emergent Vill., THE ALBERT MOHLER PROGRAM, (July 15, 2007), <http://www.russellmoore.com/2007/07/15/interracial-marriage-and-emergent-truth/>.

explanation. Dean Moore has suggested how the Southern Baptists' change on the issues of slavery and civil rights came to be:

What changed all of this was not the evolution of the community toward something else. It was repentance. From anti-slavery activists such as William Wilberforce through civil rights activists such as Martin Luther King Jr. right on down to the local pastor standing up to the chairman of deacons in order to baptize an African-American teenager, the issue is biblical authority. White supremacist communities were challenged by a truth system outside of themselves, an objective verbal authority from God. Billy Graham integrated his crusades, despite community standards of truth, because the Bible teaches that the gospel is for all men. Churches opened the doors to people of all races because they were shown in the face of clear biblical teaching that they were hypocrites for sending money to convert African nations while refusing to welcome African-Americans as brothers and sisters in Christ.<sup>199</sup>

As a description of how *society* changed on the issues of slavery and civil rights Dean Moore is simply wrong. Slaveholders were not “challenged by a truth system outside of themselves” and convinced to free their slaves by a compelling scriptural argument. They were challenged by the Union army and convinced to free their slaves at the point of a bayonet and by the objective authority of the victorious federal government. Integration came to the South not because of a better understanding of the Bible’s teachings; integration came to the South because the federal government required it. And, in point of objective fact, many churches have still not “opened the doors to people of all races.”<sup>200</sup>

What changed for society was the evolution of the community toward an end more perfect. And on this evolutionary path, the Southern Baptist Convention was very late. The Convention did not adopt the Racial Reconciliation Resolution, admitting its scriptural error on matters of racism, slavery and civil rights, until 1995: 173 years after Reverend Furman’s biblical defense of slavery; 150 years after the Southern Baptist Convention was formed in the original sin of slavery;<sup>201</sup> 130 years after the surrender at Appomattox and the Thirteenth Amendment ended

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199. *Id.*

200. *See id.* Additionally, in 1963 Reverend Martin Luther King observed: “We must face the fact that in America, the church is still the most segregated major institution in America. At 11:00 on Sunday morning when we stand and sing and Christ has no east or west, we stand at the most segregated hour in this nation.” *Id.* Interview by James W. Miller, W. Mich. Univ. Press., with Martin Luther King, Jr. (Dec. 18, 1963), *available at* <http://www.wmich.edu/library/archives/mlk/q-a.html>.

201. *See* HANKINS, *supra* note 106, at 241 n.3 (citing E. LUTHER COPELAND, THE SOUTHERN BAPTIST CONVENTION AND THE JUDGMENT OF HISTORY (1995)).

slavery; thirty-one years after Congress passed the Civil Rights Act of 1964, declaring illegal segregation across the South; and twenty-eight years after the Supreme Court ended restrictions on interracial marriage.

But if Dean Moore is not correct as to how society evolved, he may speak more convincingly as to how individual Baptists came to abandon the historic support of slavery and opposition to civil rights based on their understanding of the Bible:

Religious people challenged Christian churches and an allegedly Christianized nation using Christian rhetoric that white supremacy is, and always has been, contrary to the Word of God. It has always been false, community or no community. I will not marry a believer to an unbeliever. But I will marry a godly, Christ-honoring couple, regardless of how much skin-color is in each set of flesh. My great-grandparents couldn't do that. Why? Because, just like me in all sorts of other ways and with all sorts of other issues, they, on this issue, were walking according to the flesh. When confronted with the biblical truth, Spirit-filled people eventually listen to God, or are disciplined for it.<sup>202</sup>

It is not that the Bible changed, or that society changed, according to Dean Moore. Rather, individual Southern Baptists moved from error on slavery, civil rights and racism because they overcame the “historically-situated and culturally-shaped . . . prevailing notions of human nature and racial hierarchy,”<sup>203</sup> rejected erroneous scriptural readings, and came to the interpretation of the Bible that had always been correct but was obscured by prevailing racist notions.

Thus the obvious question: Might Dean Moore's analysis of Southern Baptist error and redemption on slavery and civil rights apply equally to their opposition to same-sex civil marriage? There certainly is an argument that the Southern Baptists' scriptural analysis has been diverted into error by what—to paraphrase Dean Moore—we might term historically-situated and culturally-shaped prevailing notions of human nature and sexual identity. The question is whether the Southern Baptists are as influenced by homophobia in this situation as they were admittedly influenced by racism on questions of slavery and civil rights.<sup>204</sup>

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202. Interview by Russell D. Moore with Tony Jones, *supra* note 198.

203. *Id.*

204. The connection has been made that states with large Southern Baptist populations tend to have public policies that disadvantage gays. William N. Eskridge, Jr., *Comparative Law and the Same-Sex Marriage Debate: A Step-by-Step Approach Toward State Recognition*, 31 MCGEORGE L. REV. 641, 656-57 (2000) (“In America, states where the aggressively anti-gay Southern Baptist Convention and the Church of Jesus Christ of Latter-Day Saints have the most members are, generally speaking, the most anti-gay in their policies.”).

The suggestion that the Convention position on same-sex civil marriage is shaped by historically-situated and culturally-shaped prevailing notions of human nature and sexual identity finds support in the observation that the Convention treats same-sex civil marriage differently than it treats other issues which exhibit parallel biblical standing, suggesting the presence of cultural motivations.

A number of the scriptural passages cited by the Convention in support of its positions on homosexuality, same-sex religious marriage, and same-sex civil marriage, have parallel injunctions against other forms of conduct. Such forms of conduct, being listed in parallel, should presumably be subject to equivalent forms of approbation by the Convention. To the extent they are not, it could be construed as evidence that the Convention's interpretation of the scripture is distorted by historically-situated and culturally-shaped prevailing notions of human nature and sexual identity. Among the behaviors that are given equivalent treatment in the scriptural passages cited by the Convention with respect to homosexuality, same-sex religious marriage, and same-sex civil marriage—and for which the penalty is also death—are, in alphabetical order, adultery,<sup>205</sup> backbiting,<sup>206</sup> being unmerciful,<sup>207</sup> being without natural affection,<sup>208</sup> bestiality,<sup>209</sup> breach of covenants,<sup>210</sup> covetousness,<sup>211</sup> cursing one's parents,<sup>212</sup> debate,<sup>213</sup> deceit,<sup>214</sup> despising,<sup>215</sup> disobedience to parents,<sup>216</sup> envy,<sup>217</sup> fornication,<sup>218</sup> fornication with one's mother in law,<sup>219</sup> hatred of God,<sup>220</sup> implacability,<sup>221</sup> invention of evil things,<sup>222</sup> maliciousness,<sup>223</sup> malignity,<sup>224</sup> murder,<sup>225</sup> nonunderstanding,<sup>226</sup>

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205. See *Leviticus* 18:20, 20:10; 1 *Corinthians* 6:9-10 (for a discussion of death as a penalty for adultery).

206. See *Romans* 1:29-32 (for a discussion of those who commit the acts as deserving death).

207. *Id.*

208. *Id.*

209. See *Leviticus* 18:23, 20:15 (for a discussion of death as punishment).

210. *Romans*, 1:29-32.

211. *Id.*

212. *Leviticus* 20:9.

213. *Romans* 1:29-32.

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.*

218. 1 *Corinthians* 6:9-10.

219. See *Leviticus* 20:14 (for a discussion of burning alive as punishment).

220. *Romans* 1:29-32

221. *Id.*

222. *Id.*

223. *Id.*

pride,<sup>227</sup> unrighteousness,<sup>228</sup> whispering,<sup>229</sup> and wickedness.<sup>230</sup> Among the offenses given equivalent treatment, but for which the penalty is apparently not death, are in alphabetical order: drunkenness,<sup>231</sup> effeminateness,<sup>232</sup> extortion,<sup>233</sup> idolatry,<sup>234</sup> profaning the name of God,<sup>235</sup> revilement,<sup>236</sup> self-abuse with mankind,<sup>237</sup> and thievery.<sup>238</sup>

One might expect all of these similarly situated offenses, or at least those that have the same capital consequences, to be treated the same. Given their belief in the inerrancy of the Bible, the Convention should not edit the list or differentiate among the similarly listed offenses to emphasize some at the expense of others. Clearly this is not the case. The Convention has never passed a resolution on backbiting, extortion, or whispering, for example. It might be argued that homosexuality is a more frequent sin than, say, fornication with one's mother-in-law or bestiality, thus justifying the difference in treatment. But surely the same cannot be said of breach of covenants, covetousness, cursing one's parents, deceit, disobedience to parents, drunkenness, envy, fornication, idolatry, maliciousness, nonunderstanding, pride, profaning the name of God, revilement, thievery, unrighteousness, whispering, and wickedness.

The disparate treatment of homosexuality allows the inference that the Southern Baptists are motivated by historically-situated and culturally-shaped prevailing notions of human nature and sexual identity and not solely by the scriptures.

The contention finds additional support in the observation that the Convention's rhetoric on same-sex civil marriage is consistently quite extreme.<sup>239</sup> In assessing the Convention's rhetoric it is helpful to note that

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224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*

228. 1 *Corinthians* 6:9-10.

229. *Romans*, 1:29-32.

230. *Id.*

231. 1 *Corinthians* 6:9-10.

232. *Id.*

233. *Id.*

234. *Id.*

235. *Leviticus* 18:22.

236. 1 *Corinthians* 6:9-10.

237. 1 *Corinthians* 6:9-10 (King James).

238. *Id.*

239. One rabbi, a self-described "fan of Evangelicals" observes:

Evangelicals [have] become obsessed with homosexuality. They took a single prohibition in the Bible and elevated it to [a] single moral standard besides which all else pales. . . . Religious Christians are people of inspiring faith. But by supporting the

it has defined a standard on point. When dealing with “moral, ethical, and political issues . . . Southern Baptists are urged to . . . speak biblically and authoritatively with conviction, kindness, and gentleness.”<sup>240</sup>

It is hard to read the Convention’s rhetoric over time and not conclude that the group is operating under some powerfully negative historically-situated and culturally-shaped prevailing notions of human nature and sexual identity. To the Convention, homosexuality is “an abomination in the eyes of God,”<sup>241</sup> and homosexual behavior is “immoral and aberrant.”<sup>242</sup> They have described “even desire to engage in a homosexual sexual relationship” as being “always sinful, impure, degrading, shameful, unnatural, indecent and perverted.”<sup>243</sup> They have cited a rise in homosexuality as evidence of modern society’s “erosion of moral sanity,”<sup>244</sup> and have gone beyond the statement that homosexual acts are sinful by saying that “[t]he Bible is very clear in its teaching that homosexuality is a manifestation of a depraved nature.”<sup>245</sup> The Convention has declared that gays and lesbians are responsible for the “introduction and spread of AIDS” and that only those who are straight are “innocent victims” of the disease.<sup>246</sup>

In fairness, one can point to a few passages in the record where the Southern Baptists’ rhetoric has conformed with the Christian ideal of love for the sinner. The Convention has declared that “[h]omosexual persons are not our enemies but our neighbors whom we love,”<sup>247</sup> and has called upon Southern Baptists “to demonstrate our love for those practicing homosexuality by sharing with them the forgiving and transforming power of the gospel of Jesus Christ.”<sup>248</sup> And of late there has been a moderation of their rhetoric when speaking of homosexuality, at least with reference to the issue of same-sex civil marriage.<sup>249</sup> But

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comment that homosexuality was akin to pedophilia and bestiality they too had crossed a line. And it would be difficult to come back.

Rabbi Shmuley Boteach, *Gay Obsession Has Marginalized Evangelicals Politically*, HUFFINGTON POST (Nov. 2, 2010, 12:36 PM), [http://www.huffingtonpost.com/rabbi-shmuley-boteach/gay-obsession-has-margina\\_b\\_777690.html](http://www.huffingtonpost.com/rabbi-shmuley-boteach/gay-obsession-has-margina_b_777690.html).

240. *On Civil Public Discourse*, SBC.NET (June 2011), <http://www.sbc.net/resolutions/amResolution.asp?ID=1216>.

241. *1988 Resolution on Homosexuality*, *supra* note 61.

242. *2010 Resolution on the Employment Non-Discrimination Act*, *supra* note 62.

243. *1996 Resolution on Homosexual Marriage*, *supra* note 56.

244. *1988 Resolution on Homosexuality*, *supra* note 61.

245. *Id.*

246. *Id.*

247. *2010 Resolution on the Employment Non-Discrimination Act*, *supra* note 62.

248. *2003 Resolution on Same-Sex Marriage*, *supra* note 69.

249. *Compare 1996 Resolution on Homosexual Marriage*, *supra* note 56, with *2003 Resolution on Same-Sex Marriage*, *supra* note 69.

taken all together, the Convention's rhetoric on homosexuality strongly suggests a pervasive homophobic component. They certainly have not honored their own "kindness and gentleness" standard.<sup>250</sup>

A final suggestion that the Convention position on same-sex civil marriage is shaped by historically-situated and culturally-shaped prevailing notions of human nature and sexual identity is found in the admission of Dr. Mohler that Southern Baptists "have . . . exhibited a certain form of homophobia of which we must, absolutely must, in gospel terms repent . . . ."<sup>251</sup>

What might it look like for the Southern Baptist Convention to reflect, recant, and repent on the issue of homosexuality and marriage equality? One way to consider the possibility is to draft the language of the Convention resolution that such a step might require, paraphrased from their 1995 resolution on slavery, discrimination, and racism:

WHEREAS, Homophobia has led to discrimination, oppression, injustice, and violence, throughout the history of our nation; and

WHEREAS, Homophobia has divided the body of Christ and Southern Baptists in particular, and separated us from our gay brothers and lesbian sisters; and

WHEREAS, the Convention and many of our congregations have intentionally and/or unintentionally excluded gays and lesbians from worship, membership, and leadership; and

WHEREAS, Homophobia profoundly distorts our understanding of Christian morality, leading some Southern Baptists to believe that prejudice

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250. 2011 Resolution on Civil Public Discourse, *supra* note 240.

251. R. Albert Mohler, Jr., Address at the Southern Baptist Convention Annual Meeting (June 15, 2011) (transcript available at <http://hereiblog.com/transcript-commentary-al-mohler-on-homosexuality-sbc/> [hereinafter Mohler, *Seminary Report*]). Mohler had previously spoken in a similar way:

When gay activists accuse conservative Christians of homophobia, they are wrong. Our concern about the sinfulness of homosexuality is not rooted in fear, but in faithfulness to the Bible—and faithfulness means telling the truth.

Yet, when gay activists accuse conservative Christians of homophobia, they are also right. Much of our response to homosexuality is rooted in ignorance and fear. We speak of homosexuals as a particular class of especially depraved sinners and we lie about how homosexuals experience their own struggle. Far too many evangelical pastors talk about sexual orientation with a crude dismissal or with glib assurances that gay persons simply choose to be gay. While most evangelicals know that the Bible condemns homosexuality, far too many find comfort in their own moralism, consigning homosexuals to a theological or moral category all their own.

R. Albert Mohler, Jr., *Between the Boy and the Bridge—A Haunting Question*, ALBERTMOHLER.COM (Oct. 4, 2010), <http://www.albertmohler.com/2010/10/04/between-the-boy-and-the-bridge-a-haunting-question/> [hereinafter Mohler, *A Haunting Question*]. *But see* Michael Foust, *Mohler: Homosexuality Comments Reflect Scripture*, BAPTIST PRESS (June 23, 2011), <http://www.bpnews.net/BPnews.asp?ID=35615> (offering alternative meaning of "homophobia" as "being 'afraid of the conversation and afraid of the issue'").

and discrimination on the basis of sexual identity are compatible with the Gospel; and

WHEREAS, Jesus performed the ministry of reconciliation to restore sinners to a right relationship with the Heavenly Father, and to establish right relations among all human beings, especially within the family of faith.

Therefore, be it RESOLVED, That we, the messengers to the Southern Baptist Convention, unwaveringly denounce homophobia, in all its forms, as deplorable sin; and

Be it further RESOLVED, That we affirm the Bible's teaching that every human life is sacred, and is of equal and immeasurable worth, made in God's image, regardless of sexual identity (Genesis 1:27), and that, with respect to salvation through Christ, there is neither Jew nor Greek, there is neither slave nor free, there is neither male nor female, for (we) are all one in Christ Jesus (Galatians 3:28); and

Be it further RESOLVED, That we lament and repudiate historic acts of evil from which we continue to reap a bitter harvest, and we recognize that the homophobia which yet plagues our culture today is inextricably tied to the past; and

Be it further RESOLVED, That we apologize to all gays and lesbians for condoning and/or perpetuating individual and systemic homophobia in our lifetime; and we genuinely repent of homophobia of which we have been guilty, whether consciously (Psalm 19:13) or unconsciously (Leviticus 4:27); and

Be it further RESOLVED, That we ask forgiveness from our gay brothers and lesbian sisters, acknowledging that our own healing is at stake; and

Be it further RESOLVED, That we hereby commit ourselves to eradicate homophobia in all its forms from Southern Baptist life and ministry; and

Be it further RESOLVED, That we commit ourselves to be doers of the Word (James 1:22) by pursuing sexual identity reconciliation in all our relationships, especially with our brothers and sisters in Christ (1 John 2:6), to the end that our light would so shine before others, that they may see (our) good works and glorify (our) Father in heaven (Matthew 5:16); and

Be it finally RESOLVED, That we pledge our commitment to the Great Commission task of making disciples of all people (Matthew 28:19), confessing that in the church God is calling together one people from every tribe and nation (Revelation 5:9), and proclaiming that the Gospel of our Lord Jesus Christ is the only certain and sufficient ground upon which redeemed persons will stand together in restored family union as joint-heirs with Christ (Romans 8:17).

Are the Southern Baptists headed for reexamination and repentance on the issues of homosexuality and marriage equality? One might have

taken some comments made at the 2011 Southern Baptist Convention by Dr. Mohler as suggesting the possibility.<sup>252</sup> In answering a question from the floor of the Convention, Dr. Mohler was critical of the record of Christian churches on homosexuality:

The reality is that we as Christian churches have not done well on this issue. And I think if we're unwilling to admit that it is further to our shame.<sup>253</sup>

Declaring that the evangelical history on the issue of homosexuality is "very sad," Dr. Mohler apparently contradicted the position that homosexuality is a choice:

But we as Evangelicals have a very sad history in dealing with this issue. We have told not the truth . . . we have said to people that homosexuality's just a choice. Well it's clear that it is more than a choice . . . it's not something that people can just turn on and turn off.<sup>254</sup>

Finally, as noted above, Dr. Mohler acknowledged that "we have . . . exhibited a certain form of homophobia of which we must, absolutely must, in gospel terms repent."<sup>255</sup>

Did Dr. Mohler acknowledge the homophobia of the Southern Baptist Convention and call for repentance in parallel to the 1995 acknowledgement by the Convention of racism and a pledge to repent? Did he acknowledge that homosexuality is not a choice and thus not a sin? Did he indicate a sea change in Southern Baptist thinking, leading to an acceptance of homosexuality and marriage equality? After all, Dr. Mohler had earlier predicted that same-sex marriage "is going to become normalized, legalized, and recognized in the culture."<sup>256</sup>

No, clearly not, as recourse to Dr. Mohler's entire statement makes quite clear.<sup>257</sup> First, Dr. Mohler signals that his beliefs on homosexuality

252. See Mohler, *Seminary Report*, *supra* note 251.

253. *Id.*

254. *Id.*

255. *Id.*

256. Mohler: *Inevitable Marriage Equality*, *supra* note 197. Dr. Mohler is not alone; others who oppose marriage equality have also predicted that it will become law; see also Howell Scott, *Southern Baptists & the Homosexual Culture*, FROM LAW TO GRACE (June 24, 2011), <http://fromlaw2grace.com/2011/06/24/southern-baptists-the-homosexual-culture/> ("Within the next three to five years, our nation will undergo a sea change in its perception of gay rights, including the rights of gay couples to marry. . . . With some recent polls now showing a majority of Americans favoring gay marriage, homosexuality and the gay lifestyle will be normalized within our culture. To speak negatively against gay rights will be the equivalent of using racist language.").

257. It is fair to say that Dr. Mohler's allies seemed more confused by his statements than those with whom he disagrees. See Peter Lumpkins, *Al Mohler and Homosexuality: Setting the Record Straight* (June 20, 2011), [http://peterlumpkins.typepad.com/peter\\_lumpkins/2011/06/al-](http://peterlumpkins.typepad.com/peter_lumpkins/2011/06/al-)

have been clearly articulated and have not changed.<sup>258</sup> Second, Dr. Mohler makes it quite clear that he continues to consider homosexuality to be a sin; he contrasts the position of the Southern Baptist Convention with “the liberal trajectory of lying about homosexuality and its sinfulness,” and says that “the Bible clearly declares, not only in isolated verses but in the totality of the its [sic] comprehensive presentation, that fact that homosexuality, not only is not God’s best for us as some try to say, but it is sin.”<sup>259</sup>

As to Dr. Mohler’s commentary about homosexuality not being a choice, the full statement makes it very clear that he is acknowledging that being gay is not a choice one makes, but he is not saying that sexual orientation is innate or that homosexual behavior is not sinful:

But we as Evangelicals have a very sad history in dealing with this issue. We have told not the truth, but we’ve told about half the truth. We’ve told the biblical truth and that’s important, but we haven’t applied it in the biblical way. For instance, we have said to people that homosexuality’s just a choice. Well it’s clear that it is more than a choice. That doesn’t mean it’s any less sinful. But it does mean it’s not something that people can just turn on and turn off.<sup>260</sup>

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mohler-and-homosexuality-setting-the-record-straight-by-peter-lumpkins.html (Minister who asked Dr. Mohler a question at June, 2011 Southern Baptist Convention saying that he is “confused” about Dr. Mohler’s position). Bryan Fischer, *Southern Baptists: Disturbing Signals on Homosexuality, Immigration*, RIGHTLY CONCERNED (June 17, 2011), <http://afa.net/Blogs/BlogPost.aspx?id=2147508733>. Fischer claimed that Dr. Mohler “appeared to pander to the homosexual lobby” when he “urged attendees at the SBC’s annual convention to ‘repent’ of what he called ‘a form of homophobia,’ without saying exactly what kind of homophobia he was talking about” and when “[h]e told the delegates at the SBC that homosexuality is ‘more than a choice,’ and that it apparently borders on something sinful to believe otherwise.” “He did not elaborate on exactly what he meant by ‘more than a choice,’ but what else could it mean but that he’s urging SBC’ers to accept the bogus claim that homosexuality is innate and that people can be homosexual from birth.” *Id.*; Foust, *supra* note 251 (“Mohler’s comments were called confusing in some circles, with others saying they wondered if he had changed his beliefs.”).

258. Mohler, *Seminary Report*, *supra* note 251 (“There is no way that anyone can in fair-mindedness be confused about what I believe about homosexuality because I’ve published over 200 articles on the subject. Not that I’d expect you to go home and read them all this evening.”).

259. Mohler, *Seminary Report*, *supra* note 251; Foust, *supra* note 251 (“He . . . was clear in calling homosexuality a sin.”).

260. Mohler, *Seminary Report*, *supra* note 251. Mohler later sought to explain his use of the choice term. Foust, *supra* note 251:

[W]hen it comes to the question of homosexual acts, ‘choice’ is a fully legitimate category. But when it comes to that pattern of temptation, the reality is that all of us struggle with some kind of temptation that we have simply known from our earliest self-understanding. . . .

. . . .  
Every single human being past the point of puberty has some form of sexual temptation, and we need to be honest about the fact that that pattern of sexual temptation is something that will represent a lifelong struggle.

As to his admission of Southern Baptist homophobia, Dr. Mohler later clarified that his use of the term may differ from that of most other people—it is not fear of homosexuality, it is fear of the discussion of homosexuality.<sup>261</sup>

Finally, it is true that Dr. Mohler desires to include gays and lesbians in the life of the Southern Baptist Convention. But it is clear that he wants to include them on *his* terms: He wants to minister to them<sup>262</sup> and help them repent and gain “release from homosexuality.”<sup>263</sup> In that context, Dr. Mohler wants Southern Baptists to repent their homophobia as a tactic to position them to more easily minister to gays and lesbians. It falls far, far short of the rhetoric of the 1995 acknowledgement and renunciation of racism.

#### V. THE SOUTHERN BAPTIST CONVENTION, CHURCH-STATE SEPARATION, AND ABSTENTION ON HOMOSEXUALITY AND MARRIAGE EQUALITY

“[O]ur Baptist aversion to any effort to use the . . . powers of government to lay the weight of a feather upon the conscience of any man in the realm of religion by privilege or penalty.”

—Southern Baptist Convention, 1957<sup>264</sup>

In 1971, two years before *Roe v. Wade*, the Southern Baptist Convention passed a resolution “to work for legislation that will allow the possibility of abortion under such conditions as rape, incest, clear evidence of severe fetal deformity, and carefully ascertained evidence of

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261. Foust, *supra* note 251 (“Mohler defines homophobia in the church as being ‘afraid of the conversation and afraid of the issue’ of homosexuality. He said he was not using the word ‘homophobia’ in the context that many others use it. ‘The gay activists have used that word as a battering ram for ideological purposes,’ he said. ‘They try to insist that any negative judgment on homosexuality is rooted in fear. Well, that is absolute nonsense. But we play in to that when we do demonstrate ourselves to be afraid of the conversation.’” (quoting Albert Mohler)). As discussed in Part III.A, the Southern Baptist Convention passed nineteen resolutions touching on homosexuality over the thirty-four years between 1976 and 2011. As this is written in early July of 2011, Mohler’s own Web site, <http://www.AlbertMohler.com>, lists *three hundred* articles of his under the heading “Homosexuality” since July 31, 2003, a period of less than eight years. Given the number and immoderate tone of Convention statements on homosexuality, and his own voluminous commentary, Mohler’s construction that he meant Southern Baptists have been afraid of conversation on the topic of homosexuality seems rather bizarre.

262. Mohler, *Seminary Report*, *supra* note 251 (“I believe . . . with my whole heart that that is a part of our challenge as we now face the responsibility not only to speak the truth about homosexuality, but to minister to a very militant community of homosexuals. And also to a large number of persons in our churches, whether we want to acknowledge this or not, who are struggling with this issue.”).

263. *Id.*

264. *Resolution on Religious Liberty*, SBC.NET (May 1957), <http://www.sbc.net/resolutions/amResolution.asp?ID=934> [hereinafter *1957 Resolution on Religious Liberty*].

the likelihood of damage to the emotional, mental, and physical health of the mother.”<sup>265</sup>

But in 2003, the Convention passed a very different resolution on abortion in which they declared that the 1971 resolution “accepted unbiblical premises of the abortion rights movement, forfeiting the opportunity to advocate the protection of defenseless women and children,” and that “During the early years of the post-Roe era, some of those then in leadership positions within the denomination endorsed and furthered the ‘pro-choice’ abortion rights agenda outlined in *Roe v. Wade*.”<sup>266</sup> The 2003 resolution asserts that “Southern Baptist churches have effected a renewal of biblical orthodoxy and confessional integrity in our denomination, beginning with the Southern Baptist Convention presidential election of 1979,” and claims that the “Convention has maintained a robust commitment to the sanctity of all human life, including that of the unborn, beginning with a landmark pro-life resolution in 1982.”<sup>267</sup> In the 2003 resolution the Convention declared that “we lament and renounce statements and actions by previous Conventions and previous denominational leadership that offered support to the abortion culture,” and resolved that “we humbly confess that the initial blindness of many in our Convention to the enormity of *Roe v. Wade* should serve as a warning to contemporary Southern Baptists of the subtlety of the spirit of the age in obscuring a biblical worldview.”<sup>268</sup> Clearly things had changed significantly within the Convention.<sup>269</sup>

When *Brown v. Board of Education* was handed down, some leaders of the Southern Baptist Convention—clearly mindful of the widespread popular disagreement with desegregation among their religious community—nevertheless urged Southern Baptists to defer to the civil authorities and implement the Supreme Court’s decision.<sup>270</sup>

What led to these surprising initial positions on abortion and desegregation? A basic tenet of the Southern Baptist Convention has always been “soul competency,” defined as “the accountability of each

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265. *Resolution on Abortion*, SBC.NET (June 1971), <http://www.sbc.net/resolutions/amResolution.asp?ID=13>.

266. *Resolution on Thirty Years of Roe v. Wade*, SBC.NET (June 2003), <http://www.sbc.net/resolutions/amResolution.asp?ID=1130> [hereinafter *2003 Resolution on Roe v. Wade*].

267. *Id.*

268. *Id.*

269. See HANKINS, *supra* note 106, at 43-45, 58-59; see also Linda Greenhouse & Reva B. Siegel, *Before (and After) Roe v. Wade: New Questions About Backlash*, 120 YALE L.J. 2028, 2063 n.132 (2011).

270. See NEWMAN, *supra* note 107, at ix-x, 20-21; see also HANKINS, *supra* note 106, at 242-43.

person before God.’<sup>271</sup> In Southern Baptist belief, individuals must voluntarily accept God and conform their actions to God’s will; such acceptance and godly behavior cannot be forced upon them. The implication as to government is clear: “Authorities can’t force belief or unbelief. They shouldn’t try.”<sup>272</sup>

The doctrine of soul competency helps define the Southern Baptist attitude toward civil government. From the founding of the Southern Baptist denomination Southern Baptists consistently and vigorously proclaimed the necessity of a strict separation of church and state. Contemporary Southern Baptist Convention doctrine states the proposition quite simply: “Church and state should be separate.”<sup>273</sup> We now turn to a discussion of that history and consideration of whether that history might give the Convention a path to join the emerging national consensus on homosexuality and marriage equality.

#### A. *The Southern Baptist Convention and Church—State Separation*

“The complete separation of church and State has ever been, and is now, a fundamental principle of Baptist belief and practice . . . .”

—Southern Baptist Convention, 1913<sup>274</sup>

Contemporary Southern Baptist doctrine<sup>275</sup> is unequivocal on church interference in the affairs of state: “The church should not resort to the civil power to carry on its work. The gospel of Christ contemplates spiritual means alone for the pursuit of its ends.”<sup>276</sup> Or, as stated in the

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271. *Position Statement on Soul Competency*, *supra* note 143.

272. *Id.*

273. *The Baptist Faith and Message*, SBC.NET, <http://www.sbc.net/bfm/bfm2000.asp#xvii> (last visited Mar. 24, 2012).

274. *Resolution on Religious Liberty*, SBC.NET (May 1913), <http://www.sbc.net/resolutions/amResolution.asp?ID=909> [hereinafter *1913 Resolution on Religious Liberty*].

275. *The Baptist Faith and Message*, *supra* note 273:

The state owes to every church protection and full freedom in the pursuit of its spiritual ends. In providing for such freedom no ecclesiastical group or denomination should be favored by the state more than others. Civil government being ordained of God, it is the duty of Christians to render loyal obedience thereto in all things not contrary to the revealed will of God. . . . The state has no right to impose penalties for religious opinions of any kind. The state has no right to impose taxes for the support of any form of religion. A free church in a free state is the Christian ideal, and this implies the right of free and unhindered access to God on the part of all men, and the right to form and propagate opinions in the sphere of religion without interference by the civil power.

276. *Id.* Nineteenth-century American agnostic Robert Ingersoll stated the proposition somewhat differently:

An infinite God ought to be able to protect Himself, without going in partnership with State Legislatures. Certainly he ought not so to act that laws become necessary to keep

current Southern Baptist position statement on church and state: “We stand for a free church in a free state. Neither one should control the affairs of the other.”<sup>277</sup>

This tradition of strict separation between church and state is a core doctrine throughout Southern Baptist history. In 1913, the Southern Baptist Convention adopted a resolution stating that: “The complete separation of church and State has ever been, and is now, a fundamental principle of Baptist belief and practice . . . reaffirm[ing] its unalterable belief in the absolute separation of church and State and . . . express[ing] its sympathy with all who are having to fight efforts of any who would try to violate the holy principle of the absolute separation of church and State.”<sup>278</sup> Forty years later, the Convention declared “Southern Baptists stand firmly for the separation of church and state, and have repeatedly affirmed this stand.”<sup>279</sup> Baptist involvement in crafting the Bill of Rights, and Southern Baptist advocacy of the separation of church and state, have been the source of pride in Convention writings.<sup>280</sup>

There has been nothing nuanced about the Southern Baptist position on religious liberty and the separation of church and state. Take, for example, the 1942 resolution which noted “the cherished principle of

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him from being laughed at. No one thinks of protecting Shakespeare from ridicule, by the threat of fine and imprisonment.

ROBERT GREEN INGERSOLL, SOME MISTAKES OF MOSES sec. III (1879); *The Politicians*, POSITIVE ATHEISM, <http://www.positiveatheism.org/hist/ingermm1.htm#III> (last visited Mar. 24, 2012).

277. *Church and State*, SBC.NET, <http://www.sbc.net/aboutus/pschurch.asp> (last visited Mar. 24, 2012).

278. *1913 Resolution on Religious Liberty*, *supra* note 274.

279. *Resolution on Concerning Use of Tax Funds And Tax-Supported Schools By Religious Organization*, SBC.NET (May 1953), <http://www.sbc.net/resolutions/amResolution.asp?ID=468> [hereinafter *1953 Resolution on Tax-Supported Schools*]; *see also Resolution on Religious Liberty and Education*, SBC.NET (May 1961), <http://www.sbc.net/resolutions/amResolution.asp?ID=469> [hereinafter *1961 Resolution on Religious Liberty*] (voicing “our Baptist concern that every effort shall be made to keep church and state separate,” noting “our historical position on the separation of church and state and that we adhere scrupulously to this principle in our own policies and practices,” and referring to “the cherished principle of separation of church and state”); *see also Resolution on Church-State Relations*, SBC.NET (June 1965), <http://www.sbc.net/resolutions/amResolution.asp?ID=941> [hereinafter *1965 Resolution on Church-State Relations*] (“Southern Baptists maintain their traditional position on the separation of church and state by having a ‘free church in a free state’ . . .”); *see also Resolution Concerning Religious Liberty*, SBC.NET (June 1966), <http://www.sbc.net/resolutions/amResolution.asp?ID=942> (“In the historic Baptist concern for religious liberty the separation of the state from the church has been and continues to be an important policy.”).

280. *Resolution on Religious Liberty*, SBC.NET (June 1964), <http://www.sbc.net/resolutions/amResolution.asp?ID=940> (“Baptists had much to do with writing the First Amendment into the Constitution of the United States and have been in the forefront in preserving the religious liberty that our nation has enjoyed. We have unflinchingly declared our desire for separation of church and state in resolutions, in sermons and in policies and practices.”).

religious liberty and its inevitable corollary, the complete separation of church and state, as set forth and guaranteed in the first amendment to the Constitution of the United States,” remembered that: “[o]ur Baptist people have stood resolutely and without compromise for this principle of religious liberty and complete separation of church and state in all relationships of religion and government,” and reaffirmed: “our time-honored conviction that there must be no infringement upon the principle of complete separation of church and state by either the government or by any religious group.”<sup>281</sup>

The Convention’s support for the separation of church and state is typically presented as the corollary of the free exercise guarantee<sup>282</sup>—“That the right and freedom of religious opinion does not justify the union or mingling of state and church, but rather requires and demands that the two be kept separate and inviolate the one from the other”<sup>283</sup>—or as the foundation for the free-exercise guarantee—“the principle of separation of church and state, upon which the Federal Constitution guarantees religious liberty to all the people and all churches of this republic.”<sup>284</sup> Thus, in 1940, the Southern Baptist Convention passed a resolution reaffirming

our unfaltering belief in and our deep devotion to the principle of the absolute freedom of the individual in all the concerns of religion and in all acts of worship, both private and public, and in its corollary [sic] the complete separation of church and state, or of organized religion and of organized government, in so far as directing authority and right of control are concerned.<sup>285</sup>

The convention also declared that organized religion should not “assume any authority or control over the affairs of the state.”<sup>286</sup> Three decades later the Convention recognized that it “has consistently adopted

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281. *Resolution Suggested Establishment of Diplomatic Relations with the Vatican*, SBC.NET (May 1942), <http://www.sbc.net/resolutions/amResolution.asp?ID=928> [hereinafter *1942 Resolution on the Vatican*].

282. See *id.* (“inevitable corollary”); see also *Resolution on Religious Liberty and No Establishment of Religion*, SBC.NET (June 1972), <http://www.sbc.net/resolutions/amResolution.asp?ID=947> [hereinafter *1972 Resolution on Religious Liberty*] (“[R]enew[ing] our commitment to religious freedom and its corollary, no establishment of religion.”).

283. *Resolution Urging Care in Safeguarding the Principle of the Separation of Church and State*, SBC.NET (May 1939), <http://www.sbc.net/resolutions/amResolution.asp?ID=925> [hereinafter *1939 Resolution Urging Care*].

284. *Resolution on Protestants and Other Americans United for Separation of Church and State*, SBC.NET (May 1948), <http://www.sbc.net/resolutions/amResolution.asp?ID=932> [hereinafter *1948 Resolution on Protestants and Other Americans United*].

285. *Id.*

286. *Resolution Concerning Freedom of Religion*, SBC.NET (May 1940), <http://www.sbc.net/resolutions/amResolution.asp?ID=539>.

statements expressing its belief in the separation of church and state as a vital protection of religious freedom and soul liberty,” and remembered “the vital role Baptists played in the formation of the First Amendment.”<sup>287</sup>

The doctrine of separation of church and state has been described by the Southern Baptist Convention in different ways throughout its history: as “the total separation of church and state,”<sup>288</sup> as “the basal principle of separation of church and state so plainly taught in the first section of the bill of rights [sic] in our constitution,”<sup>289</sup> as “our traditional precepts of the absolute separation of church and state,”<sup>290</sup> as “the cherished principle of separation of church and state,”<sup>291</sup> as “[t]he complete separation of church and State,”<sup>292</sup> and as “the absolute separation of church and State,”<sup>293</sup> among others. The Southern Baptists have lauded the separation of church and state as “this great American doctrine,”<sup>294</sup> “this great American principle,”<sup>295</sup> “the cherished principle,”<sup>296</sup> and the “precious principle.”<sup>297</sup> The Baptists have described the doctrine of separation of church and state as “a wall of separation between church and state.”<sup>298</sup> The Convention’s position on the separation of church and state has been formulated as “its unalterable devotion to the principles of the absolute separation of church and state and the absolute freedom of

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287. *Resolution on United States Ambassador to the Vatican*, SBC.NET (June 1969), <http://www.sbc.net/resolutions/amResolution.asp?ID=945> [hereinafter *1969 Resolution on the Vatican*].

288. *Resolution on Religious Liberty*, SBC.NET (May 1916), <http://www.sbc.net/resolutions/amResolution.asp?ID=912>.

289. *1939 Resolution Urging Care*, *supra* note 283.

290. *Resolution on Amending the Constitution of the United States*, SBC.NET (May 1947), <http://www.sbc.net/resolutions/amResolution.asp?ID=466> [hereinafter *1947 Resolution on Amending the Constitution*].

291. *1961 Resolution on Religious Liberty*, *supra* note 279.

292. *1913 Resolution on Religious Liberty*, *supra* note 274.

293. *Id.*

294. *1948 Resolution on Protestants and Other Americans United*, *supra* note 284 (endorsing the work of the group, Protestants and Other Americans United for Separation of Church and State).

295. *Id.*

296. *1961 Resolution on Religious Liberty*, *supra* note 279.

297. *Resolution on Affirming Religious Liberty and Separation of Church and State*, SBC.NET (June 1981), <http://www.sbc.net/resolutions/amResolution.asp?ID=952> [hereinafter *1981 Resolution on Religious Liberty*].

298. *1947 Resolution on Amending the Constitution*, *supra* note 290.

religion,”<sup>299</sup> and as “its unwavering devotion to the separation of church and state.”<sup>300</sup>

The Southern Baptist’s position on the separation of church and state has repeatedly been attributed to a scriptural foundation: as “fundamental New Testament doctrine,”<sup>301</sup> as the “basic American and New Testament doctrine of the absolute freedom of religion and the absolute separation of church and state,”<sup>302</sup> and as “the holy principle of the absolute separation of church and State.”<sup>303</sup>

There are two related facets of the Southern Baptist Convention’s policy on the separation of church and state. The first is that the Convention will not interfere in political affairs: “[T]he Convention expressly disavow[s] any disposition to interfere with political affairs, and have regard solely to the question of religious liberty.”<sup>304</sup> In this regard, the Southern Baptists have also made it clear that public officials should not be pressured by churches to make specific decisions in their public role: “In all cases a public official should be free from sectarian pressures that he may make independent decisions consistent with the rights and privileges of all citizens.”<sup>305</sup>

The second facet of the separation policy is that the state should not be put in a position of choosing among denominations with differing beliefs. Take, for example, the 1981 Convention resolution which notes that “[t]he United States Constitutional principle of religious liberty has given freedom for expression of the separation of the church and state,” and asserts that “[t]his precious principle is under constant attack by those who would serve sectarian purposes.”<sup>306</sup> The resolution contains a remarkable statement on the imposition of religious views by government:

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299. *Resolution Concerning Freedom of Religion*, SBC.NET (May 1941), <http://www.sbc.net/resolutions/amResolution.asp?ID=540> [hereinafter *1941 Resolution Concerning Freedom of Religion*].

300. *1953 Resolution on Tax-Supported Schools*, *supra* note 279.

301. *Resolution on Freedom of Religion*, SBC.NET (May 1936), <http://www.sbc.net/resolutions/amResolution.asp?ID=582>; *Resolution Concerning Freedom of Religion*, SBC.NET (May 1935), <http://www.sbc.net/resolutions/amResolution.asp?ID=922>.

302. *Resolution Concerning Government and Fundamental Human Rights*, SBC.NET (May, 1938), <http://www.sbc.net/resolutions/amResolution.asp?ID=583>.

303. *1913 Resolution on Religious Liberty*, *supra* note 274.

304. *Resolution on Religious Liberty*, SBC.NET (May 1866), <http://www.sbc.net/resolutions/amResolution.asp?ID=907> [hereinafter *1866 Resolution on Religious Liberty*].

305. *Resolution on Christian Citizenship*, SBC.NET (June 1960), <http://www.sbc.net/resolutions/amResolution.asp?ID=339> [hereinafter *1960 Resolution on Christian Citizenship*] (“[T]he implications of a candidate’s affiliations, including his church, are of concern to the voters in every election.”).

306. *1981 Resolution on Religious Liberty*, *supra* note 297.

That the Southern Baptist Convention, in accordance with and in commitment to the First Amendment to the Constitution of the United States, and to the historic Baptist principle of church and state separation, deplore and reject the arrogation of the right of any group to define and pronounce for all people what is the Christian faith, and to seek through political means to impose this faith upon the American people under a government which is mandated to safeguard and respect the people of all religious and no religion . . . .<sup>307</sup>

The Southern Baptist Convention has been quite clear over time that the power of the state should not be used to advance any religious agenda.<sup>308</sup> In the contemporary formulation that position is stated as the dual proposition that “[t]he church should not resort to the civil power to carry on its work,” and that “[t]he gospel of Christ contemplates spiritual means alone for the pursuit of its ends.”<sup>309</sup> An earlier, more lyrical formulation of the proposition noted “our Baptist aversion to any effort to use the administrative, legislative, or judicial powers of government to lay the weight of a feather upon the conscience of any man in the realm of religion by privilege or penalty.”<sup>310</sup>

One of the stated reasons for not using the coercive power of the state to advance a religious message was that to do so would cause a popular reaction against the religious message: “History has demonstrated often and in numerous and large areas of the world that religious persuasion or coercion by the use of political power engenders antagonistic attitudes toward the churches and the Christian message.”<sup>311</sup>

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307. *Id.*

308. *1961 Resolution on Religious Liberty*, *supra* note 279 (“[W]e urge upon all who either lead or support the cause of public instruction to give due care to the transmission of the noblest moral and spiritual values of our society without equating those with religion nor with divine imperatives . . . .”). *But see Resolution on Outcome-Based Education*, SBC.NET (June 1994), <http://www.sbc.net/resolutions/amResolution.asp?ID=477> (“[O]ppos[ing] educational reform . . . which risks the undermining of Judeo-Christian values [and] commend[ing] those educators who have maintained a faithful witness for biblical morality in our public schools . . . .”); *On Educating Children*, SBC.NET (June 2005), <http://www.sbc.net/resolutions/amResolution.asp?ID=1142> (“[C]ommend[ing] godly teachers and students who feel called by God to take a stand for Christ in secular schools as a light shining in the darkness.”); *2008 Same-Sex Marriage*, *supra* note 65 (“We strongly urge all Southern Baptists in the state of California to be informed about [the issue of same-sex civil marriage] and to exercise their civic and moral duty by working diligently to support and voting to pass this referendum.”); *2010 Resolution on the Employment Non-Discrimination Act*, *supra* note 62 (“[C]all[ing] upon the [P]resident of the United States to appoint, and Congress to confirm, only nominees to federal judicial positions who will protect foundational religious freedoms . . . .”).

309. *The Baptist Faith and Message*, *supra* note 273.

310. *1957 Resolution on Religious Liberty*, *supra* note 264.

311. *Id.*

For scriptural reasons Southern Baptists have historically fought against state-sponsored religious exercise: “[o]ur understanding of the gospel of Jesus Christ has led us to place strong emphasis on . . . the voluntary quality of religious faith and participation, . . . the importance of freedom for the church, . . . [and] the rights of all men to be free from the coercion of law in matters of religious practice and support.”<sup>312</sup>

To be sure, Southern Baptist support for the strict separation of church and state has some uncomfortable aspects. For example, during Reconstruction, Southern Baptist support for the separation of church and state may be seen to have been a mere tactic to avoid interference by the civil authorities in the workings of the church.<sup>313</sup> Another uncomfortable aspect of their position on the separation of church and state is that the Convention’s position has very frequently been asserted in opposition to the Catholic church,<sup>314</sup> often expressed in both

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312. *1961 Resolution on Religious Liberty*, *supra* note 279.

313. In May of 1866, the Convention adopted its “Resolution on Religious Liberty.” *1866 Resolution on Religious Liberty*, *supra* note 304. The formulation was a straightforward *quid pro quo*. First, the civil government is “of divine appointment, and . . . magistrates should be prayed for, and obeyed, in all things, not contrary to the rights of conscience and the revealed will of Christ.” *Id.* Second, the church is answerable only to Christ and church leaders must “obey God rather than men,” and endure the consequences.” *Id.* Third, the Convention sympathizes with ministers who were penalized and hopes the civil authorities will be “considerate and just.” *Id.* Lastly, the Convention offers the *quid*, as it disavows in adopting the resolutions “any disposition to interfere with political affairs, and have regard solely to the question of religious liberty.” *Id.*

314. The Convention’s advocacy on the establishment of diplomatic relations with the Vatican was so frequent and overwrought as to inevitably suggest anti-Catholic motivations. From the first statement in 1914 to the final statement on this issue in 1993, the Convention addressed diplomatic relations with the Vatican no less than thirteen times. *Resolution on Religious Liberty*, SBC.NET (May 1914), <http://www.sbc.net/resolutions/amResolution.asp?ID=910> [hereinafter *1914 Resolution on Religious Liberty*]; *Resolution on Religious Liberty*, SBC.NET (May 1920), <http://www.sbc.net/resolutions/amResolution.asp?ID=915>; *Social Service Committee Recommendation*, SBC.NET (May 1929), <http://www.sbc.net/resolutions/amResolution.asp?ID=919>; *Untitled*, SBC.NET (May 1934), <http://www.sbc.net/resolutions/amResolution.asp?ID=921>; *1939 Resolution Urging Care*, *supra* note 283; *1941 Resolution Concerning Freedom Of Religion*, *supra* note 299; *1942 Resolution on the Vatican*, *supra* note 281; *Resolution Petitioning the Department of State of the United States*, SBC.NET (May 1946), <http://www.sbc.net/resolutions/amResolution.asp?ID=930>; *1965 Resolution on Church-State Relations*, *supra* note 279; *1969 Resolution on the Vatican*, *supra* note 287; *Resolution on Public Funds and Non-Public Education*, SBC.NET (June 1971), <http://www.sbc.net/resolutions/amResolution.asp?ID=946>; *1972 Resolution on Religious Liberty*, *supra* note 282; *Resolution on a U.S. Ambassador to the Vatican*, SBC.NET (June 1984), <http://www.sbc.net/resolutions/amResolution.asp?ID=1072>.

Southern Baptist discomfort on this issue even extended to opposition to sending American representatives to the funerals and installations of Popes. See *1939 Resolution Urging Care*, *supra* note 283.

Only in its final statement on the issue, in 1993, did the Convention speak to “assure Roman Catholics that we are not acting on the basis of any bigotry against them, their spiritual leader or their strongly held convictions and that we express our desire to continue working with Roman

immoderate tone<sup>315</sup> and seemingly without a sense of proportion.<sup>316</sup> This history included opposition to the election of Catholic President John Fitzgerald Kennedy in 1960,<sup>317</sup> and long-standing opposition to the public funding of Catholic schools.<sup>318</sup>

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Catholics on moral, social and public policy issues of mutual agreement.” *Resolution on Diplomatic Relations with the Vatican*, SBC.NET (June 1993), <http://www.sbc.net/resolutions/amResolution.asp?ID=1073> [hereinafter *1993 Resolution on the Vatican*].

315. Take for example the 1914 resolution, fifteen years before the Lateran Treaty, viewing “with serious alarm and vigorous protest the efforts of the Roman Catholic hierarchy to gain control of our government, and thereby be in a position to fasten either its faith or fallacies upon the consciences of a free and sovereign people.” *1914 Resolution on Religious Liberty*, *supra* note 314.

316. Consider the remarkable statement of the Convention made in June of 1940, as the British expeditionary force was evacuated at Dunkirk, France fell to Nazi aggression, Norway surrendered, and Italy declared war on France and Great Britain:

In this tragic hour of struggle between the totalitarian concept of force and the democratic concept of liberty, when the call has gone out for continuing effort to make democracy work within our own borders, when the love of freedom, we are happy to believe, is aflame in the hearts of our people, we feel impelled from deep conviction and from the verdict of history to register our considered judgment touching a matter of vital concern not only to our Southern Baptist people from Maryland to Texas and from Illinois to Florida, but as well to all men alike everywhere, both for the present and the unfolding future.

*A Statement*, SBC.NET (June 1940), <http://www.sbc.net/resolutions/amResolution.asp?ID=926>. What, in the midst of the horror of World War II, was the “matter of vital concern . . . both for the present and the unfolding future”? The appointment of Myron Taylor as the American representative to the Vatican with the rank of ambassador. *Id.*

317. In 1960, Southern Baptist support for the separation of church and state was clearly tied to opposition to the election of a Catholic President. The Southern Baptist Convention adopted its “Resolution on Christian Citizenship” in June of 1960, just a month after Catholic John F. Kennedy defeated Hubert Humphrey in the pivotal West Virginia primary and became the presumptive Democratic Presidential nominee. *1960 Resolution on Christian Citizenship*, *supra* note 305. In it, the Convention “reaffirm[ed] our faith in the historic principle of the separation of Church and State as expressed in the Bill of Rights and the constitutional guarantee that a man’s personal faith shall not be a test of his qualification for public office.” *Id.* Then the Convention restated the proposition as to religious qualifications, but with a caveat:

We reaffirm our conviction that a man must be free to choose his own church and that his personal religious faith shall not be a test of his qualification for public office. Yet, when a public official is inescapably bound by the dogma and demands of his church he cannot consistently separate himself from these. This is especially true when the church maintains a position in open conflict with our established and constituted American pattern of life as specifically related to religious liberty, separation of Church and State, the freedom of conscience in matters related to marriage and the family, the perpetuation of public schools and the prohibition against use of public monies for sectarian purposes.

*Id.* The resolution continued with the propositions that church affiliation would be “of concern” to voters, but that “[i]n all cases a public official should be free from sectarian pressures that he may make independent decisions consistent with the rights and privileges of all citizens.” *Id.*

318. The issue that perhaps most strongly suggests a connection between anti-Catholic sentiment and support of church-state separation is that of public support for religious education. The traditional Southern Baptist stance on governmental support of church-related educational

Notwithstanding these uncomfortable aspects, the stated doctrine of the Southern Baptist Convention on the separation of church and state has been clear and firm over time. In 1925, the Southern Baptist Convention enacted its “Statement of Faith on Religious Liberty,” in which it stated:

God alone is Lord of the conscience, and [H]e has left it free from the doctrines and commandments of men which are contrary to [H]is Word or not contained in it. Church and state should be separate. The state owes to every church protection and full freedom in the pursuit of its spiritual ends. In providing for such freedom no ecclesiastical group or denomination should be favored by the state more than others. Civil government being ordained of God, it is the duty of Christians to render loyal obedience thereto in all things not contrary to the revealed will of God. The church should not resort to the civil power to carry on its work. The gospel of Christ contemplates spiritual means alone for the pursuit of its ends. The state has no right to impose penalties for religious opinions of any kind. The state has no right to impose taxes for the support of any form of religion. A free church in a free state is the Christian ideal, and this implies the right of free and unhindered access to God on the part of all men, and the right to form and propagate opinions in the sphere of religion without interference by the civil power.<sup>319</sup>

That declaration remains unchanged in Southern Baptist Convention policy today.<sup>320</sup>

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programs was simple: unalterable opposition. *1953 Resolution on Tax-Supported Schools*, *supra* note 279 (confirming the Convention’s “unwavering devotion to the separation of church and state in its strong opposition to the use of tax funds and tax-supported schools in favor of any or all religious organizations”); *1947 Resolution on Amending the Constitution*, *supra* note 290 (calling for a constitutional amendment “to prohibit sectarian appropriations to non-public educational institutions”); *Resolution on McCowen Bill*, SBC.NET (May 1948), <http://www.sbc.net/resolutions/amResolution.asp?ID=467> (supporting legislation “to prohibit the use of Federal funds, either directly or indirectly, for the aid of any private, sectarian, or parochial schools”); *1953 Resolution on Tax-Supported Schools*, *supra* note 279 (reaffirming the Convention’s “unwavering devotion to the separation of church and state in its strong opposition to the use of tax funds and tax-supported schools in favor of any or all religious organizations” and urging that Convention pastors and churches “bear vigorous witness against unlawful encroachments of local religious groups on the public school system”); *1961 Resolution on Religious Liberty*, *supra* note 279 (“[T]he Roman Catholic leadership in our own country is currently in an aggressive campaign to press our Federal Government into a program of tax support for church operated schools.”).

319. *Comparison of 1925, 1963 and 2000 Baptist Faith and Message*, SBC.NET (2000), <http://www.sbc.net/bfm/bfmcomparison.asp>.

320. *Id.* The only change between the 1925, 1963, and 2000 versions is in the third sentence. The 1925 version reads: “The state owes to the church protection and full freedom in the pursuit of its spiritual ends.” The 1963 and 2000 versions read: “The state owes to *every* church protection and full freedom in the pursuit of its spiritual ends.”

*B. The Southern Baptist Abstention Doctrine, Homosexuality, and Marriage Equality*

“Marriage is a civil right. If you don’t want gay people to marry in your church, good for you. But you can’t say they can’t marry in your city.”

—Julian Bond<sup>321</sup>

How might the rich Southern Baptist tradition on the separation of church and state inform their discussion on the issues of homosexuality and marriage equality? I would make three suggestions: First, the government should not be put in a position where it is choosing among denominations to declare religious truth. Second, churches should not use governmental power to pursue religious ends. Third, churches should not pressure public officials to make specific decisions in their public roles.

The first way in which Southern Baptist history on church-state separation should inform their thinking on same-sex civil marriage is through the precept that the government should not be put in a position where it is choosing among denominations to declare a religious truth. It is this precept that called the Convention to:

deplore and reject the arrogation of the right of any group to define and pronounce for all people what is the Christian faith, and to seek through political means to impose this faith upon the American people under a government which is mandated to safeguard and respect the people of all religious and no religion.<sup>322</sup>

But there is a deep division among Christian religious groups on the issues of homosexuality and marriage equality.<sup>323</sup> For the Convention to demand that the government prohibit same-sex civil marriage based on their religious view of homosexuality is to ask the government to choose among denominations to declare a correct religious orthodoxy; precisely what its first precept of church-state separation says it is improper to do.

The second way in which Southern Baptist history on church-state separation should inform their thinking on same-sex civil marriage is through the precept that churches should not use governmental power to pursue religious ends. Here, the question is whether there is a justification, apart from the religious justification, for the Convention’s opposition to same-sex civil marriage. The 2003 *Resolution on Same-*

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321. Julian Bond, Chair, NAACP, Remarks at Univ. of Va. Forum (Oct. 2006), <http://www.buddybuddy.com/quotes-2.html>.

322. 1981 *Resolution on Religious Liberty*, *supra* note 297.

323. See discussion *supra* Part III.

*Sex Marriage* does not contain any policy-based justifications for opposition to same-sex civil marriage that are not scripture-based.<sup>324</sup>

The question of whether there are sufficient nonreligious justifications for discrimination on the question of marriage rights has been addressed by the courts. For example, in the landmark case of *Varnum v. Brien*,<sup>325</sup> the Iowa Supreme Court considered the role of religious justifications in evaluating Iowa's statutory restriction of civil marriage to opposite-sex couples. It first noted the division of opinion among the various denominations and the inappropriateness of a judicial determination of which sect is correct:

This contrast of opinions in our society largely explains the absence of any religion-based rationale to test the constitutionality of Iowa's same-sex marriage ban. Our constitution does not permit any branch of government to resolve these types of religious debates and entrusts to courts the task of ensuring government *avoids* them. See Iowa Const. art. I, § 3 ("The general assembly shall make no law respecting an establishment of religion . . .").<sup>326</sup>

The *Varnum* court then clearly limited its discussion to civil marriage, thus excluding religious marriage from the effect of its ruling:

The statute at issue in this case does not prescribe a definition of marriage for religious institutions. Instead, the statute declares, "Marriage is a civil contract" and then regulates that civil contract. Iowa Code § 595A.1. Thus, in pursuing our task in this case, we proceed as civil judges, far removed from the theological debate of religious clerics, and focus only on the concept of civil marriage and the state licensing system that identifies a limited class of persons entitled to secular rights and benefits associated with civil marriage.<sup>327</sup>

Having excluded religious marriage from its analysis, the *Varnum* court affirmed that its task was to judge the statute at issue under an equal-protection, not a religious, analysis:

As a result, civil marriage must be judged under our constitutional standards of equal protection and not under religious doctrines or the religious views of individuals. This approach does not disrespect or denigrate the religious views of many Iowans who may strongly believe in marriage as a dual-gender union, but considers, as we must, only the

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324. *2003 Resolution on Same-Sex Marriage*, *supra* note 69.

325. *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009).

326. *Id.* at 905.

327. *Id.*

constitutional rights of all people, as expressed by the promise of equal protection for all.<sup>328</sup>

Evaluated under such an equal-protection analysis, the court found that the exclusion of same-sex couples from civil marriage furthered no important governmental objective, and thus violated the equal protection clause of the Iowa Constitution:

We are firmly convinced the exclusion of gay and lesbian people from the institution of civil marriage does not substantially further any important governmental objective. The legislature has excluded a historically disfavored class of persons from a supremely important civil institution without a constitutionally sufficient justification. There is no material fact, genuinely in dispute, that can affect this determination.<sup>329</sup>

For the Convention to demand that the government prohibit same-sex civil marriage based on their religious view of homosexuality is to use governmental power to pursue religious ends—precisely what its second precept of church-state separation says is improper to do.

The third way in which Southern Baptist history on church-state separation should inform their thinking on same-sex civil marriage is through the precept that churches should not pressure public officials to make specific decisions in their public roles. The Convention stated this proposition as: “In all cases a public official should be free from sectarian pressures that he may make independent decisions consistent with the rights and privileges of all citizens.”<sup>330</sup> The Convention has not always honored this commitment.<sup>331</sup> For the Convention to demand that the government prohibit same-sex civil marriage based on their religious view of homosexuality is to pressure public officials to make a specific public policy decision in their public role—precisely what its third precept of church-state separation says is improper to do.

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328. *Id.*

329. *Id.* at 906.

330. *1960 Resolution on Christian Citizenship*, *supra* note 305 (“[T]he implications of a candidate’s affiliations, including his church, are of concern to the voters in every election.”).

331. *See On President William Jefferson Clinton*, SBC.NET (June 1993), <http://www.sbc.net/resolutions/amResolution.asp?ID=1198> (“That we as a Convention, the denomination with which President Clinton has publicly identified, separate ourselves from the aforementioned acts and positions of the President and urge him to affirm biblical morality in exercising his public office, recognizing that to do so is not inappropriate nor is it a violation of the separation of the institutions of church and state; and Be it finally RESOLVED, That we urge the more than 15 million Southern Baptists to use their influence with the President to urge him to stand for biblical morality and to reverse his stands on the issues aforementioned for the sake of our nation’s survival.”).

VI. THE MORAL MINORITY WORLD-VIEW OF THE SOUTHERN BAPTIST LEADERSHIP

“[I]f you’re ready to go to war against the Serpent of Eden . . . pick up your Sword.”

—Dean Russell D. Moore<sup>332</sup>

The final and most important reason the Southern Baptist leadership will not bring the Convention to reflect, recant and repent on the issues of homosexuality and marriage equality so as to join the national consensus is because of changes over the past generation in the leadership itself. Simply put, starting in about 1979, the conservatives within the Convention took control of the organization, purged those with whom they disagreed, and took the Convention in a direction that makes movement on the issues of homosexuality and marriage equality absolutely impossible.<sup>333</sup>

Internally, the new leadership of the Southern Baptist Convention used policy issues to identify and motivate their supporters, and to marginalize their opponents. Externally, the leadership used issues to differentiate the Southern Baptists from other groups and to delegitimize them. Issues such as the inerrancy of the Bible<sup>334</sup> and the role of women<sup>335</sup> served the leadership’s purposes, as do the issues of homosexuality and marriage equality today.

For the Southern Baptist leadership, the positions one takes on homosexuality and marriage equality are tests of faithfulness to God:

My understanding of human sexuality, of morality, and of what it even means to be human is drawn from the Bible. As Martin Luther famously declared at the Diet of Worms, if I am convinced that the Bible teaches anything, I am under the glad obligation to receive it as true and obey it as a believer in Christ. In this sense, the historic Christian understanding of homosexual acts as sinful (and of same-sex marriage as inconceivable) is nothing less than faithfulness to the Bible as the Word of God.<sup>336</sup>

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332. *Dean’s Page*, S. BAPTIST THEOLOGICAL SEMINARY, <http://www.sbts.edu/theology/dean/> (last visited Oct. 7, 2011).

333. See HANKINS, *supra* note 106, at 2-3.

334. See *id.* at 4-6.

335. See *id.* at 224-27.

336. R. Albert Mohler, Jr., *Mere Moral Opprobrium? Far More than Marriage Is on Trial*, ALBERTMOHLER.COM (Jan. 29, 2010), <http://www.albertmohler.com/2010/01/29/mere-moral-opprobrium-far-more-than-marriage-is-on-trial/> [hereinafter *Moral Opprobrium*]. This is not, of course, only a Southern Baptist position. *Manhattan Declaration*, *supra* note 193 (“The impulse to redefine marriage in order to recognize same-sex and multiple partner relationships is a symptom, rather than the cause, of the erosion of the marriage culture. . . . Yet it is critical that the impulse be resisted, for yielding to it would mean abandoning the possibility of restoring a sound understanding of marriage and, with it, the hope of rebuilding a healthy marriage culture.”).

Thus with homosexuality and marriage equality, “far more than marriage is on trial.”<sup>337</sup>

Faithfulness to the word of God, as the Southern Baptists see it, is also a critical point of differentiation as between the Southern Baptist Convention and other, more “liberal” Christian denominations:

The church cannot change its understanding of the sinfulness of homosexual acts unless it willfully disobeys the Scripture and rejects the authority of the Bible to reveal the truth about sin and sinfulness.

In other words, the believing church cannot surrender to the demand that we disobey and reject biblical truth. That much is clear. We cannot lie to persons about the sinfulness of their sin, nor comfort them with falsehood about their moral accountability before God. The rush of the liberal churches and denominations to normalize homosexuality is now a hallmark of their disobedience to the Bible.<sup>338</sup>

Illustrative of the importance of these issues in the contemporary Southern Baptist Convention, and how these issues are used by its leadership, was the commentary on the occasion of the ordination of a lesbian bishop by the Episcopal Church, the second homosexual to be ordained by that body. Dr. Al Mohler first noted one writer’s plea to get past the issue:

Columnist Ruth Gledhill of *The Times*, one of the most seasoned observers of the Anglican scene, now calls for Christians to just stop arguing over homosexuality and get on with whatever the churches are supposed to be doing. Liberals and conservatives, she argues, must now “put their differences behind them, for the sake of God, themselves and the common good.”<sup>339</sup>

He notes her argument that matters of homosexuality need be put in perspective, given the larger issues of faith and morality which confront the modern church:

She begins by telling of a conversation she had years ago with a source “close to the Archbishop of Canterbury,” who told her that “a person’s view on homosexuality is now what defined them on the Christian spectrum.” Gledhill was startled by this assertion, as is made clear by this argument:

*In other words, the infighting over homosexuality means that for the 77 million Anglicans worldwide, more important than the Resurrection, the Crucifixion, the Virgin Birth and the Trinity is what one person does in bed*

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337. *Moral Opprobrium*, *supra* note 336.

338. *A Haunting Question*, *supra* note 251.

339. R. Albert Mohler, Jr., “For the Sake of God”—Must We Surrender Sexual Morality?, ALBERTMOHLER.COM (May 18, 2010), <http://www.albertmohler.com/2010/05/18/for-the-sake-of-god-must-we-surrender-sexual-morality/> [hereinafter *Sexual Morality*].

*with another. The lines of Christian belief, in the Anglican world at least, have been redrawn around a battle over gay rights that, in the secular world, ended years ago.*

In other words, get on with life. The secular argument over homosexuality “ended years ago,” but the church (and the Anglican Communion, in particular) is still fighting that battle. As she sees it, this costs the church dearly. Young people who were baptized as Anglicans as infants but have no identification with the church, now cannot remember a time when the culture believed homosexuality to be wrong or criminal. “These are the people that church leaders should be trying to attract,” she insists.

Furthermore, she adds, “Sexuality figures nowhere in the creeds. It is not mentioned in the church’s liturgies.”<sup>340</sup>

But Dr. Mohler and the Southern Baptists cannot put the issue of homosexuality in perspective, because they have made it a proxy for all of the other issues of modernity that separate them from other, more “liberal” Protestant denominations:

[T]he argument that an insistence on the importance of biblical sexuality means that these teachings are held to be more important than “the Resurrection, the Crucifixion, the Virgin Birth, and the Trinity” is nothing less than ludicrous. The issue of homosexuality may now function to place persons “on the Christian spectrum,” but this is only because the liberal churches have forced the issue. Conservative Anglicans from Africa and South American [sic] did not raise the issue of sexuality—the Episcopal Church did.

One other aspect of this particular issue cries out for acknowledgment. One additional reason that the issue of homosexuality (and biblical authority) now functions so decisively is precisely because the liberal churches have already allowed liberal denials of everything mentioned by Gledhill on her list. It so happens that the churches that hold fast to those theological essentials are, almost without exception, the same churches that maintain biblical teachings on human sexuality. No real surprise there. . . .

. . . .

The opposing sides in the Anglican Communion cannot simply “put their differences behind them” and agree to move on. Those who argue that such a strategy will gain credibility for the church in a secular age are selling fool’s gold. What the church would lose is its soul.

Ruth Gledhill calls upon Anglicans to just drop the issue of homosexuality “for the sake of God, themselves, and the common good.”

Do God a favor by abandoning his design for human sexuality and by surrendering the authority of his Word?<sup>341</sup>

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340. *Id.*

In this context, when the Southern Baptist leadership has elevated the issues of homosexuality and marriage equality into litmus tests for whether one has betrayed the revealed word of God, as society moves toward consensus in favor of the acceptance of homosexuality and marriage equality, their statements are perfectly predictable:

By any measure, [the passage of marriage equality in New York] is a massive development in the nation's legal and moral life. . . .

....

If current trends continue, the American map of marriage will reveal a deep and consequential division between states which recognize same-sex marriage and those who do not.

Given the central importance of marriage to our civilization and culture, it is hard to imagine how such a mixed moral landscape can last. . . .

....

The legalization of same-sex marriage represents nothing less than a moral revolution, for what the law allows and recognizes, it also approves. Last Friday was a sad day for marriage and, if the advocates of same-sex marriage are right, it was also a sign of things to come.<sup>342</sup>

For the Southern Baptist leadership, issues of homosexuality and marriage equality are part of the case that society has moved in a destructive direction,<sup>343</sup> one which tests their most fundamental convictions:

Christians are put in a very strange position in today's postmodern/post-Christian culture. We cannot be unclear or uncomfortable in acknowledging the Bible and the Christian faith as our moral authorities. To shrink from this—or in any sense to be unclear—would amount to treason against our convictions.<sup>344</sup>

The pace of change they see is staggering, especially in the area of sexual morality:

The breathtaking pace of the moral revolution now transforming Western cultures staggers belief. In the course of a single generation, the

341. *Id.*

342. R. Albert Mohler, Jr., *The Empire State's Moral Revolution: New York State Legalizes Same-Sex Marriage*, ALBERTMOHLER.COM (June 27, 2011), <http://www.albertmohler.com/2011/06/27/the-empire-states-moral-revolution-new-york-state-legalizes-same-sex-marriage/>.

343. *See On Corporate Prayer and Repentance*, SBC.NET (June 2011), <http://www.sbc.net/resolutions/amResolution.asp?ID=1215> [hereinafter *2011 Resolution on Corporate Prayer*] (“For the past fifty years wickedness and family collapse have been increasing rapidly . . .”).

344. *Moral Opprobrium*, *supra* note 336.

sexual morality that has survived for thousands of years is giving way to a radically different moral understanding.<sup>345</sup>

The change is perhaps even more disconcerting for the leadership of the Southern Baptist Convention because of their rather egocentric historical view:

For centuries the Christian church has been the center of Western civilization. Western culture, government, law, and society were based on explicitly Christian principles. Concern for the individual, a commitment to human rights, and respect for the good, the beautiful, and the true—all of these grew out of Christian convictions and the influence of revealed religion.<sup>346</sup>

Their world, in which respect for the good, the beautiful, and the true is limited to Christians, is also a world in which the concept of morality apart from Christianity is “nonsense” because “there is no secular morality of any substance.”<sup>347</sup> This peculiar historical sense is accompanied by a truly ominous view of the state of the Western world:

All of these, we now hasten to add, are under serious attack. The very notion of right and wrong is now discarded by large sectors of American society. Where it is not discarded, it is often debased. Taking a page out of Alice in Wonderland, modern secularists simply declare wrong, right, and right, wrong.<sup>348</sup>

In such a worldview, the church has been displaced by secularism, and the traditionally central role of the church in public discourse has been ended:

The Christian church now finds itself facing a new reality. The church no longer represents the central core of Western culture. Though outposts of Christian influence remain, these are exceptions rather than the

345. R. Albert Mohler, Jr., “Now It Is the Other Way Around”—*The Moral Revolution in Full View*, ALBERTMOHLER.COM (Jan. 21, 2011), <http://www.albertmohler.com/2011/01/21/now-it-is-the-other-way-around-the-moral-revolution-in-full-view/>.

346. R. Albert Mohler, Jr., *Keeping the Faith in a Faithless Age: The Church as the Moral Minority*, ALBERTMOHLER.COM (July 15, 2004), <http://www.albertmohler.com/2004/07/15/keeping-the-faith-in-a-faithless-age-the-church-as-the-moral-minority/> [hereinafter *Moral Minority*]. *But see* MICHAEL PAKALUK, ARISTOTLE’S NICOMACHEAN ETHICS (2005); ANONYMOUS, THE BHAGAVAD GITA (Juan Mascaro & Simon Brodbeck trans., 2003); M.A.S. ABDEL HALEEM, THE QUR’AN (2008); HOMER, THE ODYSSEY (Bernard Knox trans., 1999); PLATO, THE REPUBLIC (Robin Waterfield trans., 2008); SUN TZU, THE ART OF WAR (Ralph D. Sawyer trans., 1994).

347. R. Albert Mohler, Jr., *Can We Be Good Without God?*, ALBERTMOHLER.COM (Dec. 3, 2003), <http://www.albertmohler.com/2003/12/03/can-we-be-good-without-god-4/> [hereinafter *Good Without God?*] (“But can Americans be good without God? Can we even entertain the fiction that citizens can create a totally secular morality? Nonsense. There is no secular morality of any substance.”). *But see* WALTER SINNOTT-ARMSTRONG, MORALITY WITHOUT GOD? (2009).

348. *Moral Minority*, *supra* note 346.

rule. For the most part, the church has been displaced by the reign of secularism.

....

The faithful church is, for the most part, tolerated as one voice in the public arena, but only so long as it does not attempt to exercise any credible influence on the state of affairs. Should the church speak forcefully to an issue of public debate, it is castigated as coercive and out of date.<sup>349</sup>

This is a complete reversal of fortune, they think, from the halcyon days of the Reagan administration, when the church was “the vanguard of a moral majority.”<sup>350</sup> But what is now required is for the church to be “a moral minority.”<sup>351</sup> Being such a moral minority is simple in concept: [T]he church must reject moral revisionism and political correctness,<sup>352</sup> stand in opposition to the culture of unbelief,<sup>353</sup> and submit only to the authority of God:<sup>354</sup>

Whatever the issue, the church must speak as the church—that is, as the community of fallen but redeemed, who stand under divine authority. The concern of the church is not to know its own mind, but to know and follow the mind of God. The church’s convictions must not emerge from the ashes of our own fallen wisdom, but from the authoritative Word of God which reveals the wisdom of God and His commands.<sup>355</sup>

The goal is not to transform society but to preserve scriptural truth from a hostile society: “The church must awaken to its status as a moral minority and hold fast to the gospel we have been entrusted to preach. In

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349. *Id.* Unacknowledged is the inconsistency of such a conception of the historical role of the church and the Southern Baptist history of church-state separation.

350. *Id.* (“How does the church think of itself as it faces this new reality? During the 1980s, it was possible to think in ambitious terms about the church as the vanguard of a moral majority. That confidence has been seriously shaken by the events of the past decade. Little progress toward the re-establishment of a moral center of gravity can be detected. Instead, the culture has moved swiftly toward a more complete abandonment of all moral conviction.”).

351. *Id.*

352. *Id.* (“The church has no right to follow the secular siren call toward moral revisionism and politically correct positions on the issues of the day.”).

353. *Id.* (“The church is to be a community of character. The character produced by a people who stand under the authority of the Sovereign God of the universe will inevitably be at odds with a culture of unbelief.”).

354. *2011 Resolution on Corporate Prayer*, *supra* note 343 (“The common corporate sins of many churches include, but are not limited to, prayerlessness, lukewarmness, neglect of biblical church discipline, and shallow relationships with God and with one another . . .”); *Moral Minority*, *supra* note 346 (“Eternity will record whether or not the American church is willing to submit only to the authority of God; or whether the church will forfeit its calling in order to serve lesser gods.”).

355. *Moral Minority*, *supra* note 346.

so doing, the deep springs of permanent truth will reveal the church to be a life-giving oasis amidst American's [sic] moral desert."<sup>356</sup>

Issues of homosexuality and marriage are central to this worldview. Thus the remarkable interview by Jim Daly of "Focus on the Family" with Dr. Mohler:

Daly: Do you think, as we look at those demographics and the polling data and all the other things, as the Christian community, is this something that is inevitable? I know this is a tough question here on Christian radio but I think it's time to start talking about what if.

Mohler: Well Jim I appreciate your candor in that because I think a lot of Christian conservatives are going to try to deny the obvious. I mean, when we're talking about same-sex marriage, we're talking about something that is already legal in one form or another in basically twelve states. So whether they call it marriage, as they do in a few states, or marriage lite as they have now in twelve states, the reality is that a good number of Americans are living where they're already facing not just the inevitably, but the reality, of same-sex marriage. I think it's clear that something like same-sex marriage—indeed, almost exactly what we would envision by that—is going to become normalized, legalized, and recognized in the culture. It's time for Christians to start thinking about how we're going to deal with that. I think in the United States, Evangelical Christians in particular, have kind of grown accustomed to having our beliefs and moral convictions and ways of life supported by the state, by the larger culture and we're going to have to learn what it means to live faithfully as Christians when we do not have those supports. You know, it's one thing to live believing that you're in the majority position—everything comes pretty easy that way . . .

Daly: A Christian nation.

Mohler: That's right. But when you live in a situation where we're clearly a minority holding to certain convictions that the larger culture either doesn't hold or doesn't hold tenaciously or as very important, we're going to find out just where we stand as Christians.<sup>357</sup>

Perhaps it is the disorientation caused by losing public support for their position on homosexuality that has led the opponents of marriage equality to attempt the contortionist maneuver of turning the equal protection right of gays and lesbians to civil marriage into a free exercise claim on the part of third parties:

We understand that many of our fellow citizens, including some Christians, believe that the historic definition of marriage as the union of one man and one woman is a denial of equality or civil rights. . . . No one

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356. *Id.*

357. *Marriage Equality*, *supra* note 197.

has a civil right to have a non-marital relationship treated as a marriage. . . . [T]he religious liberty of those for whom this is a matter of conscience is jeopardized.<sup>358</sup>

Not surprisingly, the rhetoric of the Southern Baptist Convention leadership reflects this apocalyptic worldview. Readers not familiar with the rhetoric of the contemporary Southern Baptist leadership might find their statements surprisingly militaristic. Take, for example, the writings of Dean Moore of the School of Theology of The Southern Baptist Theological Seminary directed at prospective seminarians. Dean Moore, it turns out, is looking for a few good men to go to war:

The Bible tells us that the whole world is enemy-occupied territory—and has been for thousands of years. What’s needed today, just as in every era of history, are those who are willing to stand up with the sword of the Spirit and declare war on the serpent of Eden.<sup>359</sup>

Is the prospective seminarian strong enough to become a member of “the corps of students in the School of Theology,” to go through “a rigorous boot camp for very serious scholars” and be prepared “for a lifetime of ministry in the trenches” in which he will have the tools to “address every skirmish in the life of every soul”?<sup>360</sup> “[I]f you’re ready to declare war on the principalities and powers,” Dean Moore promises, “then we’re ready for you.”<sup>361</sup> “Because we’re at war,” Dean Moore declares, “we bring to the task a world-renowned faculty” and “cutting-edge degree programs.”<sup>362</sup> Prospective seminarians are promised membership in Dean Moore’s “band of warrior companions”:

[I]f you’re ready to go to war against the Serpent of Eden through the triumph of a crucified and resurrected King, then I’m ready to be your Dean, this faculty is ready to show you the way, and these students are ready to be your band of warrior companions for life. If you’re ready for the fight of your life, pick up your Sword. The School of Theology is ready for you.<sup>363</sup>

Just how different is the current generation of Southern Baptist leaders—in both substance and style—is suggested by contrasting the rhetoric of the contemporary band of warrior companions with the 1946

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358. *Manhattan Declaration*, *supra* note 193; *see also 2011 Resolution on DOMA*, *supra* note 66 (“Equating same-sex relationships with heterosexual marriage would create a host of religious liberty and freedom of conscience conflicts.”).

359. *School of Theology*, S. BAPTIST THEOLOGICAL SEMINARY, <http://www.sbts.edu/theology/> (last visited Nov. 15, 2011) [hereinafter *The School of Theology*].

360. *Dean’s Page*, *supra* note 332.

361. *The School of Theology*, *supra* note 359.

362. *Dean’s Page*, *supra* note 332.

363. *Id.*

resolution of their ancestors from the greatest generation—many of them genuine warriors—at the first convention following World War II.<sup>364</sup> The statement begins with a preamble that speaks eloquently to the historic place at which the group found itself:

From time to time through all our modern history, Baptists have declared their principles which define their meaning and mission in relation to the gospel and in relation to the world. Surely, now when the world is writing in terrific crisis we are under obligation to restate our principles, to make clear that our faith is good news for all mankind. It is with this sense of obligation and with this purpose that the Southern Baptist Convention, at its Centennial meeting, undertakes to state afresh the basic principles that we must proclaim to the whole world in our day.<sup>365</sup>

Declaring that “[n]ew men are essential to a new world,” the statement of principles speaks to the organization of the emerging world:

Recognizing the divine sovereignty over all the people of the world, we must do all possible to prevent the organization of the world on the principles of materialism, selfish nationalism, arrogant imperialism and power politics; but rather insist upon the principles of the oneness of humanity, the rights of all men alike under God, and the Christian ideals of brotherhood, justice and truth, remembering that God’s supreme word for the organized life of humanity is righteousness. . . .

To this end it is necessary to resist all inequalities of basic rights and privileges in the church and in society, which arise out of racial prides and prejudices, economic greed, and class distinctions; everywhere proclaiming and practicing human brotherhood under the will and purpose of God. . . . Our Christian faith repudiates and opposes all forms of exploitation, manipulation or neglect and indifference on the part of any section of our human race by any other section on any and every pretext whatsoever. The Christian religion lies at the base of all. In it alone is there hope of the application of these principles in other relations of men.

It is especially urgent therefore, at this time, that these principles should be recognized when we are face to face with the necessity for the reconstruction, the rehabilitation and the reorientation of the lives of all peoples and the corporate life of humanity. Upon the Christian forces lies the responsibility for introducing now the gospel, the purpose and the power of God unto salvation for all men.

There can be a Christian order only as it is constituted of and by genuine Christians. Neither the world nor any part of the world can be organized and conducted on Christian principles except as there are Christians incorporating these principles. Here lies the imperative for an

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364. *Statement of Principles*, SBC.NET (May 1946), <http://www.sbc.net/resolutions/am/Resolution.asp?ID=732> [hereinafter *1946 Statement of Principles*].

365. *Id.*

immediate undertaking for worldwide and thorough evangelizing of all peoples. Christian missions must be comprehensive, thorough and universal. New men are essential to a new world.<sup>366</sup>

The new men for a new world have passed into history; we ought not expect today's band of warrior companions to reflect, recant and repent on homosexuality or marriage equality.

## VII. CONCLUSION

"[C]ivil marriage will now take on a new meaning that reflects a more complete understanding of equal protection of the law. This result is what our constitution requires."

—Iowa Supreme Court in *Varnum v. Brien*<sup>367</sup>

The Southern Baptist Convention could undergo a transformation on the issues of homosexuality and marriage equality like the transformation it underwent on the issues of slavery, racism, and civil rights. It could move from error on homosexuality and marriage equality by overcoming historically-situated and culturally-shaped prevailing notions of human sexuality, rejecting erroneous scriptural readings, and coming to interpretations of the Bible that had always been correct but were obscured by prevailing homophobic notions. But it won't.

The Southern Baptist Convention could honor its historic commitment to the separation of church and state by differentiating between civil and religious marriage and withdrawing from the debate over same-sex civil marriage. In doing so, it could help to end a divisive chapter in our national life, engage in compromise, and move on. It could avoid a conflict its leaders know it is going to lose. But it won't.

If the leadership of the Southern Baptist Convention is not going to change its position on marriage equality, where do proponents of marriage equality go from here in dealing with Southern Baptists? I think there are six lessons that proponents of marriage equality ought to take from the Southern Baptist Convention's statements and actions on homosexuality and marriage equality.

First, we ought not treat the Southern Baptist Convention as being monolithic on these matters. As a matter of structure, strong Baptist traditions of democracy, soul competency, and the primacy of local churches run counter to the arrogation of power in the leadership of the denomination on this or any issue. And, as a matter of fact, the Southern Baptist community is not of one mind on these issues. Survey research

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366. *Id.*

367. *Varnum v. Brien*, 763 N.W.2d 862, 906 (Iowa, 2009).

indicates that 29% of white evangelicals favor acceptance of homosexuality,<sup>368</sup> and 22% favor marriage equality.<sup>369</sup> We ought always acknowledge that there are a substantial number of Southern Baptists for whom the leadership does not speak on these issues.

Second, we ought always remember that there is a genuine diversity of thinking among Christian religious people and groups over the issues of homosexuality and marriage equality. Just as there are differing opinions within the Southern Baptist community, there are differing opinions in the broader religious community. The Southern Baptist Convention's statements on homosexuality and marriage equality are at one end of the spectrum, and we ought not concede to the Southern Baptist leadership that their position is the only religious position in the debate, or even the majority view.

Third, we ought always frame these issues as matters of civil rights, not free exercise of religion. Even if there was unanimity within and among the religious denominations on homosexuality and marriage equality, it could certainly be argued that it would be inappropriate to base our laws on civil marriage on religious grounds. But we need not get to that question since there is no such unanimity. As the Southern Baptists once understood, the government should not be put in the position of choosing among competing religious denominations. This is a question of the civil rights of gays and lesbians.

Fourth, we ought not be silent about the Southern Baptist Convention's history on slavery, racism, and civil rights. It is relevant to the contemporary public debate on homosexuality and marriage equality that the Southern Baptist Convention was formed in scripture-based error on the issue of slavery and that so many Southern Baptists affirmed scripture-based error on the issues of racism and civil rights. It might be different if the Convention came to the contemporary debate with a sense of historical humility based on its past errors, but it does not. In the end, a resolution on slavery 130 years after the eradication of slavery and on civil rights decades after the civil rights acts does not expiate its historic guilt. The Southern Baptist Convention comes to the public debate on homosexuality and marriage equality with unclean hands—and that ought to be noted.

Fifth, we ought always remember that the current leadership of the Southern Baptist Convention does not want to compromise on these issues. It uses these issues, as it used inerrancy and the role of women in

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368. *Acceptance of Homosexuality Poll*, *supra* note 7.

369. *Few Say Religion*, *supra* note 87.

the church, as litmus tests. Given the history of Southern Baptists on the transcendent moral issues of slavery, racism, and civil rights, for any Convention leader to suggest using the denial of the civil rights of gays and lesbians as a way “to find out just where we stand as Christians” is historically iniquitous. We need to remember that the Southern Baptist leadership does not want to find a compromise on these issues; it wants to use them for other ends.

Finally, notwithstanding the desire of the Southern Baptist leadership to use the issues of homosexuality and marriage equality to define who they are as Christians, that is not what is at issue. At issue in our national debate on homosexuality and marriage equality is who we are as Americans.

As to this final point, an important thought for our consideration of marriage equality comes by analogy from Dean Moore’s observation that Southern Baptists rejected their racist past on the issues of slavery and civil rights by overcoming historically-situated and culturally-shaped prevailing notions of human nature and racial identity. On the issue of marriage equality, for example, the opinion of the Iowa Supreme Court in *Varnum* found a right to same-sex civil marriage under the equal protection clause of the Iowa Constitution.<sup>370</sup> The equal protection clause of the Iowa Constitution has existed without change since the Constitution was adopted in 1857.<sup>371</sup> No one seriously suggests that its framers in the mid 19<sup>th</sup> century would have thought that their language would legalize same-sex civil marriage, had they been asked. Critics of the outcome of *Varnum* suggest that the approval of same-sex civil marriage was either the product of “the evolution of the community,” in Dean Moore’s words, or the product of “activist judges” rewriting the Constitution.<sup>372</sup> After all, the critics asked, how could the right to same-sex civil marriage have existed, unseen, in the Iowa Constitution for over 150 years?

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370. *Varnum*, 763 N.W.2d at 906.

371. IOWA CONST., art. I, § 6 (“All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens.”).

372. Bob Vander Plaats, one of the organizers of the successful campaign to defeat three of the Iowa Supreme Court Justices who decided *Varnum v. Brien*, used the “activist judges” theme:

If the Iowa Supreme Court will do this to marriage, every one of our freedoms, including gun rights and private property, is in danger of being usurped by activist judges who are unelected officials. Most Americans believe that government is out of control. Now is the time to take a stand against the radical judicial activism of the Iowa Supreme Court.

Korva Coleman, *Iowa Judges Ousted*, NAT’L PUB. RADIO (NOV. 3, 2010), <http://www.npr.org/blogs/itsallpolitics/2010/11/03/131032419/iowa-judges-ousted>.

To follow Dean Moore's analysis, it is not that the Iowa Constitution changed—it did not—or that society changed—it did on the issue of same-sex civil marriage, but that is not the reason for *Varnum*. Rather, we moved from error on same-sex civil marriage because we overcame the historically-situated and culturally-shaped prevailing notions of human nature and sexual identity, rejected an erroneous reading of the Iowa Constitution, and came to the interpretation of the Iowa Constitution's equal protection clause that had always been correct but was obscured by prevailing homophobic notions.<sup>373</sup>

Not that we are constitutional inerrantists; clearly the founders were capable of substantial error. But the founders were products of the Enlightenment and the Age of Reason, not the Reformation, and the constitutional structure they devised surely anticipated that our knowledge would advance over time to be more complete, more perfect than theirs.<sup>374</sup> They, and their mid-nineteenth century counterparts who drafted the Civil War amendments and the Iowa Constitution, proclaimed underlying ideals such as the separation of church and state and equal protection of the laws. Surely they had faith in succeeding generations to transcend the historically-situated and culturally-shaped prevailing misunderstandings of their time to better perfect our understanding of those underlying ideals. This must especially be true where the advance in our understanding is not a change in the meaning of a constitutional guarantee, but rather an expansion of our understanding of the people as to whom the guarantee applies.<sup>375</sup>

Thus what is at issue here is who we are as Americans and whether we believe, as surely we must, that our understanding of what it means to be an American gets more perfect over time. In the issue of marriage equality, we as a civic society are presented with the opportunity to acknowledge that homophobia has obscured our Constitutional thinking. We have the opportunity to affirm that our Constitution protects, and but for our failings, has always protected, all Americans.

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373. *Varnum*, 763 N.W.2d at 906.

374. THOMAS PAINE, THOUGHTS ON THE PRESENT STATE OF AMERICAN AFFAIRS, COMMON SENSE, COLLECTED WRITINGS (1950) ("It is pleasant to observe by what regular gradations we surmount the force of local prejudice, as we enlarge our acquaintance with the world.").

375. LANGSTON HUGHES, *The Black Man Speaks*, in 2 THE COLLECTED WORKS OF LANGSTON HUGHES 76 (Arnold Rampersad ed., 2001) ("I swear to the Lord, I still can't see, why Democracy means, everybody but me.").

## Appendix A

## On Same-Sex Marriage (June 2003)

WHEREAS, The Vermont legislature established “civil unions” which bestow the rights of marriage on same-sex couples; and

WHEREAS, Since the law became effective in July 2000, eighty-five percent of the more than 5,600 civil unions performed in Vermont were for out-of-state homosexual couples; and

WHEREAS, The legislative Assembly of the state of California has passed a bill that says registered partners “shall have the same rights” that are “granted to and imposed upon spouses”; and

WHEREAS, Courts in Massachusetts and New Jersey currently are considering the legalization of same-sex “marriage”; and

WHEREAS, The Full Faith and Credit Clause of the United States Constitution requires that marriages solemnized in one state be recognized in all fifty states; and

WHEREAS, The Vermont experience indicates that if same-sex unions are recognized as “marriage” in a state court, then same-sex couples wishing to marry will inundate that state to “marry” and return home demanding that their states recognize their “marriages” and provide all rights and benefits afforded to traditional marriages; and

WHEREAS, Proponents of same-sex “marriage” have indicated their intention to challenge state laws and the federal Defense of Marriage Act, which define marriage as between one man and one woman; and

WHEREAS, Same-sex “marriages” are now legal in Belgium and Holland; and

WHEREAS, An appellate court in Ontario, Canada, has changed the definition of marriage from a union of one man and one woman to the “voluntary union for life of two persons to the exclusion of all others”; and

WHEREAS, Newspapers are beginning to recognize homosexual unions by publishing announcements of same-sex commitment ceremonies; and

WHEREAS, A vast segment of the entertainment industry has pursued an agenda of legitimizing homosexual relationships; and

WHEREAS, Public school textbooks and curricula are beginning to portray families with two homosexual “parents” as equivalent to families with a mother and a father; and

WHEREAS, Jesus states that marriage is a sacred, lifelong bond between one man and one woman (Matthew 19:4–6); and

WHEREAS, Legalizing same-sex “marriage” would convey a societal approval of a homosexual lifestyle, which the Bible calls sinful and dangerous both to the individuals involved and to society at large (Romans 1:24–27; 1 Corinthians 6:9–10; Leviticus 18:22); now, therefore, be it

RESOLVED, That the messengers to the Southern Baptist Convention meeting in Phoenix, Arizona, June 17–18, 2003, affirm that legal and biblical marriage can only occur between one man and one woman; and be it further

RESOLVED, That we continue to oppose steadfastly all efforts by any court or state legislature to validate or legalize same-sex marriage or other equivalent unions; and be it further

RESOLVED, That we commit ourselves to pray for and support legislative and legal efforts to oppose the legalization of same-sex unions; and be it further

RESOLVED, That we call upon all judges and public officials to resist and oppose the legalization of same-sex unions; and be it further

RESOLVED, That we oppose all efforts by media and entertainment outlets and public schools to mainstream homosexual unions in the eyes of our children; and be it further

RESOLVED, That we call on Southern Baptist churches to commit to guard our religious liberty to recognize and perform marriages as defined by Scripture; and be it finally

RESOLVED, That we call on Southern Baptists not only to stand against same-sex unions, but to demonstrate our love for those practicing homosexuality by sharing with them the forgiving and transforming power of the gospel of Jesus Christ (1 Corinthians 6:9–11).

Southern Baptist Convention, Resolution on Same-Sex Marriage (June 2003), <http://www.sbc.net/resolutions/amResolution.asp?ID=1128>.

## Appendix B

Resolution on Racial Reconciliation on the 150th Anniversary of the  
Southern Baptist Convention (June 1995)

WHEREAS, Since its founding in 1845, the Southern Baptist Convention has been an effective instrument of God in missions, evangelism, and social ministry; and

WHEREAS, The Scriptures teach that Eve is the mother of all living (Genesis 3:20), and that God shows no partiality, but in every nation whoever fears him and works righteousness is accepted by him (Acts 10:34-35), and that God has made from one blood every nation of men to dwell on the face of the earth (Acts 17:26); and

WHEREAS, Our relationship to African-Americans has been hindered from the beginning by the role that slavery played in the formation of the Southern Baptist Convention; and

WHEREAS, Many of our Southern Baptist forbears defended the right to own slaves, and either participated in, supported, or acquiesced in the particularly inhumane nature of American slavery; and

WHEREAS, In later years Southern Baptists failed, in many cases, to support, and in some cases opposed, legitimate initiatives to secure the civil rights of African-Americans; and

WHEREAS, Racism has led to discrimination, oppression, injustice, and violence, both in the Civil War and throughout the history of our nation; and

WHEREAS, Racism has divided the body of Christ and Southern Baptists in particular, and separated us from our African-American brothers and sisters; and

WHEREAS, Many of our congregations have intentionally and/or unintentionally excluded African-Americans from worship, membership, and leadership; and

WHEREAS, Racism profoundly distorts our understanding of Christian morality, leading some Southern Baptists to believe that racial prejudice and discrimination are compatible with the Gospel; and

WHEREAS, Jesus performed the ministry of reconciliation to restore sinners to a right relationship with the Heavenly Father, and to establish right relations among all human beings, especially within the family of faith.

Therefore, be it RESOLVED, That we, the messengers to the Sesquicentennial meeting of the Southern Baptist Convention, assembled in Atlanta, Georgia, June 20-22, 1995, unwaveringly denounce racism, in all its forms, as deplorable sin; and

Be it further RESOLVED, That we affirm the Bible[']s teaching that every human life is sacred, and is of equal and immeasurable worth, made in God[']s image, regardless of race or ethnicity (Genesis 1:27), and that, with respect to salvation through Christ, there is neither Jew nor Greek, there is neither slave nor free, there is neither male nor female, for (we) are all one in Christ Jesus (Galatians 3:28); and

Be it further RESOLVED, That we lament and repudiate historic acts of evil such as slavery from which we continue to reap a bitter harvest, and we recognize that the racism which yet plagues our culture today is inextricably tied to the past; and

Be it further RESOLVED, That we apologize to all African-Americans for condoning and/or perpetuating individual and systemic racism in our lifetime; and we genuinely repent of racism of which we have been guilty, whether consciously (Psalm 19:13) or unconsciously (Leviticus 4:27); and

Be it further RESOLVED, That we ask forgiveness from our African-American brothers and sisters, acknowledging that our own healing is at stake; and

Be it further RESOLVED, That we hereby commit ourselves to eradicate racism in all its forms from Southern Baptist life and ministry; and

Be it further RESOLVED, That we commit ourselves to be doers of the Word (James 1:22) by pursuing racial reconciliation in all our relationships, especially with our brothers and sisters in Christ (1 John 2:6), to the end that our light would so shine before others, that they may see (our) good works and glorify (our) Father in heaven (Matthew 5:16); and

Be it finally RESOLVED, That we pledge our commitment to the Great Commission task of making disciples of all people (Matthew 28:19), confessing that in the church God is calling together one people from every tribe and nation (Revelation 5:9), and proclaiming that the Gospel of our Lord Jesus Christ is the only certain and sufficient ground upon which redeemed persons will stand together in restored family union as joint-heirs with Christ (Romans 8:17).

Southern Baptist Convention, Resolution on Racial Reconciliation on the 150th Anniversary of the Southern Baptist Convention (June 1995), <http://www.sbc.net/resolutions/amResolution.asp?ID=899>.

Appendix C  
Resolution on Homosexual Marriage (June 1996)

WHEREAS, In May 1993, the Hawaiian Supreme Court ruled that the state's exclusion of same-sex couples from marital status may be contrary to the Hawaiian state constitution because it amounts to invidious discrimination; and

WHEREAS, The Hawaiian Supreme Court has instructed the state of Hawaii to prove compelling state interests for limiting marriage to heterosexual couples; and

WHEREAS, The instructions of the Hawaiian Supreme Court shift the burden of proof from persons seeking to change existing law and places it instead on officers of the government who support norms of conduct long established in the Western legal tradition; and

WHEREAS, The compelling state interests standard is extraordinarily difficult to prove before a court already disposed to regard the exclusion of same-sex relationships from the definition of marriage as a matter of invidious discrimination, and therefore the state of Hawaii is soon likely to grant full legal status to the marriage of homosexual couples; and

WHEREAS, Under the full faith and credit clause of the Constitution of the United States, any marriage performed in the state of Hawaii will, apart from the enactment of state-by-state exceptions or the enactment of a new and comprehensive federal law, have to be legally recognized in every other state; and

WHEREAS, Homosexual couples from every other state are preparing to obtain marriage licenses in Hawaii and then to challenge the courts, legislatures and institutions in their home states to treat their same-sex relationship as having identical status to the recognition of marriage between a man and a woman; and

WHEREAS, Challenging the exclusion of homosexual couples from the definition of marriage as sanctioned and protected by civil law is a strategy to appropriate the moral capital of marriage in order to enforce acceptance of homosexual conduct and homosexual desires in the public arenas of American life; and

WHEREAS, There is much scientific evidence showing that homosexual attractions are pathological, abnormal, and mostly if not entirely a matter of external influence, learned behavior, acquired taste and personal choice; and, although there have been speculations, no conclusive scientific evidence has been found to support claims that homosexual attractions are biologically fixed and irreversible; and

WHEREAS, Even should a biological link with homosexuality be discovered, it could not settle the morality of homosexual behavior, and could not serve to justify, much less require, any society to grant the status of marriage to homosexual couples; and

WHEREAS, God, who is both Moral Ruler of the Universe and the Creator of all that is, and who knows and understands the physical and psychological composition of all and every human life better than any human scientist will ever know it, has stated in Scripture that homosexual conduct is always a gross abomination for all human beings, both men and women, in all circumstances, without exception (Lev. 18:22 and 20:13); and

WHEREAS, God makes it clear in Scripture that even desire to engage in a homosexual sexual relationship is always sinful, impure, degrading, shameful, unnatural, indecent and perverted (Rom. 1:24-27), so any effort to extend the meaning of marriage in order to sanction the satisfaction of such desire must also be in every case sinful, impure, degrading, shameful, unnatural, indecent and perverted; and

WHEREAS, God by saying their blood will be on their own heads (Lev.20:13) has explicitly ruled out any effort by homosexual couples to justify their behavior, or to claim their homosexual relationship deserves protected legal status, by shifting blame or responsibility for their same-sex relationship to the Creator who made them; and

WHEREAS, Marriage is God's idea established in the order of creation to be a permanent union of one man with one woman (Gen. 1:28, and 2:24), and marriage is therefore first and foremost a divine institution (Mat. 19:6) and only secondarily a cultural and civil institution; and

WHEREAS, Jesus reaffirmed the origin of marriage in the order of creation and declared marriage to be a sacred, monogamous and life-long institution joining one man with one woman (Matt. 19:4-6); and

WHEREAS, Any action by the government giving homosexual unions the legal status of marriage denies the fundamental immorality of homosexual behavior and causes the government of any nation so doing to jeopardize seriously the favor of Almighty God on whom the security, welfare and stability of every nation, even Gentile nations (Lev. 18:24-25, 28; Ps. 2; Am. 1:3, 6, 9, 11, 13; Isa. 13-21), ultimately depends; and

WHEREAS, Separating marriage from the complementary union of male and female trivializes the concept of marriage in the laws, public policies, educational systems, and other institutions of society; and

WHEREAS, Only the marriage of male and female serves to tame the impulses of self-centered individuals by inter-generational obligations and commitments; and

WHEREAS, Failure in the courts and institutions of civil law to recognize the unique importance of heterosexual family units, by granting moral equivalence to the idea of same-sex relationships, will surely and very seriously undercut the formation of stable heterosexual family units in future generations; and

WHEREAS, The future of the United States of America will be placed at risk because no society can survive that does not recognize, protect, defend the unique importance of heterosexual marriage to its own health and stability; and

WHEREAS, The legal recognition of homosexual marriage carries the potential use of force, a force that will likely be turned against those who do not or cannot accept the moral equivalence of homosexual marriages; and

WHEREAS, The enforcement of marriage laws, standards of educational instruction in schools, and the regulation of fair business practices will be adjusted to require public recognition of homosexual marriages, and this adjustment will certainly undermine, and may even restrain, the public communication, influence, and independence of individuals, groups and institutions who believe and teach that homosexual marriage is immoral in both concept and practice; and

WHEREAS, Legalizing homosexual marriage will force public schools to teach the acceptability of homosexual marriage and will likely lead to laws requiring that businesses remove distinctions between homosexual and heterosexual relationships in the way they treat marriage benefit[s] for their employees; and

WHEREAS, Legalizing homosexual marriage raises the specter of new laws and policies intended to marginalize, privatize, or silence the social and moral influence of parents and churches which teach that homosexual marriage is wrong or that heterosexual marriage is morally superior; Now, therefore,

BE IT RESOLVED, That we, the messengers of the one hundred thirty-ninth meeting of the Southern Baptist Convention, assembled in New Orleans, Louisiana, June 11-13, 1996, do clearly and steadfastly oppose the legalization of homosexual marriage by the state of Hawaii, or by any other state, or by the United States of America; and

BE IT FURTHER RESOLVED, That we affirm the Bible's teaching that promotion of homosexual conduct and relationships by any society, including action by the governments to sanction and legitimize

homosexual relationships by the legalization of homosexual marriages, is an abominable sin calling for God's swift judgment upon any such society (Lev. 18:22, 28; Isa. 3:9); and

BE IT FURTHER RESOLVED, That we commit ourselves to pray faithfully against the legalization of homosexual marriages in American law, and to preach and teach the truth concerning what the Bible says about homosexuality, homosexual conduct and the institution of marriage, and against the foolishness, danger and moral wickedness of any government action to accept, sanction, approve, protect, or promote homosexual marriage; and

BE IT FURTHER RESOLVED, That we commit ourselves to pray for, affirm, and support legislative and legal efforts and all persons involved in efforts to oppose the legalization of homosexual marriages through judicial actions, through public policy decisions and through legislation introduced at both the state and federal levels of government; and we call upon all judges, all persons in public office, and all candidates for public office, to do all they can to resist and oppose the legalization of homosexual marriages; and

BE IT FINALLY RESOLVED, That because any law, or any policy or regulation supporting a law, that legalizes homosexual marriage is and must be completely and thoroughly wicked according to God's standards revealed in the Bible, we do most solemnly pledge our decision never to recognize the moral legitimacy of any such law, policy or regulation, and we affirm that, whatever the stakes (Dan. 3:17-18), we will never conform to or obey (Acts 4:19) anything required by any governing body to implement, impose or act upon any such law. So help us God.

Southern Baptist Convention, Resolution on Homosexual Marriage June 1996, <http://www.sbc.net/resolutions/amResolution.asp?ID=614>.