

**Testimony of Rev. Robert Schenck, D. Min.**

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**U.S. House of Representatives  
Committee on the Judiciary**

**Hearing**

**Undue Influence: Operation Higher Court and Politicking at SCOTUS**

I am the Reverend Dr. Robert Lenard Schenck, an ordained evangelical minister of 40 years and the former lead missionary for Faith and Action in the Nation's Capital, a religious organization active on Capitol Hill between 1995 and 2018. Since 2015, I have been the founding president of The Dietrich Bonhoeffer Institute in Washington, DC, named after the renowned World War II-era German theologian and Nazi resister who worked to protect the German Evangelical church from Nazi co-optation before being executed at the Flossenburg concentration camp in the waning days of the war. The Institute supports and encourages ethical and morally courageous leaders to address the social crises of their time and has taken a particular interest in gun violence prevention and immigration issues.

I hold degrees in Bible and Theology, Religion, Christian Ministry, and Strategic Leadership with a concentration in the theology of church and state. During my career, I have served as a pastor, seminary instructor, denominational official, and evangelist, preaching in more than 1000 pulpits across the United States and several other countries. In 2006, I helped lead a historic dialogue between American evangelical church representatives and Moroccan Islamic leaders. In addition, I was the first appointed chaplain to serve the Capitol Hill Executive Service Club. In that capacity, I often delivered the invitational prayer at the U.S. Capitol Police Officer of the Year Awards Ceremony.

Until recently, I was a national leader in the anti-abortion movement and was based in Buffalo, New York. In that connection, I was arrested for blockading clinics and was the subject of numerous federal injunctions restricting my protest activity. I then moved to Washington, DC, where I shifted my strategy to privately persuading elected and appointed officials to embrace a strongly conservative social policy agenda. I also organized public events such as the annual

National Memorial for the Pre-born and their Mothers and Fathers, presentations of Ten Commandments plaques to public officials, staging a Live Christmas Nativity at the U.S. Capitol, and holding prayer meetings, Bible studies, church services, and news conferences outside the White House, inside Congressional hearing rooms, and on the plaza of the Supreme Court.

My most ambitious undertaking was Operation Higher Court. It involved recruiting, training, and deploying wealthy volunteer couples who we paired with sympathetic Supreme Court justices and their spouses to bolster, encourage, and applaud the Justices' conservative opinions. While I will describe that effort in more detail, I want to first complete my brief biography.

About ten years ago, I started questioning my religious community's positions on guns, abortion, same-sex marriage, and religious liberty, among other concerns. I eventually broke with the orthodoxy I had long followed and became a dissenting voice among my culturally and theologically conservative peers. Finally, in 2018 I closed down Operation Higher Court and its parent organization, Faith and Action. Today I advocate for an empathetic, humane, and reality-based approach to complex moral problems and personal crises, respecting the dignity, autonomy, and moral agency of the individuals involved. My 2018 book, *Costly Grace: An Evangelical Minister's Rediscovery of Faith, Hope, and Love*, tells the story of that transition.

I live in Alexandria, Virginia, with my wife of 45 years, Cheryl E. Schenck, a former school-based occupational therapist and for the last twelve years, a psychotherapist in private practice. We have two adult children and a much-loved son-in-law, and we thoroughly enjoy my first grandchild's hugs. These days, I spend most of my time guiding the religious non-profit I lead, reading, researching, and writing for my blog at [revrobshenck.com](http://revrobshenck.com), along with other religious platforms and journals. I also consult with clergy and denominational leaders on the challenges evangelicals face today.

After more than 40 years of very public life, I relish the quietude of time with family, friends, colleagues, and my beloved books. While I had no qualms about complying with the Committee's subpoena to appear before it and submit this written testimony concerning the

subjects of interest to the committee, I did not seek such a public forum; neither did I instigate the news accounts associated with this subject. I want to make clear to those interested in this hearing how the reports came about that resulted in my testimony today. It began when a reporter overheard a former colleague talking about the prayers we held with some of the Justices inside the Supreme Court building. That information began the cascade of media interest in the story. Simultaneously, a contemporary associate spoke with friends about my role in a leak of the *Hobby Lobby* result of 2014; that information reached the New York Times, which subsequently contacted me to ask if the story was true. After initially declining to answer questions, I agreed to two limited, strictly off-the-record, and restricted-from-publication interviews. After two extraordinarily persistent publications hounded me to go on the record, I eventually granted the much more polite New York Times exclusive and extensive access to me, along with the kind of documentation I could provide. I resolved to go public with my story because I felt it was best for the American people to know what happened, and it was in the best interests of the Supreme Court because public trust is crucial to its preservation and successful functioning. I also considered what I did a moral obligation. I chose to work with the New York Times because I felt a well-researched account was much better than a poorly researched one or one that might involve histrionics. I stand by the facts I provided to reporters Jodi Kantor and Jo Becker and published in their history of my activities at and surrounding the Supreme Court during the years I was active there.

This statement will give the Committee an overview of how and why I interacted with particular Supreme Court justices, including socializing with them, visiting in chambers, and having the occasional prayer with some. I will also explain how others associated with my organization hosted certain justices at their homes, at restaurant meals, and on hunting trips, and how particular justices reciprocated that hospitality and what came of it. Finally, I'll explain how I gained advanced knowledge of the outcome of the 2014 *Burwell v. Hobby Lobby* opinion, which was significant to religious conservatives.

My ministry in Washington, DC, began in August 1994, when my family and I relocated to the metro Washington, DC, area from our native Buffalo, New York. My first post was as the organizing pastor of a new congregation called the National Community Church on Capitol Hill,

which was also the setting for our first pro-life event, which we dubbed "The Memorial for the Pre-born." However, I surrendered my pastoral position in February 1996 to pursue developing what would later become Faith and Action in the Nation's Capital. Initially operating under the moniker of "Operation Save Our Nation," I instituted a religious and moral outreach program to congressional members, their staff, and other federal employees; this involved conducting Bible studies, prayer meetings, and eventually small to large ceremonies held in congressional offices and hearing rooms during which I would present recipients with plaques of the Ten Commandments, asking that they be publicly displayed and privately obeyed. My team of paid personnel, volunteer clergy and lay people expanded over the years, allowing us to add similar programs to accomplish our aim of "bringing the Word of God to bear on the hearts and minds of those who make public policy in America."

In March 1996, my team and I concluded that the Supreme Court was a necessary part of our designated mission field. By then, I was convinced that no matter how much pro-life legislation or executive policy success we achieved, inevitably, any gains would be frustrated, diminished, or nullified by the existence of *Roe v. Wade*. As what has sometimes been called a "super precedent," *Roe* was long seen as nearly impossible to overturn. Moreover, even staunchly anti-abortion nominees to the Court had assured members of the Senate that they saw *Roe* as "settled law." The reversal of *Roe* became the single overarching objective for our national movement. In November 1999, my organization acquired a row house at 109 2nd Street, NE, opposite the East Facade of the Supreme Court, to use as our base of operations for outreach to the Court and the other two branches of the federal government. We hoped, as other organizations have, that proximity would be helpful to our cause.

Between 1996 and 2001, our group's moniker was Operation Save Our Nation, or OSON. During this time, I became aware of the Supreme Court Historical Society. Eventually, I joined as a member, befriending its then-executive director, Dr. David Pride, and other employees and officers. Knowing how vital membership growth and fundraising are to any non-profit institution, I immediately offered to recruit members and deliver significant prospective donors to the Society. I learned that the Society sponsors an annual dinner for members in conjunction with its annual business meeting, which is held in the Court's building. I learned that the Chief

Justice hosts the event and that most of the associate justices attend. As a result, I was keenly interested in the hour-long pre-dinner reception held in the Court's conference rooms, where guests could approach the Justices and engage in small talk. I first attended the event in June 2000, where I carefully observed the interactions between guests and the various Justices. They appeared to me to be more curious about the non-legal professionals with whom they conversed than the more common attorneys and law professors who were present. I also noted how a significant number of guests carefully and, at times, aggressively jockeyed for position to ensure they could get facetime with at least a few of the Justices, particularly the then-Chief Justice, William Rehnquist. In that setting, I had my own brief exchange with Chief Justice Rehnquist and a warmer and more substantive one with Associate Justice Clarence Thomas, with whom I shared more than one mutual acquaintance.

Following my experience at the dinner, I determined to use it and the Society's various other events, such as lectures at the Court (generally hosted by a Justice) and discussion forums (often involving Justices or high-level Court officials), as initial contact points with the Justices. My purpose was to develop relationships with the Justices who held positions sympathetic to religious conservatives' general concerns. In this way, I could gain insights into their thinking regarding the questions and cases that come before them and, perhaps, read their disposition toward the topics of most significant interest to me and my cohorts. Over time, I also thought my associates and supporters might be able to shore up the resolve of the conservative members. Our concern was for cases we adjudged beneficial to the country's culture, such as those restricting or banning abortion, euthanasia and assisted suicide, as well as same-sex relationships, especially marriage, and those expanding religious liberty, predominantly Christian practice, and public displays of Christian belief. The Historical Society was also a place where my cohorts and I could learn more about the customs, traditions, mores, and protocols of the Court, easing our entry into their social circles.

Between 2001 and 2002, I determined that my activist profile, frequent media appearances, and occasional commentary at the microphone station on the Supreme Court's front plaza could place me at a deficit in establishing a rapport with the relevant Justices. At the same time, I was getting to know and talk with Court employees, fellow Supreme Court Historical Society members, and

less visible pro-life legal advocates. These individuals knew more than I did about the internal workings of the Court and had regular contact with the conservative Justices. My interlocutors led me to conclude that the wealthier donors to my organization and the less visible legal professionals in my universe were reasonable prospects for carrying out the mission of developing relationships with consequential Justices and bolstering their moral and religious sensibilities. I hoped that by boosting their morale, we might see stronger opinions by such Justices as Antonin Scalia, Clarence Thomas, and perhaps even Sandra Day O'Connor and Chief Justice Rehnquist.

It was also from 2001 to 2002 that my organization formulated a new moniker, Faith and Action in the Nation's Capital, or "Faith and Action" for short, which replaced the earlier Operation Save Our Nation. Due to the sensitive nature of our work inside the Supreme Court (which I had now dubbed "Operation Higher Court"), I directed my organization's personnel to keep it as invisible as possible. Except for one or two mentions in our donor newsletter, we only referenced the initiative in internal settings. In consultation with key donors, particularly attorney Bernie Reese of Rockford, Illinois, and his wife, Leonna "Lee" (both now deceased), I refined a process for enlisting, training, and deploying mainly married donor couples as what I called "stealth missionaries." Their task would be to "adopt" a designated Justice (with their spouse, if applicable), first as a prayer concern, then as possible conversation partners, and ultimately as familiar acquaintances, if not friends. We termed the nature of the stealth missionaries' work "the ministry of emboldenment." At that time, the Justices we saw as potentially receptive and certainly consequential were Chief Justice Rehnquist, as well as Justices Kennedy, Scalia, and Thomas, with the latter two being the most approachable. Beyond being convivial at Court social functions, our operatives made no attempt to build relationships with the known liberal members of the Court.

In the beginning stages of this endeavor, I met with likely missionary recruits recommending they join the Supreme Court Historical Society and make substantial donations to distinguish themselves and possibly rise to trusteeship. This status would give them privileged access to highly coveted tickets for often sold-out Society events and allow them to sit in front of the courtroom's bar, making them more noticeable to the Justices hosting lectures and the like. Such

advantages would facilitate easier and more frequent contact with our missionaries' "targets." Moreover, because Court personnel assumed the Society properly vetted its trustees, I concluded their status as trustees might assuage suspicions about our missionaries' motives. One of the first couples to embrace the project was Donald "Don" and Gayle "Crede" Wright of Dayton, Ohio. They would become our most successful model of stealth missionary work.

It's important to note that the people I recruited as stealth missionaries for Operation Higher Court were older, highly accomplished, and independently minded. They did not take kindly to being told where to go, what to do, or how to do it. That was especially true of the Wrights. Therefore, to successfully deploy them required that I allow them unlimited autonomy. I saw my role as imparting the vision for this new form of personal ministry to Supreme Court Justices, then stepping back as our recruits carried that mission out in whatever ways they deemed appropriate. I casually suggested tactics that might prove fruitful, including researching the Justices' family and religious histories and seeking points of commonality. Then, I suggested using these shared points to cultivate affinity. As such relationships blossomed, I recommended that missionaries extend invitations to their target Justices or their spouses for meals at restaurants, private clubs (which were preferable for privacy), and their homes, but especially their country, vacation, or other unique properties. Such hospitality was in keeping with several biblical warrants regarding being generous to others. Most of our stealth missionaries limited their support for their justice couples to regular prayers on their behalf, warm personal greetings, assurances of goodwill at various social functions, and sending greeting cards on special occasions. The Wrights were much more gregarious, forward, and, ultimately, successful in this endeavor. They had established meaningful rapport within a short period with the Scalias and the Thomases. Later, after Justice Samuel Alito joined the Court, the Wrights quickly struck up what they described to me as a friendship with him and his wife, Martha-Ann. From time to time, my staff or one of the missionary couples would tell me of brief visits to the chambers of some of the Justices. I recall Justices Kennedy, Scalia, and Thomas being mentioned in this context. I understood those visits to be social in nature, with some of the exchanges including a brief prayer offered by the missionary visitor for the Justice. I also paid visits to the chambers of Justices Scalia and Thomas, offering prayers for them, their families, and our country. In the case of Justice Thomas, he had invited me to his chambers on one occasion to view the plaque of the



Ten Commandments given to him by the Wrights that was prominently displayed in the entryway to his office. It was an example of the wood-mounted stone sculptures we routinely presented to public officials as part of our National Ten Commandments Project promoting the public Ten Commandments displays.

From the time Chief Justice John Roberts arrived in September 2005, I had detected a more relaxed, less guarded atmosphere inside the Court. My fellow pro-life advocates and I credited that to the Chief's obvious commitment to his Catholic faith, especially as it was expressed in his family's parish, The Church of the Little Flower in Bethesda, Maryland, and his wife Jane's history of involvement with a pro-life crisis pregnancy center. The new tone at the court made it easier for our stealth missionaries to operate.

As the Wrights and others ambitiously took on Operation Higher Court, I was often distracted by several other continuous or annual Faith and Action programs. These included the National Memorial for the Preborn and their Mothers and Fathers, a gathering of pro-life advocates held in one of the House or Senate hearing rooms on the anniversary of *Roe v. Wade* and in conjunction with the large-scale March for Life, The Ten Commandments Project, presenting plaques of the Decalogue to Members of Congress and other elected and appointed officials, a National Day of Prayer observance on the steps of the Supreme Court, co-sponsorship of the U.S. Capitol Bible Reading Marathon and Annual U.S. Capitol Police Officer of the Year Awards ceremony, and a Capitol Hill Christmas Live Nativity. In addition to these responsibilities, I also conducted incidental chaplain-like duties such as the occasional wedding, funeral, or crisis pastoral counseling session for members of this House, Senators, staff, or other House, Senate, or U.S. Capitol employees. Additionally, I kept up a robust speaking itinerary, preaching up to 40 Sundays a year in churches spread across the country, speaking at conferences, addressing denominational conventions, and sitting for in-studio media interviews. I also hosted 50-100 church leaders each year as part of my organization's National Ministry Cabinet, sometimes arranging for these clergy to visit with Justices in chambers or elsewhere in the Court building. For these reasons, I could not closely monitor Operation Higher Court, which took on a life of its own.



My staff would inform me of our missionaries' progress within the Supreme Court Historical Society and other similar societies and clubs where they might encounter a Justice—such entities included Legatus events, an organization of Catholic CEOs, corporate presidents, managing partners, and business owners, and the Capitol Hill Republican Club and University Club. In this regard, the John Carroll Society was especially important. It sponsors the annual Red Mass held at St. Matthew's Cathedral the Sunday before each Supreme Court term starts. Most Justices typically attended the Mass, and a luncheon often followed. Our missionaries could approach the Justices in this intimate, less guarded, spiritual setting. In addition, it was known the Chief Justice's wife, Jane, was an officer in the Society, and the family's then-pastor, Monsignor Peter Vaghi, highly esteemed among pro-life advocates, was a prominent figure in its circles. Attendance by the Justices diminished somewhat after Justice Ruth Bader Ginsburg ceased her participation after taking offense at an overtly anti-abortion sermon in 2008.

In 2008, my team and I formalized the orientation process for missionary recruits, establishing a verbal protocol briefing and occasional missionary debriefings held at our headquarters building. By then, to make our building more attractive to personnel at the Court, we had christened it "The Honorable William J. Ostrowski House" for a retired New York State Supreme Court judge and pro-life advocate. That same year, as part of Operation Higher Court, my team and I arranged for approximately 40 top donors to the Council for National Policy (CNP) to meet several Justices during a jointly sponsored reception with the Supreme Court Historical Society. (I need to note here that I had not disclosed the mission or existence of Operation Higher Court to the Society's employees or officers; they did not know of our intentions beyond introducing prospective donors to the Society's programs.) The CNP is a network of top conservative influencers in business, government, politics, religion, and academia. Following this one encounter, I did not monitor how the CNP or its donors may have continued engaging with the Court or the Historical Society.

In 2010, I began consulting with an exploration team seeking a prominent metropolitan location for the Museum of the Bible, a project of the Green Family of Oklahoma City, owners of the national Hobby Lobby chain of retail stores. I first came to know owners David and Barbara Green in 2000. That year I conferred on them the National Ten Commandments Leadership

Award during an event held in the U.S. Senate Hart Building. The Greens later became major donors to the parent organization of Operation Save Our Nation, the precursor to Faith and Action. I advocated for Washington to be the museum's site, making the argument to the search team that, among other benefits, top U.S. government officials, including Supreme Court justices, might find such an institution appealing and benefit personally and professionally from associating with it. After the Green Family indeed chose Washington, DC, for their \$500 million project, I arranged for Hobby Lobby president Steve Green and his wife, Jackie, to attend the Chief Justice's private Christmas Party so Steve could talk up the museum with the Chief and other likely sympathetic members of the Court.

My activities and those of the missionary couples continued apace through the years. Come 2014, my team and I were closely monitoring three cases before the Court (*McCullen v. Coakley*, in which one of our early Operation Higher Court recruits had filed an amicus brief, along with other groups allied with ours; *Town of Greece v. Galloway*, again, for which one of our early recruits submitted an amicus, along with other allied groups, (it is also worth noting I had long known one of the pastors involved directly in the matter before the Court and had met with him before and following oral argument in the case); and, of most significant interest to my team and me, *Burwell v. Hobby Lobby*. The *Hobby Lobby* case, and another, *Conestoga Wood Specialties Corp. v. Sebelius* consolidated with *Hobby Lobby*, were again subjects of amici briefs submitted by early recruits to Operation Higher Court, and numerous allied organizations to my own. As previously indicated, I also knew the principals in these cases, having had a long personal association with the Hobby Lobby Corporation owners, and the company's president.

As the *Hobby Lobby-Conestoga Wood* case proceeded, I consulted with our pro bono constitutional litigation counsel and Operation Higher Court stealth missionary, Bernie Reese, on whether to submit an amicus curiae brief in support of Hobby Lobby. We decided not to do so because many of our allied groups were submitting briefs reflecting our position on the case. I often publicly and privately discussed the case with colleagues, donors, team members, other Operation Higher Court stealth missionaries, and representatives of allied groups and organizations. In advance of the oral arguments, during a stay at the Siesta Key-Sarasota, Florida, winter house owned by Don and Gayle Wright, I visited and had prayer with the Hahns,

owners of Conestoga Wood Specialties Corporation, the other respondents in the case, who owned a winter house nearby.

On March 25, 2014, I attended the oral argument in the *Hobby Lobby* case, having obtained a reserved seat from the Marshal's office. Earlier that day, I had convened a prayer service in the Supreme Court's cafeteria dining area, which attorneys for both Hobby Lobby and Conestoga Wood Specialties Corporation attended, along with David and Barbara Green and members of the Hahn family. Though we did not communicate directly at that time, I was aware that Don and Gayle Wright were seated in either Justice Scalia's or Alito's reserved guest benches near the Court's dais. Following oral arguments, I was the first to comment at the media microphone tree outside the Court, followed by David and Barbara Green.

The Wrights and I had spoken several times, in person and by phone, about the importance of the case. The Wrights were also aware of my relationship with Green family members and that David and Barbara Green were donors to our organization. Following oral argument, as the Court deliberated and the writing of opinions began, Gayle Wright and I continued conversations about the case and its implications for the country.

As June 2014 approached and the end of the court's 2013 term, I discussed with my team how we would manage the announcement of the *Hobby Lobby* opinion. Sometime in the last week of May or on June 1 or 2, Gayle Wright informed me by phone that she and her husband, Don, would be dining with Justice and Mrs. Alito the day after that year's Supreme Court Historical Society dinner, which occurred on June 2, placing their get-together on June 3. She suggested it would be a busy day for Don and her but that she might try to stop by our building to say Hi. I informed her I would be flying to California that day so I couldn't receive them. Sometime during the remainder of our call, and in the context of the meal with the Alitos, Gayle said something to the effect of "Maybe we can learn something about what's happening at the court." Given the context of the conversation, I took that to mean the impending *Hobby Lobby* decision. I said something back to her to the effect of "That would be helpful." Knowing the strict practice of the Court to keep opinions highly confidential, I dismissed Gayle's suggestion as unrealistic wishful thinking. I landed in Los Angeles mid-day on June 4 and later discovered an email from

Gayle which read, "Rob, if you want some interesting news, please call. No emails. Gayle"

Based on our earlier phone conversation, and because it was highly unusual for Gayle to insist on only audio communication, I anticipated this was news on the *Hobby Lobby* decision. When we spoke on the phone later that day, Gayle relayed that she had learned the outcome of the *Burwell v. Hobby Lobby* case while at the meal with the Alitos, that it was in Hobby Lobby's favor, and that "Sam is writing it." I was shocked by the thought that I had advanced knowledge of an important and consequential Supreme Court case. My impulse was to call colleagues and associates to notify them, but I only called my wife and brother, Paul, to tell them what I had learned. Both urged me to keep it confidential and share it with no one else. I resolved to do that, knowing that if the information were to travel beyond my closest confidants, it would risk my and our missionaries' further access to the Justices and the Court in general. Blame for the leak might even extend to Supreme Court Historical Society personnel and Court employees, whom I wished to protect. For all these reasons, I resolved to keep the information sacrosanct and use it only to privately formulate a public relations strategy surrounding the official release of the opinion whenever that might happen. (At one point, I violated my resolution in a casual phone conversation with my oldest sister, Kathleen Bauer, whom I knew would keep it to herself.)

As the days went on, I wrestled with whether to share the information about the *Hobby Lobby* Case with the Greens, who had a much greater interest in its outcome than I did, and whom I hoped would renew a philanthropic interest in our work, especially at the Court. There were times when I paced the floor in my study and wrung my hands with anxiety over this question. Still, I kept the information to myself, using it to formulate language for a news release, public statements, and donor communications. While I knew Justice Alito was the author, and the opinion was in favor of *Hobby Lobby*, I was careful to cast it with some measure of uncertainty so staff and other court-related interlocutors wouldn't ask about the source of my confidence in victory. Still, as the days went on, in my conversations and communications, I waxed more certain about the outcome in my written and spoken communications. On June 12, in an email to Kaitlynn Hendricks, Faith and Action's Digital Media Platform Specialist and Content Developer, I said of an Alito-authored Hobby Lobby win, "from all the information I have, I think this will be it." However, I couldn't know what day the decision would be released, as such scheduling decisions are dynamic, often up until the last minute. However, as June came to a

close, it became easier to predict. Once we knew it would likely be the last day of the term, June 30, I became preoccupied with telling the Green Family what I knew about the outcome. Meanwhile, at 10:17 AM on June 29, I sent an embargoed news release to Dan McCullough of Christian Newswire, telling him in an email, "If positive--and I'm confident now it will be--I'm taking an educated guess on Alito."

Then in the late afternoon of June 29, 2014, I spoke with Steve Green by phone, conveying what I knew about the case in words to the effect of "God has answered your prayers and given your family favor. I have good reason to say this based on my communications with people close to the Court and the Justices. I am sure you will be pleased with the decision's author. We couldn't ask for better." I'm unsure whether I named Justice Alito in that conversation because I worried that doing so would be the worst form of violating the Court's custom of secrecy. Steve thanked me profusely and suggested he would pass the news along to his parents because he would be out of the country the following day. We said a short prayer of thanksgiving together and ended the call. That evening, at 6:05 ET, to ensure Steve kept the information I gave him only to his family members, I sent him an email saying, in part, "Glad we could connect and talk about such important matters. As I mentioned, we'll need to keep it strictly 'in the family.'"

At 11:59 PM the same night, I sent an email to Kaitlynn Hendricks, the communications specialist for Faith and Action, directing her to include specific language in all her social media posts and an email communique to our donors. Referencing the possibility of a positive outcome, I wrote in parenthesis, "confidential: I have good reason to believe it will be." I also presumed the author to be Justice Alito, instructing Ms. Hendricks to include my quote, "We're thankful to God that Justice Alito authored this opinion."

The following day, I called my staff and directed them to implement the plan we had mapped out on June 12. It included directing Dan McCullough of the Christian News Wire to send out the pre-written news release on the *Hobby Lobby* win to the media as soon as the opinion was read from the bench. My team insisted we give Dan a negative option, which I approved out of concern that my refusing to do so would reveal I had insider information. Nevertheless, I indicated we would also stage a prayer service that morning on the sidewalk in front of the

Court, offering thanksgiving to God for the Greens' and Hahns' victory. Simultaneously, I took my seat in the courtroom at the appointed time, anxiously awaiting what I knew to be inevitable, that Justice Alito would read the majority opinion. When the Chief Justice announced that, I prepared to exit the courtroom as soon as Justice Alito finished reading. Once outside, I made remarks to reporters and supporters at a podium set up for that purpose. It was my custom to raise a paper copy of any opinion I commented on in front of the Court following the release of decisions, so I asked my staff to obtain one, but they were unable to do so. So, I proceeded without it and referred instead to handwritten notes I had made in the courtroom.

The next day, July 1, my staff released the donor communique I had written, presuming a Hobby Lobby win and an Alito-authored opinion. Gayle Wright emailed me that same day at 4:30 PM ET. Under the subject line, "Sam," she informed me, "I sent your email about hobby lobby [sic] case to Sam. He sent me an email back saying he appreciated your comments very much. How about that?"

In August 2014, I delivered my chairman's address to the annual meeting of the Evangelical Church Alliance, an association of evangelical ministers, missionaries, and military chaplains. In it, I alluded to my advanced knowledge of the *Hobby Lobby* decision, saying, "I was praying Justice Alito would get the *Hobby Lobby* case because of his moral, ethical, and even theological sensibilities. None of the experts predicted that was going to happen. After two decades at the Court, though, I've learned to listen to certain people and certain chatter, and I thought I had a pretty good handle on how it would come out." I then detailed how the opinion did come out. While protecting the details and not revealing much, I did want my constituents to know that I could gain extraordinary access to generally inaccessible and vital information about the Court's work.

At the Green family's invitation and their expense, my wife, Cheryl, and I traveled to Oklahoma City in October 2014 to attend a launch ceremony for the Museum of the Bible project. During an evening soiree at the Hobby Lobby corporation headquarters campus, I began a conversation with Steve Green, who signaled his parents standing nearby to join our conversation circle. As he did, Cheryl stepped away with her iPhone to take photos of the impromptu reunion, knowing I

would value them as a memento and for promotional purposes. Then, as Steve prompted me to re-tell the story of my disclosure of the case to him on the eve of the decision's announcement, Cheryl captured it in a sequence of frames. Finally, all three Greens thanked me for my supportive role in their case.

In my mind, our departure from Oklahoma City the next day marked the close of the *Hobby Lobby* episode. Faith and Action in the Nation's Capital continued its standard set of programs for the next two years, with Operation Higher Court as a component. By then, I was in regular conversation with a different group of collegial interlocutors who challenged me to look differently at the social and political views I had held for three decades. After reflecting on my doctoral work from 2009 to 2012, examining American evangelicalism's politicization, I came to see my pro-life, pro-traditional family, and pro-religious liberty activism through different interpretative lenses. Reconsidering past experiences with individuals who had chosen to end their pregnancies and comparing them with the contemporary accounts of others with whom I was working on various projects left me with a less certain and more nuanced view of abortion and its attendant public policies. In this same period, I became the subject of a documentary film investigating the attitudes of American evangelical church leaders toward gun ownership and related public policy. In the course of that production, I was asked several times in different ways whether being pro-gun was pro-life. These spiritual and intellectual inquiries and exercises left me with a different opinion on complex moral questions like abortion. The 2015 release of the Emmy Award-winning film *Armor of Light* began my public separation from the ideological circles I had inhabited for most of my adult life.

In November 2016, I was working with a ghostwriter to produce a memoir for HarperCollins Publishers. In it, I recounted three significant conversions that have shaped my formation: My initial conversion from nominal Judaism to belief in the Jesus of the Sermon on the Mount, who cared for the poor, the marginalized, and the oppressed; from a simple faith to a highly politicized one that produced the kind of activism I carried out on sidewalks in front of abortion clinics, and later inside Capitol Hill federal buildings using moral suasion; and finally a return to following Jesus as the paragon of loving God and neighbor. The latter came principally through reading the body of literature by and about Dietrich Bonhoeffer.



While working on my memoir project, I composed a journal-like entry for my ghostwriter, Marianne Szegedymazak. In it, I referenced the leak of the *Hobby Lobby* decision, telling her on November 16, 2016, "Word of the decision in the much-anticipated, highly media-monitored case was leaked to me through back channels at the Court days before it was to be announced--something that has rarely happened in American history." I later instructed Ms. Szegedymazak not to include the leak or any other sensitive material about the Court in the final manuscript. I feared such revelations would compromise court personnel, embarrass our stealth missionaries, and damage relationships I valued at the Supreme Court Historical Society.

I mentioned the leak again in either late 2016 or early 2017 when I recounted it to a consultant who was profiling prospective major donors for The Dietrich Bonhoeffer Institute. The Green family was on the prospecting list. The profiling included identifying unusual experiences with the prospects that could become the basis for a personal appeal for their significant support. The consultant I spoke to wishes to remain anonymous out of concern for his other clients, but he told a New York Times reporter and me that he vividly remembers my account of the *Hobby Lobby* leak because it fit so perfectly in his wheelhouse as a fundraiser, it had all the elements of a good prospect, including a philanthropic billionaire-class family, a prominent American public institution, and a unique benefit extended to the prospective donor.

I was pursuing the development of the new entity because I felt my days as an influential conservative activist were quickly and appropriately coming to an end and that I could no longer lead my old organization with integrity. I expressed this to my board of directors, who agreed with my plan to sunset Faith and Action in the Nation's Capital and its various programs, including Operation Higher Court. I began a search for an acquisition partner interested in continuing the premier programs that Faith and Action's 50,000 donors had supported for some 25 years. In 2018, Faith and Action in the Nation's Capital suspended all programming, and in 2019 Liberty Counsel of Orlando, Florida, assumed two of Faith and Action's principal employees, the majority of our programs and organs of communication, and took possession of our property on 2nd Street, NE, across the street from the Supreme Court. As a result, I resigned as Lead Missionary and assumed the full-time presidency of The Dietrich Bonhoeffer Institute.

Since we closed on the Capitol Hill property in 2019 until now, I have had no contact with Liberty Counsel or Faith and Liberty, the program they operate from Faith and Action's old headquarters.

The *Hobby Lobby* episode faded in my memory while building the Bonhoeffer Institute, authoring articles and opinion pieces, and managing major life events, including the arrival of a first grandchild. Then, on May 2, 2022, the Capitol Hill-based journal Politico published a leaked draft opinion in the *Dobbs v. Jackson Women's Health Organization* indicating Justice Samuel Alito as author and a presumed majority of the justices ready to overturn *Roe v. Wade*. I was as shocked as many other court observers, knowing how difficult it was to manage a verbal leak like the one I was involved with in the *Hobby Lobby* matter, as compared to this leak of an actual draft document. Still, I initially thought my account was no longer relevant due to the passage of time and kept any conversation about it to myself and my closest circle of conversation partners.

Then, in the first week of July, writer Kara Voght of Rolling Stone magazine contacted me. She told me she was on assignment at the Court and overheard my former associate at Faith and Action, Peggy Nienaber, lately of Faith and Liberty and working similarly to how she had during her years in my employ, talking to someone on a mobile device and indicating she prayed with Justices inside the Supreme Court. Ms. Voght asked me what I knew about Peggy's claim. I confirmed that it was true, at least during the years Peggy was active with me at the Court, but I deliberately did not speak about the *Hobby Lobby* leak. Instead, I wrote a critical reflection on both Operation Higher Court and the related *Hobby Lobby* leak. I considered either posting the essay to my blog at [revrobschenck.com](http://revrobschenck.com) or submitting it to a major journal as an OpEd. However, within a few days, I decided to place a hold on my plans to publish anything about Operation Higher Court and, most especially, the leak. Subsequently, I shared my piece with two friends I thought could offer sound advice on whether there was any redemptive value in my reporting the previous *Hobby Lobby* leak. Shortly afterward, I received calls from two reporters from Politico and the New York Times seeking confirmation on my claims about the *Hobby Lobby* leak. I spoke to both individuals off the record, explaining that I did not want to publicize the matter but preferred to keep it private.

I then revived an unfinished letter to Chief Justice John Roberts that I had drafted a month earlier. In it, I detailed the *Hobby Lobby* leak and suggested it may have a bearing on his investigation of the *Dobbs* leak. When I started writing it, foremost on my mind was the possibility of a clerk or other employee unfairly taking the blame for the *Dobbs* episode and suffering draconian punishment. Yet, inequitably, a Justice would face no such consequence for a similar breach. I completed the letter in early July and mailed it on or about July 7. While I waited for a response to my letter, my concerns about the implications of both leaks grew.

At the end of my internal deliberations, and in the absence of a response to my letter to the Chief Justice, I decided to go public. I resolved it was in the best interests of the country, the Court, and the integrity of Christian work in Washington to tell what I knew of the leak and my activities related to Operation Higher Court. I concluded it would be much better to work exclusively with one reputable journal that could tell the whole story accurately than to discount it by spreading it across multiple platforms. The result was the story published by the New York Times on November 19, 2022. I stand by all facts I gave to authors Jodi Kantor and Jo Becker, and how they reported them with one caveat. I only take issue with how the story characterizes the aggregate amount of Faith and Action's annual revenues between 2000-2018 as "more than \$30 million." The total amount, spread across that period, equates to an average of \$1.7 million per year, a relatively modest amount on which to operate a Washington-based organization on the scale of Faith and Action. Each of those years, Faith and Action operated a staff of five employees, a 2000-square-foot fully maintained century-old facility, several significant public events, fundraising and communications platforms for 50,000 active donors, and an average of three million paper and digital contacts, not to mention occasional staff travel, frequent guest entertainment costs, and fees related to state and federal regulatory compliance, accounting, legal, and auditing services. We were proud of how far we could stretch a donor dollar and were always chasing the next donation so we could meet the next month's expenses.

At my age and station in life, and after a nearly 13-year spiritual, intellectual, and relational journey of self-examination, self-doubt, and sometimes painful reflection and even regret, I have come to see myself as a penitent pilgrim. After a 35-year sojourn inside the world of highly politicized religion, a great deal of which dismissed the deepest needs, real circumstances, and

both invisible and visible human suffering, I have recalibrated my understanding of what constitutes true religion. One translation of a passage in what was one of the most highly contested additions to the New Testament canon, the Letter of James, admonishes, “Pure and genuine religion in the sight of God the Father means caring for orphans and widows in their distress and refusing to let the world corrupt you.” (James 1:27 ASV) James also warns, “For if anyone is a hearer of the word and not a doer, he is like a man who looks at his natural face in a mirror; for once he has looked at himself and gone away, he has immediately forgotten what kind of person he was.” (James 1:23 NASB) God-willing, this last third of my life will be a time for me to concentrate on practicing pure and genuine religion, and to eschew the sanctimonious certitude and callous judgement and exclusion of others that I did too much of for too long. I humbly apologize to those on this committee, and the members of the Court, and those among its employees, as well as others at the Supreme Court Historical Society, and in other places that I have failed in this regard. Most of all, I beg the pardon of Gayle and Don Wright, and the other stealth missionaries for whom I did not always model the Jesus who saved us all. Amen.