

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JANET JENKINS FOR HERSELF AND
AS NEXT FRIEND OF ISABELLA
MILLER-JENKINS, A/K/A ISABELLA
MILLER,

Plaintiffs,

v.

KENNETH L. MILLER, LISA ANN
MILLER F/K/A LISA MILLER-
JENKINS, TIMOTHY D. MILLER,
ANDREW YODER, INDIVIDUALLY
AND AS AN AGENT FOR CHRISTIAN
AID MINISTRIES, INC., CHRISTIAN
AID MINISTRIES, INC., RESPONSE
UNLIMITED, INC., PHILIP
ZODHIATES, VICTORIA HYDEN,
F/K/A VICTORIA ZODHIATES
INDIVIDUALLY AND AS AN AGENT
FOR BOTH RESPONSE UNLIMITED,
INC., AND LIBERTY UNIVERSITY
AND ITS RELATED MINISTRY
THOMAS ROAD BAPTIST CHURCH,
INC., LIBERTY UNIVERSITY, AND ITS
RELATED MINISTRY THOMAS ROAD
BAPTIST CHURCH, INC., LINDA M.
WALL, INDIVIDUALLY AND AS
AGENT FOR THOMAS ROAD BAPTIST
CHURCH, INC., AND DOUGLAS
WRIGHT,

Defendants.

Civil Action
Docket No. 2:12-cv-00184-wks

MOTION FOR SERVICE BY PUBLICATION OF DEFENDANT LINDA WALL

Plaintiffs Janet Jenkins, for herself and as next friend of Isabella Miller-Jenkins, a/k/a Isabella Miller, by and through their attorneys, Sarah Star, Esq., Attorney and Counselor at Law, P.C. and Langrock Sperry & Wool, LLP, hereby move for service by publication of defendant Linda M. Wall, pursuant to Fed. R. Civ. P. 4(e)(1) and Vermont R. Civ. P. 4(g).

Undersigned Counsel has consulted with attorneys for the already served Defendants and while they take no position on service of Defendant Wall because they do not represent her, the parties agree that their silence on this matter should in no way be construed as affecting their position that there is no basis for personal jurisdiction over their clients.

MEMORANDUM

Plaintiffs now seek an Order from the Court to allow service of Defendant Linda Wall by publication. *See* Fed. R. Civ. P. 4(e)(1); Vermont R. Civ. P. 4(g). Plaintiffs have been diligently attempting to serve Defendant Linda Wall, as also set forth in Plaintiffs' Motion for Extension of Time for Service on Linda Wall (Dkt. #91). In particular, Plaintiffs first attempted to have Defendant Wall served by Sheriff in the County where she was last known to reside in Virginia. That attempt lead to further information that she had relocated to another County in Virginia. Attempts by a private process server to locate her were also unsuccessful. Most recently, the Court ordered Defendant Wall to be served by United States Marshal. To date, the Marshals have not been able to locate her. Defendant Wall's last known mailing address was in Appomattox, Virginia, which is approximately 20 miles east of Lynchburg, Virginia. The Second Circuit has noted that publication notice is particularly appropriate where, as here, there are indications that a defendant has engaged in "deliberate avoidance and obstruction" to prevent service from being effected. *SEC v. Tome*, 833 F.2d 1086, 1092 (2d Cir. 1987).

Further, Plaintiffs have evidence that Defendant Wall has actual knowledge of this lawsuit, which supports a decision to serve Defendant Wall by publication. *See Urbont v. Sony Music Entertainment*, 2012 WL 1592519, at * (S.D.N.Y. May 4, 2012) ("Our decision to authorize service by publication notice also draws support from the fact that [defendant]

clearly has actual notice of the instant suit[.]”); *see also Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950) (noting that any due process arising from constructive notice through publication concerns were mitigated by the fact that the defendants had actual notice of the suit). Specifically, Defendant Wall, along with Dean of Liberty University Law School Mathew Staver, gave a press interview to lifesitenews.com denouncing the lawsuit and taking issue with specific allegations made in the complaint. (Plaintiffs’ Exhibit A, lifesitenews.com article). She apparently also made statements on Facebook about the lawsuit. (Plaintiffs’ Exhibit B, rightwingwatch.org article, Page 2).

Fed. R. Civ. P. 4(e) provides for service of “an individual within a judicial district of the United States,” in contrast to individuals outside the United States or corporations. Under Fed. R. Civ. P. 4(e)(1), an individual like Defendant Wall “may be served in a judicial district of the United States by . . . following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made.” Here, the “state where the district court is located” is Vermont, and “where service is made” is Virginia. Under Rule 4(e)(1), Plaintiffs can choose to follow the state law for service of *either* Vermont or Virginia, and the Rule does not give preference to either. Because of the Court’s greater familiarity with Vermont law, Plaintiffs request leave to serve Defendant Wall under V.R.C.P. 4(g), Vermont’s rule for service by publication.

V.R.C.P. 4(g) sets forth the procedural requirements for service by publication. Under V.R.C.P. 4(g)(1), the Court, “upon a showing by . . . affidavit duly filed that service cannot with due diligence be made by another prescribed method, *shall* order service by publication when the person to be served is one described in subdivision (e) of this rule” (emphasis added). Through invoking Rule 4(e), Rule 4(g)(1) specifies that the person to be served by

publication must be one over whom the Court would have personal jurisdiction.¹ The Court here clearly has personal jurisdiction over Defendant Wall, as demonstrated by the facts set forth in the Amended Complaint and as addressed in Plaintiffs' responses to other Defendants' motions to dismiss. In particular, the Court has specific jurisdiction over Defendant Wall based on Defendant Wall's intentional conduct directed towards Vermont. *See Calder v. Jones*, 465 U.S. 783, 788, 104 S.Ct. 1482 (1984). As alleged, Defendant Wall was directly involved in assisting Lisa Miller's kidnapping of Isabella Miller-Jenkins, and she thereby intentionally acted to interfere with Plaintiff Jenkins' parental rights and to interfere with Vermont court orders. *See* Amended Complaint, ¶¶ 26, 27, 51, 52, 54. Thus, Defendant Wall satisfies the requirement of V.R.C.P. 4(g)(1) that "the person to be served is one described in subdivision (e) of this rule."

Under V.R.C.P. 4(g)(2), publication must be made "once a week and at least seven days apart for 2 or more successive weeks in a designated newspaper or newspapers of general circulation reasonably calculated to give notice to the defendant." Plaintiffs propose publication of the notice in *The News & Advance*, a newspaper based in Lynchburg, Virginia. As of September 2012, it had a circulation of approximately 25,000 on weekdays and 30,000 on Sundays, according to research conducted by the Alliance for Audited Media. *See* <http://abcas3.auditedmedia.com/ecirc/newstitlesearchus.asp> (last visited April 10, 2013). Because the last known address for Defendant Wall is in Appomattox, Virginia, which is 30 minutes outside Lynchburg, and Defendant Wall has significant ties to that area, this

¹ In relevant part, Vermont Rule of Civil Procedure 4(e) (Personal Service Outside the State): "A person whose contact or activity in the state or such contact or activity imputable to that person is sufficient to support a personal judgment against that person may be served with the summons and complaint outside the state, in the same manner as if such service were made with the state, or in any manner in which service may be effected under the laws of the state in which the person is served."

newspaper is one of “general circulation” that is “reasonably calculated to give notice” to Defendant Wall.

In addition, Rule 4(g)(2) directs that the order as published shall also be mailed to the Defendant, “if an address is known.” Here, Plaintiffs have been unable to confirm Defendant Wall’s current address. Plaintiffs therefore request that the Court permit Plaintiffs to send a copy of the order to Defendant Wall’s last known mailing address 1921 Church St #1973B, Appomattox, VA 24522, and to Defendant Wall’s last known email address, wall4america@netzero.com. Although Vermont rules and caselaw do not authorize service by email, other states have permitted service via email. *See, e.g., Snyder v. Alternate Energy Inc.*, 857 N.Y.S.2d 442 (N.Y.C. Civ. Ct. 2008) (authorizing service by email under New York Civil Practice Law and Rules § 308(5), which permits alternative means of service as directed by the court if the listed means are impracticable). Indeed, the *Snyder* court noted that service by email under certain circumstances is actually *more* likely to provide actual notice to a defendant than service by publication. *Id.* at 448. Here, insofar as mailing a copy of the order to Defendant Wall in compliance with Rule 4(g)(2) is intended to increase the likelihood of actual notice, sending an electronic copy to Defendant Wall’s known email address would serve the same function.

Pursuant to Rule 4(g)(3), service by publication is complete on the twenty-first day after the first publication. At that time, Plaintiffs “shall file with the court an affidavit that publication has been made.” *Id.*

Accordingly, Plaintiffs request that the Court order service of Defendant Wall by publication, as set forth in the attached Proposed Order.

CONCLUSION

Plaintiffs therefore respectfully request that that Court order service of Defendant Linda Wall by publication.

DATED at Middlebury, Vermont this 15th day of April, 2013.

SARAH STAR, ESQ.

s/Sarah Star _____

Sarah R. Star, Esq.
PO Box 106
Middlebury, VT 05753
(p)802-385-1023
(f)802-419-3600

Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JANET JENKINS, for herself and as next friend of
ISABELLA MILLER-JENKINS a/k/a ISABELLA
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KENNETH L. MILLER, LISA ANN MILLER f/k/a
LISA MILLER-JENKINS, TIMOTHY D. MILLER,
ANDREW YODER, individually and as an agent for
CHRISTIAN AID MINISTRIES, INC., CHRISTIAN
AID MINISTRIES, INC., RESPONSE UNLIMITED,
INC., PHILIP ZODHIATES, individually and as an
agent for RESPONSE UNLIMITED, INC., VICTORIA
HYDEN, f/k/a VICTORIA ZODHIATES, individually
and as an agent for both RESPONSE UNLIMITED,
INC., and LIBERTY UNIVERSITY, INC. and its
related ministry THOMAS ROAD BAPTIST
CHURCH, INC., LINDA M. WALL, individually and
as agent for THOMAS ROAD BAPTIST CHURCH,
INC., and DOUGLAS WRIGHT,

Defendants.

Civil Action
Docket No. 2:12-cv-00184 WKS

CERTIFICATE OF SERVICE

I, Sarah Star, Esq., attorney for Plaintiffs, Janet Jenkins, for herself and as next friend of Isabella Miller-Jenkins, a/k/a Isabella Miller, hereby certify that on March 29, 2013, I electronically filed with the Clerk of the Court Plaintiff's Motion for Enlargement of Time to Serve Linda Wall using the CM/ECF electronic filing system. The CM/ECF system will provide service of such filing via Notice of Electronic Filing (NEF) to the following NEF parties:

Ritchie E. Berger, Esq.
Brooks G. McArthur, Esq.

Peggy J. Schmitz, Esq.
Steven J. Shrock, Esq.

Joshua M. Autry, Esq.
Robert G. Cain, Esq.
Robert G. Hemley, Esq.
Thomas E. McCormick, Esq.

Norman C. Williams, Esq.
Sophie E. Zdatny, Esq.
Lisa Shelkrot, Esq.
Fritz Langrock, Esq.

DATED AT Middlebury, Vermont this 15th Day of April, 2013.

Sarah Star

Sarah R. Star, Esq.
PO Box 106
Middlebury, VT 05753
802-385-1023
802-419-3600

Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE
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THOMAS ROAD BAPTIST CHURCH,
INC., LIBERTY UNIVERSITY, AND ITS
RELATED MINISTRY THOMAS ROAD
BAPTIST CHURCH, INC., LINDA M.
WALL, INDIVIDUALLY AND AS
AGENT FOR THOMAS ROAD BAPTIST
CHURCH, INC., AND DOUGLAS
WRIGHT,

Defendants.

Civil Action

Docket No. 2:12-cv-00184-wks

AFFIDAVIT OF SARAH STAR IN SUPPORT OF MOTION FOR ALTERNATE
SERVICE OF DEFENDANT LINDA WALL

I, Sarah R. Star, Esq., being duly sworn, do hereby depose and say:

1. Plaintiffs' Exhibit A is a true and correct copy a news article that first appeared on 8/28/12 at lifesitenews.com, which I printed on March 28, 2013.
2. Plaintiffs' Exhibit B is a true and correct copy of a posting at rightwingwatch.org that first appeared on 10/29/12, which I printed on March 28, 2013.
3. I have knowledge of Linda Wall's email address from FBI search warrant applications to search her email that were unsealed for discovery in the case of USA v. Timothy David Miller.
4. I have knowledge of Linda Wall's last known address from the Sheriff in Appomattox County, Virginia who first attempted service.

DATED at Middlebury, Vermont this 15 day of April, 2013.

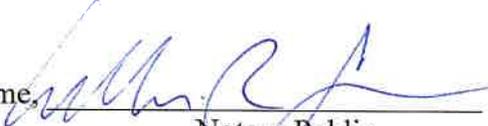


Sarah R. Star, Esq.
Attorney for Plaintiffs

STATE OF VERMONT
ADDISON COUNTY, SS.

At Middlebury, Vermont this 15th day of April, 2013, personally appeared Sarah R. Star and she acknowledged that the information contained in the foregoing Affidavit is true and correct to the best of her knowledge and belief.

Before me,



Notary Public
Commission Expires: 2/10/15

Exhibit A



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Jorge Mario Bergoglio
FRANCIS
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Homosexual's 'defamatory' lawsuit seeks to silence pro-family groups: Liberty University attorney

BY MATTHEW CULLINAN HOFFMAN

Tue Aug 28, 2012 15:32 EST Comments ()

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Tags: Homosexuality, Lisa Miller

August 28, 2012 (LifeSiteNews.com) - A lawsuit filed by a homosexual against Liberty University School of Law and various other organizations and individuals for "conspiracy" and "racketeering" is based on lies and is defamatory, according to law school dean Mathew Staver, who says that he will "pursue every recourse" against the plaintiffs for having filed it.

Staver also says that the suit is an attempt to undermine the freedom of speech of pro-family groups in their opposition to homosexual behavior and homosexual parenting.

"This is outrageously frivolous," Staver told LifeSiteNews.com. "It's a press release filed in federal court. It is sanctionable, and we will pursue every recourse possible because this suit is defamatory. It's filled with lies, it's frivolous, and the attorney who filed it ought to be sanctioned..."



Lisa Miller and her daughter Isabella

The suit, filed on behalf of Vermont lesbian Janet Jenkins, claims that Liberty University School of Law, Thomas Road Baptist Church, Christian Aid Ministries, and other organizations and individuals are involved in various schemes of "conspiracy" and "racketeering" for allegedly offering support for ex-lesbian Lisa Miller's and her daughter's escape from the United States in 2009.

Miller fled the United States after a Vermont court insisted that Jenkins, who was Miller's ex-partner in a Vermont civil union, be given visits with Miller's daughter, Isabella. Although Jenkins is unrelated biologically to Isabella, and never adopted her, the court awarded "parent" status to Jenkins, and continued to order visits despite evidence submitted of trauma suffered by Isabella.

After Miller's disappearance, Vermont judge Richard Cohen ordered that the custody of Isabella be transferred permanently to Jenkins, an order that is unenforceable while Miller remains in hiding outside of the United States.

"Racketeering" churches and law schools?

The suit seeks to invoke the Racketeer Influenced and Corrupt Organizations Act (RICO) against Liberty University's law school because a single individual who worked there part-time allegedly sent an email to co-workers soliciting donations to be sent to Miller in Nicaragua, an event that Staver says never happened.

The suit also cites the fact that the Thomas Road Baptist Church signed the Manhattan Declaration, which endorses civil disobedience in defense of Christian values, and asserts that Liberty University

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teaches the same thing in its law school. It also cites an interview given by Liberty law school professor Rena Lindavaldsen with LifeSiteNews.com, in which she states that people could write to their representatives about the case, implying that participation in politics is tantamount to a criminal "conspiracy."

The suit's abuse of the RICO statute, according to Staver, is an attempt to silence pro-family groups, in a manner similar to that of pro-abortion groups in lawsuits against the pro-life movement in the 1990s.

"It's exactly the same thing that happened in the 90s with pro-lifers," Staver said. "Pro-lifers were targeted by RICO suits, people were brought into RICO complaints and intimidated into silence, because they agreed to pray to end abortion in America. They agreed to pray for a picket or a prayer rally outside of an abortion clinic, even though they hadn't even been to the abortion clinic. People in Texas who had never been to Florida were all of a sudden named on a RICO complaint."

Ex-lesbian and pro-family activist Linda Wall, who was a close friend of Lisa Miller in the years before her disappearance, says that various claims made regarding her in the complaint are also false.

"I have never been an agent of Thomas Road Baptist Church, and not even a member of Thomas Road Baptist Church," said Wall. "So that's a big error there, connecting me with that church."

The suit also claims that Wall called law enforcement and told them not to investigate the case, and that she posted messages on Facebook encouraging people not to reveal what they know about Miller, which Wall also denies.

Wall said that she had never counseled Lisa Miller to leave the country, principally because she didn't want Miller to blame her later if it didn't work out. She also says she was never told by Miller that she had decided to leave, an event that surprised Wall, although she subsequently stated her personal agreement with Miller's actions in later interviews.

A pattern of legal harassment?

The Jenkins lawsuit comes on the heels of a number of recent cases in which homosexuals have been accused of using the legal system and even law enforcement to harass pro-family activists.

The president of the Massachusetts pro-family group Mass Resistance was recently slapped with a restraining order in the state of Maine after homosexual activist and convicted sex abuser Adam Flanders complained that Camenker was "harassing" and "stalking" him, even though Camenker has never had any personal contact with Flanders and resides in another state.

The chief motive in Flanders' complaint was that Camenker had published a public letter written by Flanders years earlier detailing the sexual exploitation of minors in a local homosexual "youth group" run by adults, and Flanders now wished it to be removed from the Mass Resistance site, a request that Camenker refused. The Maine court granted Flanders' request for the restraining order after refusing to allow Camenker to testify by phone, something that Camenker says he was told he could do.

Following the restraining order, Flanders went on to file a multimillion dollar lawsuit against Camenker and Mass Resistance, claiming that his status as a protected minority in the state of Maine has been violated by Camenker because Mass Resistance had not removed his letter from the site. Flanders also temporarily secured the removal of all of conservative news outlet Road Kill Radio's content from Vimeo's video service after threatening Vimeo with a lawsuit because of Road Kill's discussion of his case with Camenker. He has sought to silence other news sources as well, including World Net Daily, Americans for Truth About Homosexuality, and LifeSiteNews.com.

In other recent cases, homosexual activists have been accused of placing fraudulent phone calls to police, claiming that a murder or other violent event has occurred at the house of a pro-family activist, and provoking the intervention of a SWAT team at the activist's residence. Although the origin of such attacks remains unproven, they have become known as "SWATing" in the pro-family movement.

Related article:

[Exclusive Interview with Lisa Miller, Ex-Lesbian Fighting for Custody of Own Child against "Civil Union" Partner](#)

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[Ex-Lesbian Lisa Miller Loses Appeal to Prevent Transfer of Daughter to Former Lesbian Partner](#)

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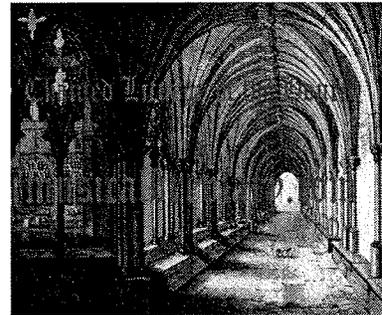
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Lisa Miller Held in Contempt of Court for Refusing Child Visitation to Former Lesbian Lover



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Allan · 7 months ago

The LGBT movement continually proves it is a menace to society.

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Bill Whatcott · 7 months ago

This is what the inspired apostle St. Paul said about unrepentant homosexuals 2000 years ago. Nothing has changed.....

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Petra Spahr · 7 months ago

Mr. Staver should find himself a good defense lawyer; actually two lawyers: a civil one and a criminal one. The law is against him - parties to litigation in the US have absolute immunity from defamation liability for anything relevant that is said or written in prosecuting or defending a lawsuit. The facts are against him as well - the trial that resulted in a criminal, beyond a reasonable doubt, conviction by 12 unanimous jurors was of someone who was coordinating illegal activity with people at Liberty University, including Mr. Staver.

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matthewchoffman → Petra Spahr · 7 months ago

Thanks for giving our readers a perfect example of homosexualist intimidation tactics. Staver is saying that the meager "evidence" linking people involved in Miller's escape from the United States is false, and making false statements in a suit may indeed constitute defamation. The suit doesn't present a shred of evidence for the majority of its claims.

Furthermore, some of the "evidence" it offers doesn't constitute any kind of wrongdoing at all. It isn't "conspiracy" to sign the Manhattan Declaration or to say that people should contact their congressman.

These kinds of tactics are typical of homosexual activists who think they can use the current climate of media-generated sympathy for their cause to silence the opposition.

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Exhibit B



A project of People For the American Way dedicated to monitoring and exposing the activities of the right-wing movement. [LEARN MORE >](#)

Hurricane Sandy is God's Vengeance for Lisa Miller

SUBMITTED BY *Kyle Mantyla* on Monday, 10/29/2012 11:59 am

Back at the very beginning of the [Lisa Miller saga](#) (<http://www.rightwingwatch.org/category/people/lisa-miller>), a Facebook page called "Only One Mommy: The Story of Lisa and Isabella Miller" that had been created by Rena Lindevaldsen, [Miller's attorney](#) (<http://www.rightwingwatch.org/content/liberty-counsel-lawyer-releases-book-about-lisa-miller-saga>) and a professor at Liberty University Law School suddenly [went dark and an announcement](#) (<http://www.rightwingwatch.org/content/liberty-counsel-takes-wash-its-hands-lisa-miller>) was made it would be "replaced by a new group (still to be named) that will be created by Linda Wall."

Wall, an "ex-gay" [activist](#) (<http://www.towleroad.com/2011/10/wall.html>), and close friend of Miller's who was among those named in a [RICO lawsuit](#) (<http://www.rightwingwatch.org/content/liberty-law-school-and-others-hit-rico-lawsuit-over-lisa-miller-kinship-case>), filed by Miller's ex-partner Janet Jenkins, created a Facebook group called "[Lisa and Isabella](#)" (<http://www.facebook.com/groups/331151156690>), where she occasionally posted updates on the Miller case along with prayers for all those involved.

On Saturday, with Hurricane Sandy closing in on the East Coast, Wall set off a bit of controversy when she [posted](#) (<http://www.facebook.com/groups/331151156690/permalink/101510765481268910>) this short message on the group's page:

[Linda Marie Wall posted in Lisa and Isabella](#)



Linda Marie Wall
Let's See How Vermont Does During The Hurricane

11:03am Oct 29

That statement, understandably, did not sit well with some of the Vermont-based members of the group:

Now what I am seeing is people openly admitting to imprecatory prayer that God will smite my neighbors and me because of where we live. Not prayers that Vermont's politicians and judges will see the error of their ways and come around. Not love. Hatred. And the worst part is that it's not just hatred for enemies, but for innocent people. We must pay the price too solely because of where we live.

And then when I object to prayers FOR MY DEVASTATION (yes that's personal!), I'm met with self-righteous self-justification and excuses. I'm told that I need to do things that are not practical or else I deserve to be harmed.

But Wall was unapologetic, [shooting back](#) (<http://www.facebook.com/groups/331151156690/permalink/101510781924816910>) that "God's judgment is upon this country" and Hurricane Sandy was [an example](#) (<http://www.facebook.com/groups/331151156690/permalink/101510792472766910>), of God's vengeance:

[Linda Marie Wall posted in Lisa and Isabella](#)



Linda Marie Wall
I didn't expect most of you to agree with my statement. But I tell you this the tragedy here is that a little six year old Christian girl and her born again Mother had to flee America in order to obey God's Word. And now a Minister of the gospel of Jesus Christ is facing imprisonment for helping protect a little child from being removed from her biological Christian Mother and turned over to a stranger. Christians who loved and nurtured Lisa and Isabella through the six plus years are also being sued for obeying God's Word. So look in the mirror and decide where your commitment is. Vengeance is God's and He does repay.

8:07am Oct 29

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Not surprisingly, all the offending posts have since been removed.

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