

AN EDUCATIONAL UPDATE FROM
THE SOUTHEAST LAW INSTITUTE™, INC.

To: SLI Supporters
Date: October 2014
From: A. Eric Johnston
Re: The American and Alabama Laws for Alabama Courts Act

November 4, 2014 will be the general election. There will be many candidates on the ballot. Also, there will be several important statewide Alabama constitutional amendments. The first one will be the American and Alabama Laws for Alabama Courts Act (“AALAC”). It was passed by an overwhelming majority in the regular session of the 2013 Alabama Legislature. There was virtually no opposition to it and it was highly favored. As a constitutional amendment, it must go to the voters for approval. It is a very important step in the protection of Alabama’s long held public policy.

When Alabama became a state in 1819, she began developing laws, regulations and court opinions all of which form the state’s public policy. We began with the common law foundations back to the Magna Carta in 1215. We build on that continuously and it is important that we preserve the very strong foundations that we have.

We are living in a time of rapid change. The catalyst for much of this is the ease with which information is now found and shared. The internet and cell phones shrink the world in such a way that borders and obstacles that once existed between peoples seemingly no longer exist. However, we must realize that with this ecumenical evolution, we must not forget principles that bind our corporate conscience together.

AALAC is an important step in that direction. It will govern how Alabama judges and administrative bodies will deal with outside influences on our laws. As a constitutional law, it will carry more authority and will govern statutes, administrative regulations and court rules of procedure. Here is a summary of the AALAC requirements:

- A court, arbitrator or other agency shall not apply a foreign law that would violate a constitutional right.
- A contract for choice of foreign law will be modified or amended to preserve a constitutional right.
- A contract for choice of venue or forum for dispute resolution outside the United States that would violate a constitutional right would be construed to preserve the right and deny removal.
- A contractual provision incapable of modification to preserve a constitutional right shall be void.
- A court shall not be required by contract to apply a foreign law that violates a constitutional right.
- As an exception, an Alabama business entity may contract or subject itself to foreign law.
- The laws of another state that violate Alabama’s public policy shall not be given full faith and credit.

The actual wording of **Statewide Amendment 1** that will be on the ballot is as follows:

“Proposing an amendment to the Constitution of Alabama of 1901, to prohibit Alabama courts from giving full faith and credit to public acts, records, or judicial proceedings of another state that violate constitutional policy of the State of Alabama and to prohibit the application of foreign law in violation of rights guaranteed natural citizens by the United States and Alabama Constitutions, and the statutes, laws, and public policy thereof, but without application to business entities. (Proposed by Act 2013-269)”

Yes ()
No ()

In recent years we have increasingly seen courts looking to the laws of other countries for making decisions. As examples, the U.S. Supreme Court in *Atkins v. Virginia* (2002) relied on foreign authorities to strike down capital punishment laws related to mentally retarded persons and in *Texas v. Lawrence* (2003) looked to the European Court of Human Rights and the laws of other nations to strike down a Texas criminal statute for same-sex sodomy. The Federalist Society opined that these cases “allow a camel’s nose under the

tent of American constitutional jurisprudence.” In 2012, U.S. Supreme Court Justice Ruth Bader Ginsburg suggested that Egypt might consider the South African Constitution as a basis for its law, rather than the U.S. Constitution. America’s founding fathers came to these shores to guarantee religious freedom and other liberties. There is no reason to be looking backward to “Old Europe” and other places for guidance.

Some have suggested the bill is unconstitutional because it singles out that part of Islam known as “Sharia law,” which is Muslim belief and practice related to law and politics. Sharia law is nowhere mentioned in the Act. It would apply, however, to those situations where individual’s constitutional rights would be infringed due to the application of such a law. There have already been cases, though none in Alabama to this time, where Muslims have asked courts to apply Sharia law in lieu of state law. This usually results in denial to women of equal protection rights.

Another objection we received is that a state cannot refuse to give full faith and credit to the laws of sister states as required by Article IV, Section One of the U.S. Constitution. That is a misunderstanding of constitutional law.¹ The U.S. Supreme Court and Alabama Supreme Court have clearly articulated standards by which conflict in public policies of other states shall not be applied. We do not wish to give full faith and credit to laws of other states that clearly conflict with our public policy. Examples of this are same sex issues or legalization of marijuana. It is unlikely AALAC will stop the U.S. Supreme Court from striking down our traditional marriage statute, thereby permitting same sex marriage in Alabama. However, there will be a great deal of fallout from any such decision affecting child custody, adoption, inheritance, and other such laws. We have already had one California same sex custody issue attempted to be enforced in Alabama courts. There are great uncertainties in these types of actions, but AALAC will provide some measure of protection of our public policy.

The 10th Amendment to the United States Constitution protects our state’s rights. If our sister states and other countries continue to deviate into aberrant social experiments, we do not want our judges put in the position of having to entertain arguments and decide difficult cases based on somebody else’s laws. By amending the Alabama Constitution with these guidelines, Alabama judges will be able to reference this controlling authority and it will simplify reviews by our appellate courts. Whenever it is possible to make a strong statement for Alabama’s public policy, it is a good idea to do so. AALAC is a good idea.

Please share this Educational Update with friends and others. As a reminder, churches and nonprofit organizations may actively support an issue referendum such as this. It is important that we preserve our heritage for generations to come. We urge you to vote “YES” on “Amendment 1.”

In addition to several local amendments, there are four other statewide amendments on the ballot:

Statewide Amendment 2: Proposing an amendment to the Constitution of Alabama of 1901, as amended, relating to the Capital Improvement Trust Fund, to increase the amount of the General Obligation Bonds authorized herein; to provide for additional payments from the Alabama Trust Fund to fund any bond issued; to provide for competitive bidding of the bonds; and to provide for the distribution of the proceeds for plans, construction, and maintenance of Alabama National Guard armories. (Proposed by Act 2013-266)

Statewide Amendment 3: Proposing an amendment to the Constitution of Alabama of 1901, to provide that every citizen has a fundamental right to bear arms and that any restriction on this right would be subject to strict scrutiny; and to provide that no international treaty or law shall prohibit, limit, or otherwise interfere with a citizen’s fundamental right to bear arms. (Proposed by Act 2013-267)

Statewide Amendment 4: Proposing an amendment to the Constitution of Alabama of 1901, to prohibit a general law, whose purpose or effect is to require a new or increased expenditure of at least \$50,000 of local funds annually, from becoming effective with regard to a city or county board of education without enactment by a 2/3 vote. (Proposed by Act 2014-185)

Statewide Amendment 5: Proposing an amendment to the Constitution of Alabama of 1901, to amend Amendment 597, now appearing as Section 36.02 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, to clarify that the people have the right to hunt, fish, and harvest wildlife subject to reasonable regulations that promote conservation and management of fish and wildlife and preserve the future of hunting and fishing. (Proposed by Act 2014-286)

¹ We addressed this concern in our March 2005 Educational Update. See 3/1/2005 newsletter with attached Educational Update “The Legal Issues of Same-Sex Marriage and Civil Union.” www.Southeastlawinstitute.org