

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

To: Interested Persons
Date: January 2020
From: A. Eric Johnston
Re: Continuing the War on Religious Freedom

As we look forward to the new year, we expect to face the continuing challenges to religious freedom, which now are focusing on a general public disregard for religious freedom and truth, as opposed to only threats against the public by the bureaucratic state. In our December 2017 Educational Update entitled “The Changing War on Religious Freedom,” we spoke at length about the changes in religious value conflict. The article reviewed the beginnings of religious freedom litigation and concluded saying:

We will not see an immediate decrease in religious freedom litigation. That will continue. We will see, however, in the media, in politics, and in other places in the public square marginalizing of religious values while emphasizing the need for the sanitized secular public square. This will pretty much allow anything, except the right of religious freedom to hold fast to your values and disagree with the changing culture.

A Wall Street Journal article on October 18, 2019, entitled “Religiosity, Church Attendance Falls Sharply” reported a sharp decline of religious influence with an increase in secular attitudes. Pew Research polls showed 77% of the U.S. adult population claimed to be Christians in 2009, but that had decreased to 65% in a 2018-19 study. The article said, “The data reflects a continuing social reordering that has seen the population shift away from Christianity and toward religious disaffiliation.” Forty percent of millennials state they are unaffiliated.

After the passage of the Alabama Human Life Protection Act last year, there was much media interest. One German outlet used the passage of our law to address the perceived phenomenon of white Christians supporting President Donald Trump. The reporter traveled in the United States, including Alabama, interviewing many people. Based on other Pew Research Center data she stated that Evangelicals would be losing their political power “. . . because the white U.S. population is sinking compared to other ethnic groups. Second, fewer and fewer Americans are religious.” She quoted a University of Maryland political scientist that their influence would be gone in one or two more election cycles. As a German, she did not have the experience or insight to understand American religious and political phenomena. She was misled believing some extreme preaching, while misinterpreting sound Southern Baptist preaching. It is important to note, however, that her intuition on what is happening in America was not far off the mark.

What is closer to reality is the marginalizing of Christianity, significantly due to disaffiliation. Christianity stands for values that support our Declaration of Independence and Bill of Rights, providing us with the freedoms that Americans enjoy, regardless of affiliation. Christianity does not threaten the fabric of America, but it is contrary to the beliefs and efforts of those who want to remake America. For example, Democrat presidential candidate Beto O’Rourke said he would strip churches of their tax-exempt status if they do not support same-sex marriage.

This is not the first time in history that such a position has been taken. When Paul and others were preaching in Thessalonica, it bothered the Jewish leaders who openly opposed them. That would seem like a First Amendment right for all of them, had it been in effect in Greece at that time. The Jewish leaders went to the city authorities complaining of what Paul and the others were saying. Disregarding their opportunities to speak, the authorities required the preachers to post money as security which they would forfeit if they preached further. See Acts 17:1-9.

Similarly, in America, opponents are condemning those who stand for Judeo-Christian values. For example, when we worked on a law in 2017 to protect Christian child-placing agencies in Alabama from having to make same-sex marriage child adoption placements, we were ridiculed in the legislative process as being hateful. No, we were merely trying to respect religious rights of those who firmly believe in the sanctity of marriage.

As we approach some legislative issues this year, we fully expect there to be similar comments. For example, we expect to be condemned for advocating laws making it a crime to kill a baby who may be born alive as a result of an abortion, performing sex-change operations on children, and other legislation.

This does not mean that protection of religious liberty through litigation is no more. In fact, there are efforts to revisit the 1990 case of *Employment Division v. Smith* which weakened religious freedom protection by allowing the state to have neutral and generally applicable laws incidentally burdening religion. Under laws like the Alabama Religious Freedom Amendment later authored by SLI, we have reestablished the strict scrutiny test required for any government action that burdens religion. On a national basis, we need that case to be revisited to restore complete constitutional protection to religious freedom. Lawyers are currently asking that the case of *Ricks v. Idaho Contractors Board* be reviewed by SCOTUS for that purpose.

Religious freedom is the hallmark of SLI. We will continue to work in everyway and in every forum to protect religious freedom. The changing of times, the coming of a new generation, or the changing attitudes of citizens should not diminish the protections that our Constitution provides for us.

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