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

To: **Interested Persons**
Date: **March 2023**
From: **A. Eric Johnston**
RE: **VCAP – Subpoenas to Eagle Forum and Southeast Law Institute**

It came to light that the Children's Hospital in Birmingham was doing transgender counseling and procedures on minor children. There was evidence of hormonal and related treatment, with questions about whether actual surgeries were done or referred. There had been and continues to be a significance increase in this type of treatment nationwide. There are various illegitimate reasons, but what appears to be certain is that it is part of a sexual agenda being promoted by the LGBTG+ interests, with the point of the spear being the U.S. Department of Justice for the Biden Administration ("DOJ").

There was significance community concern for these unprecedented and highly debatable medical procedures. The Eagle Forum of Alabama ("EFA") began an investigation of this phenomenon and consulted with the Southeast Law Institute ("SLI"), and others, to address this concern. We believed the U.S. and Alabama Constitutions could protect the interests of minors, who are not able to give legal permission for such procedure, and their parents from this progressive and aggressive medicine. Legislation was introduced in 2020 and 2021 to prohibit these procedures.

The intervention of Covid slowed the process, but in 2022, legislative bills for the Vulnerable Child Compassion and Protection Act ("VCAP") sponsored by Senator Shay Shelnutt and Representative Wes Allen were passed by the Alabama Legislature. That law prohibits these sex change procedures on minors. Almost immediately, private plaintiffs, later joined by the DOJ, filed a lawsuit to enjoin the law. A preliminary injunction was issued by the Federal Judge Liles Burke on May 13, 2022. The judge enjoined surgical procedures, but left permission for other medical procedures to continue. That lawsuit is still in process defended by Attorney General Steve Marshall and his office.

At the preliminary injunction hearing, the judge casually asked who drafted the law. The attorney general's office answered that the legislature did. An obvious answer. However, this operated as a pretext for the DOJ to file subpoenas to EFA and SLI. The subpoenas were extremely broad requesting the entire files that EFA and SLI possessed that were generated as a part of the legislative effort. EFA is a Section 501 (c) (4) advocacy organization and SLI is a Section 501 (c) (3) legal organization. For about forty years, those organizations have provided legislative and legal assistance similar to what they did for VCAP. Never during that time were they requested to produce their files. This was a significant encroachment on their constitutional rights.

EFA and SLI retained Attorney John Mark Graham to represent them to request that the subpoenas be "quashed." This means the DOJ would be prohibited from requesting the information. Our grounds for opposing the subpoenas included primarily that the information was not relevant as required by law. As a legal standard, what EFA and SLI thought, preferred, or believed has nothing to do with the constitutionality of the law itself. There was testimony during the three years' legislative processes from both sides on this issue. Many people have different ideas. The intent of the law must be determined by the text of the law and not what any other person may have thought, even legislators.

We also argued that it violated our First Amendment rights to petition the government, freedom of speech and assembly. Additionally, because of legal representation, we raised issues of attorney client privilege and work product (meaning the private work that attorneys do for their clients).

This caused a public outcry. As a result, in three separate filings, fifty-eight public interest organizations filed amicus briefs supporting our positions. Initially, the DOJ opposed our motion to quash, but after many hours of research and legal briefing filed by all parties, the DOJ sent an email shortly before the hearing on our motion saying they would reduce their request only to information related to medical studies that were referenced in the legislative findings of the VCAP law.

On October 14, 2022, there was a hearing on the motion to quash. Federal Judge Liles Burke began the hearing with a very direct examination of the Assistant United States Attorney ("AUSA") who filed the subpoenas. The judge read at length from the subpoenas and commented on the extraordinary breath of the requests. He inquired of the AUSA whether he did these subpoenas on his own or was charged to do them by the DOJ. It was obvious to all involved that the DOJ was behind this unprecedented violation of constitutional rights.

After reading the entire subpoena, Judge Burke asked the AUSA questions and made comments, some of which are as follows:

> "… when you filed this subpoena, and you signed it, I assume you did so as an officer of the court and in good faith…" Then "I got an email from you saying we don't need any of it…. So enlighten me why we're here today."
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> " So my question is: What changed? What changed between this subpoena that you filed in good faith and today, when it appears you are asking for 1 percent of what you were originally asking?"
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> "And my initial reaction was this [subpoena] is vastly overbroad and unduly burdensome."
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> "You know, administrations change every four years, or at least, you know, every eight. So, you know, is the new standard going to be that these kinds of subpoenas… go out in legislation to any advocacy organization, and they want emails to their members, they want social media posts, they want things that the group just considered in their advocacy. And that's all the things you are asking for. Is that where you think the Department of Justice thinks we need to go in this country?"
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> "I imagine you are here today because the [U.S.] Attorney General [Merrick Garland] made a decision for the U.S. Attorney to get involved; Am I correct?... [T]hey were issuing press releases from the Attorney General's office about coming into this case, so I am guessing this was not your decision." To which the AUSA responded "it was not my decision."
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> "… [H]ave we asked for sanctions in the pleadings?... I don't think we can proceed with that issue today… I think we can take that up at a later hearing if you [EFA and SLI] decide to file something."

Judge Burke obviously saw through the charade of the DOJ. He was very much annoyed by it as you can see from the above comments. During the legislative process, in 2022, agencies of the federal government attempted to insert themselves into the Alabama Legislature process, threatening legal action and depriving Alabama of Federal Health and Human Services funds if the rights of transgender minors were not protected. It is the policy of the Biden administration to advocate for sex change operations on minor children. Those who oppose the Biden administration's position are threatened with harassment and legal proceedings such as the subpoenas that were issued to EFA and SLI.

As a matter of fact, neither the EFA nor SLI could identify the studies referenced in the legislative findings. There was no citation to where they were found. What legislators considered was uncertain. In the end, Judge Burke quashed the subpoenas against EFA and SLI, but might allow the DOJ to issue a new subpoena to only ask for citations of medical studies that EFA might have that no one else knows about that could have been considered by the legislature. Now that sounds like a very extraordinary order. However, we believe the judge was saying if there was anything that was unknown to other parties that EFA knew about, it should tell everyone in all fairness. The rules of discovery in lawsuits permit parties to request things that are discoverable or might lead to discoverable information. It is possible there may be medical studies that are relevant and should be produced. If the DOJ had simply requested that in the beginning, the motions to quash would not have been necessary and there would have been avoided this whole horrible, unprecedented effort of the DOJ to try to intimidate those who oppose the Biden Administration. Its goal was not relevant information. Its goal was to intimidate and punish.

Tellingly, Judge Burke questioned several times during the hearing that if administrations change, does the Biden Administration want to set a precedent of attacking those involved in the political process? What is against us today may be against the other side in the future. His insight is very wise and we hope the Biden Administration realizes the error of its ways. We doubt it.

After the orders to quash, EFA and SLI filed a motion for sanctions. It requested payment for all attorney's fees and expenses incurred by EFA and SLI in defending themselves. A hearing was held on the motions. We are currently awaiting the court's decision. In the end, we hope this whole exercise will deter aggressive and unlawful behaviors by any federal agency and serve as an example to others not to do so.