

SOUTHEAST LAW INSTITUTE™

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Dear Friends and Supporters,

We are happy to report the “Sanctity of Marriage Act” has been passed by the Alabama Legislature. It will amend the Alabama Constitution to prohibit same-sex marriage and civil union. Citizens will vote on it in the next election, probably the spring primary 2006. SLI is indeed gratified to have played an important role in the passage of this bill.

The epic and tragic struggle to save the life of Terri Schiavo demonstrates the difficulty and seriousness of the effort to protect the sanctity of life in America today. Much of the focus is on abortion, but the nation’s attention is being drawn more and more to the protection of the helpless and the elderly.

What has happened to Terri is much the same as had been planned for Mrs. Correean Salter in 1995. Long time supporters of our efforts will recall our representation of Mrs. Salter in the Baldwin County Circuit Court when there was an effort to remove her tube providing nutrition and hydration. Mrs. Salter had a major stroke and seven years later she had not improved. However, she was fully awake and appeared to be aware of some things, though she could not move and she could not speak. A petition was filed to remove her feeding tube which would have resulted in her death by dehydration and starvation. We represented Mrs. Salter’s interests before Circuit Judge Pam Bashab, now a judge on the Alabama Court of Criminal Appeals. Judge Bashab properly ruled in favor of life. Providentially, Mrs. Salter died not long thereafter from natural causes. One of the cruel ironies is that the doctor who advocated Mrs. Salter’s death, Dr. Ronald Cranford, is the same doctor who advocated Terri’s death.

During the course of Mrs. Salter’s trial, our research showed us how dangerous it is to live in Florida, both for the unborn and for the helpless and elderly. The Florida Constitution is construed by courts in such a way as to increase your personal “liberty” right to death. In a case like Terri’s, Florida courts use the “substituted judgment rule.” This allows one person to substitute his judgment for another, a rule contrary to America’s heritage of self determination and protection of life. This is how Terri’s husband got control.

One of the important lessons to be learned from these events is for an adult to have an Advance Directive for Healthcare (sometimes called a Living Will). Mrs. Salter’s case resulted in our efforts to get a detailed protective Alabama Advance Directive law. No matter where you live, an Advance Directive will make certain your wishes are carried out. If Terri had one, her family would not have faced this tragedy.

We will continue to work for the sanctity of life. This month’s Educational Update is an unfortunate report of our efforts concerning the Alabama Fetal Protection Act in the Alabama Legislature. You never know from where your opposition will come and sometimes it is from an unexpected source.

Please continue to support and pray for our efforts. Continue to pray for those who are unable to protect themselves and for those who work to protect the sanctity of all human life.

Yours very truly,

A. Eric Johnston
General Counsel

AEJ/pmm

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

To: SLI Supporters
Date: April 2005
From: A. Eric Johnston
Re: Connor Peterson's Death Would Not Be a Crime in Alabama

Alabama's criminal law retains the ancient common law rule that you must be "born and alive" to be a victim of a crime. Section 13A-6-1 (a)(3) 1975 *Code of Alabama*. That means if Connor Peterson had been killed by his father in Alabama, it would not have been a crime. Because Scott Peterson killed his son in California, he has been sentenced to death. Can it be that California is more sympathetic to the sanctity of life than Alabama?

THE FETAL PROTECTION ACT

Representative Spencer Collier (R-Mobile) has filed a bill in the Alabama Legislature for three years now to change the born alive rule to state that a person within the meaning of the criminal homicide and assault law includes **"an unborn child at every stage of gestation in utero from conception to birth, regardless of viability."** The bill to change the law to criminalize the taking of unborn life in Alabama by criminal acts is as simple as that.

The bill has passed the House Judiciary Committee for each of the three years. The Senate leadership is absolutely opposed to any bill that would respect life and has refused to give this bill a hearing. The efforts have not been easy and there has been opposition. It is not the abortionists who are opposing the bill, at least publicly, but some who are concerned with domestic violence and the Alabama District Attorneys' Association. The former had a nonsensical position, but the DA's were a real threat to the bill.

Unfortunately, abortion remains a legal right in America and cannot be criminalized. Therefore, abortion is not covered by this proposed change to the criminal law. Under the bill, HB311, any criminal act that results in the taking of the unborn child's life would be a felony. So why is it opposed by the DA's? The short answer—a misunderstanding of the law **or** political intrigue. The DA's called for a public hearing at the committee hearing in March. Present to testify were the DA's from DeKalb County and Shelby County. They wanted the protection to only be from viability, approximately twenty weeks gestational age. The bill calls for prosecution from conception. The Baldwin County District Attorney assisted in defeating this effort to dilute the bill by the other DA's.

The actual debate took place in the hallway outside the committee hearing room, while other bills were under consideration. The DA's insisted Mr. Collier's bill had no chance to pass and theirs was the best option. We explained to them viability has no application in criminal law. Viability is a medical and abortion concept. The ability to live outside the womb has significance to physicians in rendering care to preemies. It has significance to abortionists because they can slaughter with impunity the unborn prior to viability. We explained to the DA's that proving viability was an extremely difficult task. We showed them pictures of unborn children in two week increments available in the booklet prepared by the Alabama Health Department pursuant to the Woman's Right to Know Act. We stated that children up to thirty weeks gestational age would be sacrificed by their plan because of the uncertainty of proving viability under the heightened burden of proof required in criminal cases. On the other hand, conception is easy to prove. Remember the old saying, "You cannot be a little bit pregnant." Also, we suggested it was politically damaging for the DA's to be publicly stating Mr. Collier's bill did not have a chance when theirs did. It would be better to work together to protect life.

In the end, the DA's withdrew their request for a public hearing. We hope they saw the wisdom of dropping their effort to dilute or kill Mr. Collier's bill. We would have very grave concern if the DA's were being used as political instruments to give liberal legislators, those who have actively opposed the sanctity of life, the advantage of claiming the victory for passage of a law (though weak) for the benefit of next year's political elections.

One thing we have learned working for the sanctity of life is there can be no compromise. We must always insist that a bill protect life in the best way possible. If it does not, then we come back for another year. With the Woman's Right to Know Act, it took thirteen years to get a proper bill passed. The effort paid off, because when the Act was challenged in federal court, the federal court upheld substantially all of it. If you'd like to see one of the principal results of that Act, call your local Alabama Health Department and ask for a free copy of the booklet or to order one go to www.adph.org/PROVIDERS/abomaterialorderform.PDF.

CONCLUSION

It is likely Mr. Collier's bill will not pass this year. We will continue to provide legal support to Mr. Collier for his efforts and to those who are lobbying for its passage. We invite DA's who have concern for doing the right thing to contact us and we will be glad to dialogue with them and provide any information they will need to understand this very important issue. There is no reason for the DA's to compromise the lives of these children because of a misunderstanding of the law. To compromise those lives for political expediency or to reward those who do not deserve rewards is even worse.