

# SOUTHEAST LAW INSTITUTE™

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August 2004

Dear Friends and Supporters,

As you open our letter this month, we ask you to consider your financial support for SLI. In summer, we always drop off. Even at the best of times, it is difficult to raise money. If it were not for our commitment to principle, we would not be doing this job. Please remember our need.

We all very much regret the Federal Marriage Amendment ("FMA") did not have enough votes in the U.S. Senate to pass. Sixty of the one hundred votes are required, but only forty-eight voted in favor of it. Both Alabama Senators Shelby and Sessions voted for the FMA. The failure to pass is an obvious sign of the cultural decline in America. This failure makes it all the more important that Alabama strengthen its law with an Alabama constitutional amendment. We have already been in contact with Alabama legislative sponsors for the 2005 session.

In the meantime, the U.S. House of Representatives passed a bill to limit federal judges' jurisdiction to allow same-sex marriage. This is a partial victory. SLI is preparing a more in depth look at the issue. We will send you an Educational Update in the coming months that will give an explanation of the legal and political intricacies of this issue. Take every opportunity to support any law that protects marriage, whether federal or state.

Stem cell research is on the front pages again. You may have noted that Ron Reagan, Ronald Reagan's son, will speak at the Democratic Convention in support of stem cell research. This is contrary to his father's beliefs. Ronald Reagan's strong position on the sanctity of life would never have permitted him to engage in an experiment that would result in the harvesting of unborn babies for medical science, even if it personally benefited him. Reagan said: **"We cannot diminish the value of one category of human life – the unborn - without diminishing the value of all human life"** and **"It is not for us to decide who is worthy to live and who is not."** *Abortion and the Conscience of the Nation*. pp. 18 & 30. Unborn babies continue at risk in the dangerous uncertainty of political tides which constantly find a reason to sacrifice them.

This month's Educational Update tells you about a recent accomplishment on the accreditation of non-public schools issue. We have mentioned it off and on for months. We finally have something encouraging to report. At the same time, please be in prayer for new State Superintendent of Education, Dr. Joseph B. Morton. Also, be in prayer for the new Vice President of the Board, David Byers, as well as other Board members.

Thank you very much for your prayers, support and encouragement. With personal regards, I am,

Yours Very Truly,

A. Eric Johnston  
General Counsel

AEJ/mc

*The Southeast Law Institute, Inc.™ is a 501(c)(3) organization providing legal counsel on constitutional and public policy issues.*

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

**To: SLI Supporters**  
**Date: August 2004**  
**From: A. Eric Johnston**  
**Re: Accreditation of Non-Public Schools in Alabama**

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Over the last few months we have made periodic reports on the status of accreditation for non-public schools in Alabama. We have just achieved an important milestone in that effort. The issue is not finally laid to rest, but we believe the end is in sight.

This issue has affected a number of SLI supporters and we have provided legal advice and assistance to many families, including one federal court lawsuit. The basic issue affects the ability of a non-public school student to transfer into a public school. It can also affect the credibility of the non-public school student's standing for college entrance purposes.

**The Basic Problem**

Alabama law recognizes public and non-public schools. Public schools consist of county and municipal school systems which are supported by tax dollars and administered through the State Department of Education. Non-public schools include church, parochial, private secular, and boarding schools. Homeschools are not included because homeschools are not provided for through state law specifically, but in most situations fit within a church school program.<sup>1</sup>

Public and non-public schools fit together as an educational system with public schools being more highly regulated, private schools somewhat regulated, and church schools minimally regulated. Parents have a right of parental choice on the method of education they choose. That choice should not be penalized through discrimination or other activities by any governmental authority.

Accreditation is a setting of standards for schools, public and non-public. Minimum standards must be met for a school to be accredited. Effective January 1, 2002, pursuant to a June 14, 2001 State Board of Education resolution, the only accrediting agency recognized by the state would be the Southern Association of Colleges and Schools ("SACS"). Because public schools were in the public system and regulated by the state, it would not really matter if a public school was SACS accredited. Students could transfer between public schools without impediment.

In fact, there is no state law that any school must be accredited. However, the *Alabama Administrative Code* ("AAC") does not permit non-public school students to automatically transfer at proper grade level back into public schools, unless the non-public school is accredited by an agency recognized by the state i.e., SACS. Most of the non-public schools, and primarily the church schools, are not SACS accredited. They are accredited by other reputable nationally recognized agencies. Most of the church schools are members of the Alabama Christian Education Association ("ACEA") who questioned why the state had this discriminatory policy and when it could not achieve satisfaction, ACEA contacted SLI for assistance.

The net effect of the discriminatory policy was to impede the transfer of non-public school students into public schools by requiring those students to retake all of the previous year's semester exams in the core subjects, *viz.* English, math, science and social studies, in order to enter at proper grade level. As you might expect, this created significant problems for students to prepare for and pass tests. It was unfair. In a highly mobile society, students would be moving between public and non-public schools on a fairly frequent basis and because all were part of the state design for education, this problem needed to be corrected.

**Trying to Find a Solution**

Early in 2002, representatives of various groups met with state school officials informally to resolve this problem. However, there was resistance to resolving the problem by the Board of

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<sup>1</sup> An explanation of homeschooling in Alabama is beyond the scope of this memo and any reader with questions should contact SLI directly for more information.

Education and by its superintendent, Ed Richardson. Nevertheless, ACEA and SLI were persistent in their efforts to meet with state officials to find a solution. One of those officials was Assistant Superintendent Dr. Joseph B. Morton. With the help of Dr. Morton, we drafted a proposed change to the AAC. It was presented to the State Board of Education at its regularly scheduled meeting on February 13, 2003. It was met with a significant problem.

This particular meeting was the first that newly elected Governor Bob Riley attended and there was on the Board a Siegelman appointee who had never been approved by the Alabama Senate. The politics of that meeting, unrelated to the accreditation issue, caused a division in the Board which became apparent when the vote on the proposed AAC amendment was offered. The amendment was tabled.

On April 25, 2003, SLI sent a letter to the State Board of Education demanding it approve the AAC amendment, otherwise it would be necessary for a lawsuit to be filed for violation of the constitutional and civil rights of parents, students, and church schools. It was quite clear that such a lawsuit would be costly, but that non-public schools would be in the right. At the same time, we continued diplomatic efforts to work through the situation.

### **A Solution is Found**

ACEA and SLI worked with State Board of Education members and Dr. Morton to find a solution. No one wanted a lawsuit and it was obvious there was an inequity which needed to be corrected. The opportunity for a solution came when Ed Richardson resigned as superintendent and Dr. Morton became the interim superintendent. In our opinion there was a vast difference between the two men and their ability or willingness to understand this problem.

Dr. Morton, who has now been appointed as superintendent, appreciated the gravity of the situation and immediately placed the issue on the calendar for a Board of Education work session. He invited two representatives of SACS. They clarified for the Board that SACS not only “accredits”, but “recognizes” other accrediting agencies, including agencies which accredit church schools in Alabama. Such recognition by SACS would have the same effect as accreditation by SACS. Based on this, Dr. Morton proposed and the Board agreed that a memo would be directed to all public school superintendents that any school that is accredited by SACS or recognized as accredited by SACS would meet the ACC and Board requirements and therefore students would be allowed to transfer from non-public schools to public schools without taking the exams and overcoming the other impediments they face.

### **What is Left to be Done?**

This interpretation of the policy will be in place for the 2004-2005 school year and beyond. It is our plan to go back to Dr. Morton and the Board of Education in 2005 and have the policy added to the ACC, or at a minimum, adopted formally by the Board. This will place it more firmly in the law and make it more difficult to change in the future. Over the next two semesters we should see whether there are any problems with the policy and those can be corrected.

We are confident this policy will remain, it will be effective, and it will greatly diminish the possibility of discrimination against non-public school students. We believe Dr. Morton’s leadership as the new superintendent of education will better recognize all forms of elementary and secondary education in the state and the systems will compliment each other. We are also grateful to Governor Bob Riley for his support of our efforts and his commitment to education in Alabama. Church schools owe a debt of gratitude to Robin Mears and Edward Earwood of the ACEA for their persistence and patience.

In the end, whether it is public or non-public education, religious or secular, the goal is to provide educational choice for parents and a good education for their children. Working together, we will significantly improve Alabama’s ranking in the education community.