SOUTHEAST LAW INSTITUTE™

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Dear SLI Supporter:

Let us review a few of our recent activities:

- Drafted the Alabama Religious Freedom Amendment
- Provided legal counsel to Governor James in the De Kalb County Prayer case
- Drafted the student-initiated prayer statute
- Filed *amicus curae* brief on behalf of religious education rights (see enclosure)
- Drafted legislation to preclude regulation of church schools and daycares concerning teacher or employee criminal background checks
- Provided legal counsel to the Alabama Textbook Committee for the science textbook evolution disclaimer
- Represented pro-family group and leader in gambling lawsuit
- Drafted constitutional amendment to prohibit gambling expansion
- Provided legal advice to a county board of education on policy to require daily Pledge of Allegiance and recitation of opening lines of the Declaration of Independence
- Provided legal representation to pro-life advocates in FACE, RICO and Buffer-Zone federal litigation
- Drafted partial-birth abortion ban, post-viability abortion ban and parental consent for abortion laws
- Drafted Woman's Right to Know and other pro-life legislation
- Drafted (or assisted) the Living Will and Durable Power of Attorney laws and Prohibition of Assisted Suicide Bill

These are major efforts. Most have been done in the last two or three years. These are in addition to the hundreds of individuals, churches and other organizations for whom we have provided legal assistance or advice on numerous religious freedom, speech, sanctity of life, family and related issues. Each of these efforts require many hours of research, preparation, filing fees, supply costs, *etcetera*.

Let me ask if any of the foregoing is really important to you? Does the prospect of more gambling in Alabama bother you? Does partial-birth abortion turn your stomach? Do you believe in religious education rights? Do you want the elderly cast off with the aborted? Do you want to have religious freedom to witness? Do you want your church free of government regulation? Do you wish to speak your mind on important issues without being penalized as being politically incorrect?

We believe that you do care about the above stated issues and we count it a calling and privilege to have been so productive. Remember we are lawyers in private practice doing these legal battles with little or no pay. We are not part of a large legal group supplemented by others while we do this work. We must, however, have funds in order to sustain our efforts.

I want to thank all of you who gave special gifts last month. Though giving is still behind, we made significant gains. We appreciate those who contribute on a regular basis, but let me ask you if you have done so recently? Have you shared our goals and ministry with like-minded friends? Do this: copy this letter and memo and share it with friends at work or church.

We have pointed out some things we really believe are important. We have also asked many questions. We support our work with "tent making" as much as possible. We believe a workman is worthy of his hire and we have demonstrated that. Will you please help us right away?

Yours Very Truly,

HARRY O. YATES

HOY/jg

AN EDUCATIONAL UPDATE FROM
THE SOUTHEAST LAW INSTITUTE, INC.

To: SLI Supporters

From: **A. Eric Johnston**
Date: **August, 2000**

No. 99-901

In The

Supreme Court of the United States

Brentwood Academy,

Petitioner,

v.

Tennessee Secondary School Athletic Association and Ronnie Carter, Executive Director and Individually,

Respondents,

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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Brief of *Amicus Curiae* Southeast Law Institute in Support of Petitioner Brentwood Academy

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The above is a facsimile of the cover of our brief filed with the United States Supreme Court in a case with extremely important religious freedom issues. This case addresses core principles of just how important religious freedom is in America today.

BACKGROUND OF THE CASE

All fifty states have interscholastic athletic associations. The membership in these associations consists of all public schools and all non-public schools who wish to compete in a comprehensive, competitive program. There are some smaller associations in many states, but these do not permit student athletes to excel and school programs to be recognized for their achievements. In other words, it is important to play in the overall state program.

It is necessary for such associations to have rules and regulations that will provide fair competition. Public schools usually draw their students from their local districts, while non-public schools may select from the general area. Issues of student athlete "recruitment" are important. Necessary rules and regulations must be drawn to keep competition fair.

These interscholastic associations are composed primarily of public schools and administered almost exclusively by public school authorities. Yet these associations always say they are "private" and therefore not subject to constitutional requirements. In other words, if a player or school is grieved by a decision of the association, he or it has no real alternative to have

that decision reviewed by a court of competent authority. By being a private entity, the association insulates itself from constructive criticism and remedy.

Several intermediate level federal courts have determined these associations to be "public" and therefore subject to adequate judicial remedies. Recently, the 6th Circuit Court of Appeals ruled such an association was "private." A non-public school, Brentwood Academy, wished to complain about unfair treatment by that association, but the federal court rejected its effort. Brentwood was left without an effective remedy. Historically, that has been the plight of non-public schools.

THE BURDEN ON THE PARENTS' CHOICE OF RELIGIOUS EDUCATION

> *"When such an association is controlled by public authorities who discriminate against non-public education, specifically religion based education, does that constitute state action and burden parental choice of education?"*

This was the issue SLI presented to the U.S. Supreme Court. While Brentwood Academy was addressing the overall issue of whether the Tennessee Association was a state actor, SLI addressed the specific issue of whether religious based education should be treated with constitutional respect in its athletic participation.

The example provided was a recent decision by the Alabama High School Athletic Association (AHSAA) to require all non-public schools to play at a higher classification than their actual enrollment. The AHSAA promulgated a policy change to be effective this coming school year which would increase a non-public school's enrollment by factor of 1.35. In most cases, non-public schools will be playing larger public schools. No proven reason was given for this increase and Alabama non-public schools had no opportunity to ask for meaningful judicial review.

If non-public education were reasonably treated, it would not be an issue. However, when no proven reason is give for such a discriminatory policy, it burdens the parents' right to choose that form of non-public education. Specifically, SLI was concerned with the burdening of parents' choice of religious education.

THE BURDEN ON RELIGIOUS EDUCATION

In 1923, 1925 and 1972 the U.S. Supreme Court made decisions which clearly recognized the right of parents to choose non-public, religious education for their children. In 1982, the state of Alabama recognized the rights of churches to have church schools. A significant number of persons send their children to church schools for a variety of reasons, including excellence in academics, safety, and most importantly, religious based education. These parents also want their children to have the other important facet of education and that is athletics. In fact, many parents hope their children will get athletic scholarships.

However, if the church school is not permitted to play on a "level playing field" this is discrimination against the choice of religious based education. When a publicly run association, though it claims to be private, makes unfounded distinctions and then claims to be impervious to legal regulation, this works injustice. The issue SLI brought before the court was that the choice of religious education should have fair and equal treatment and if not, federal courts should be open in order to protect free exercise of religion and other constitutional rights. SLI concluded its brief as follows:

> "*Public officials must be accountable. Healthy competition among alternative school methods, both scholastically and athletically, is at stake. For whatever reasons parents exercise their constitutional rights to choose an alternate to public education, those parents should have the assurance that their children will receive all of the same benefits and opportunities to compete in the public square without unconstitutional treatment.*"

CONCLUSION

The Brentwood Academy case should have oral argument before the Supreme Court this fall with a decision to be handed down early next year. Our hope and prayer is that choices in religious education will be accorded the same rights and privileges as public education, and if not, those religious rights will have a forum for protection.