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Dear SLI Supporter:

News of Judge Thompson's decision to remove the Ten Commandments monument from the Alabama State Judicial Building has been reported far and wide. In total, the judge's opinion and order are 94 pages long. We know many of our supporters keep up with current events, but we know it is doubtful that many of them had the time or opportunity to read the opinion. Therefore, this month's educational update is a synopsis for you.

We are very disappointed in the finding of the court. We hoped Judge Thompson, who is an intelligent man, would understand the true history of Establishment Clause jurisprudence and could distinguish between what is a state religion (forcing someone to worship or believe a certain way) and the acknowledgement of religion or a supreme being. Judge Moore is ably represented by his attorneys of record. On appeal, SLI hopes to support Judge Moore's effort which might include filing of an *amicus* brief.

We are happy to report a good outcome on a homeschool issue. Mobile County had an apparent perverse interest in some homeschooling families. There was some reason for concern, but by SLI's early intervention, we were able to avert potentially damaging efforts by a governing authority to improperly burden parental rights and educational choice. We are grateful to participating SLI attorney Bill Watts for his expert help.

In another homeschooling case, because we were not able to timely intervene, a parent's rights were violated. Fortunately, the case does not set a bad precedent for others, but it demonstrates the need to be involved from the beginning. It is our belief the judge in this case was ill informed and with some education, may not do the same thing next time. For the sake of working this out in a future case, we will let the officials involved remain anonymous.

Finally, I am gratified to report Attorney General Bill Pryor has appointed me as a Deputy Attorney General in defense of the Women's Right to Know Act lawsuit. After thirteen years of effort to get it passed, I am thankful for the opportunity to now defend it. I will be working with the Attorney General's office and the Health Department. We will keep you informed of events.

This is your last newsletter of the year. As usual, we are seeking funds to replenish those we have expended in the protection of important values throughout the year and to provide for the year to come. Importantly for you to know, the State will not pay any of my expenses in defense of the Women's Right to Know Act, not to mention payment of any fees. SLI will need to pay even the basic expenses involved in the office and travel. Therefore, we ask for your financial support not only for the year's work, but also for the very important effort necessary to protect women's healthcare and the unborn children of Alabama. Please make the largest gift you can at this end of the year time. Many of you work for companies which give matching gifts. Please be sure to apply for this, as this money is always an extra blessing.

We are grateful for your support this year. We pray God will bless you during this important holiday season.

Sincerely,

A. Eric Johnston

AEJ/jfj

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

To: SLI Supporters
Date: December 2002
From: A. Eric Johnston
Re: *Glassroth v. Moore*: Battle for the Ten Commandments

INTRODUCTION

This case is not really about the placement of the Ten Commandment monument in the rotunda of the Alabama State Judicial Building. The greater part of the court's ninety-two page opinion is dedicated to the history of Chief Justice Roy Moore and his legal/religious beliefs. SLI often analyzes cases for his readers, but this case represents a unique challenge which cannot be adequately addressed in this format. In fact, the court opinion often appears to be more of an ideological debate between Chief Justice Moore and Federal District Judge Myron Thompson. We cannot restate the debate. We can, however, attempt to explain what the debate was about and how the case was decided.

There have been numerous lower court Ten Commandment cases. In most of them, the posting of a plaque or the situation of a monument has been found unconstitutional. Those cases have suggested guidelines on how such an item might be placed by a governmental entity. However, this case is about the idea of religion's place in our culture, which seems to have gotten lost in the feeble efforts of law to define religion. Chief Justice Moore invited the court to define religion. The court denied that invitation, but at the same time, found fault with Moore's position that Judeo-Christian principles are our moral foundation of law. The court concluded its opinion with a summary that epitomizes the case:

"If all Chief Justice Moore had done was to emphasize the Ten Commandments historical and educational importance (for the evidence shows that they have been one of the sources of our secular laws) or their importance as a model code for good citizenship (for we all want our children to honor their parents, not to kill, not to steal, and so forth), this court would have a much different case before it. But the Chief Justice did not limit himself to this; he went far, far beyond. He installed a two-and-a-half ton monument in the most prominent place in a government building, managed with dollars from all the state tax-payers with a specific purpose and effect of establishing a permanent recognition of the 'sovereignty of God,' the Judeo-Christian God over all citizens in this country, regardless of each tax-paying citizen's individual, personal beliefs or lack thereof. To this, the Establishment Clause says 'no'."

What is extremely curious is the footnote following the above quote. Judge Thompson quoted from many historical sources that America began as a predominantly Christian nation, gave Christianity preference (not interfering with it) and it thereby flourished. Thompson wondered if this is what the Founding Fathers intended, but admitted a lack of historical expertise and suggested it was an interesting question. That was indeed a curious way to end this court opinion, because that is what the case is really about.

FACTS

Some significant features of the case were the description of the monument, its location and Chief Justice Moore's comments about the Ten Commandments. In summary, the monument stands in the most significant place in the rotunda where all of Alabama's appellate courts are located. The Ten Commandments are inscribed in tablet fashion on the top of the stone but slanted as if it were an open Bible. Other secular sayings, but all with references to God, were subservient around the sides and back. Chief Justice Moore has spoken on many occasions, both out of court and in court opinions on his views of the relationship between church and state.

Judge Thompson understands Chief Justice Moore to be saying that "the Judeo-Christian God is the real, and even divine, source for the separation of church and state under the First Amendment" and that "the Judeo-Christian God is sovereign over both the church and the state in this country, and both owe allegiance to that God." Judge Thompson may not have realized this but, Chief Justice Moore's statements are in agreement with general Christian principles concerning the sovereignty of God.

Also, Thompson disregarded Moore's belief that the Judeo-Christian God gives Americans the freedom of conscious to believe whatever faith they choose, while other religions do not do that. The basic belief of Christianity recognizes the freedom of other religions to exist. Judge Thompson struggled with these concepts and in many ways understood what Moore was saying, but when he attempted to apply legal precedent, significant confusion arose.

THE JUDICIAL TESTS

Those who are acquainted with the judicial tests for the constitutionality on Establishment Clause issues will be interested to know the court applied two primary tests, *viz.*, *Lemon v. Kurtzman*, 403 U.S. 602 (1971) ("*Lemon*") and *Marsh v. Chambers*, 463 U.S. 783 (1983) ("*Marsh*"). The court found the *Lemon* test requirements that a law have a secular purpose and not advance religion were violated. The court held the nature of the monument and its placement did not serve a secular purpose; its placement, along with Chief Justice Moore's many statements about it, had the net effect of advancing religious belief. In fact, Thompson felt that the monument actually proselytized. Included in the *Lemon* analysis was the endorsement test. The Court found the monument endorsed Christianity.

The *Marsh* case analyzes the "historic" nature of an activity. Judge Thompson did not believe the test proper, but he did apply it and found the monument was far more than a historic recognition or activity. Thompson was somewhat flippant in this analysis, which unfortunately minimized the real significance of *Marsh*. For example, there can be nothing more pervasive than the saying "In God We Trust" on our money and the recognition of "under God" in our Pledge of Allegiance. Yet, Judge Thompson felt the monument was a more significant religious act than those.

UNUSUAL FACTORS

Events leading up to placement of the monument as much as the monument itself were deciding factors in the case. The early cases involving then Judge Moore's Ten Commandment plaque in his Etowah County courtroom, his campaigning as the "Ten Commandment's Judge", and his financial and personal relationship to Coral Ridge Ministries removed the case from one of are the Ten Commandments properly placed, to one of what is the goal to be achieved? Judge Thompson stated, "no other Ten Commandments display represents such an extreme case of religious acknowledgement, endorsement, and even proselytization." Coral Ridge Ministries'

involvement in the overall situation was not ideal for such a court case. Thompson was impressed by evidence that Coral Ridge Ministries used this as not only a fundraising mechanism for Moore's defense, but for the furtherance of its own gospel ministries. Chief Justice Moore's personal legal/religious philosophy laid a significant factual foundation upon which the federal judge could build his case of unconstitutionality. But, if Justice Moore had simply put the monument there without all or some of these other factors, would it have meant as much?

Conclusion

Judge Thompson construed *Marsh* too harshly against Chief Justice Moore. He did not apply the principle as he should. As a practical matter, the events (campaigning, rhetoric, *etc.*) surrounding the placement of the monument may have taken the monument out of the historic analysis altogether. References to the Ten Commandments, Moses and similar religious symbolism at the U.S. Supreme Court Building and other significant court buildings may have been helpful without the events, but with them, they were distinguished. But, location without explanation would have defeated Chief Justice Moore's purpose.

Judge Thompson has gone too far in stating this is an actual establishment of religion. The case is far from over. Chief Justice Moore intends to appeal. There is much more to be said about this case and the issues surrounding it. Who is right and who is wrong will be determined by our legal process. Yet, the outcome may not be right in the context of history and God's law and intention. There are a number of pending cases involving the Ten Commandments on public property. One of those cases will make it to the U.S. Supreme Court. Unless it is this case, the issue of Judeo-Christian principles being the moral foundation for our law will not be addressed. Those cases will address more timid fact situations.

SLI hopes to play a role in the process by presenting objective legal and historical arguments that will avoid the rhetoric, while at the same time recognizing the need for acknowledgement of God by government to the greatest extent possible, without infringing on the right of citizens to believe as they are led in the market place of faith and religious ideas. SLI believes Christianity was favored by the Founding Fathers and it was by its doctrine that religion flourished in America. If America continues that recognition, she will remain a great nation.