February, 2001

Dear SLI Supporter:

This month we provide Part II of our educational memo entitled "Religious Freedom in Alabama". We are very proud of the work we have done protecting religious freedom in a hostile secular legal environment. Lest we forget the lesson of the founding fathers, religious freedom is what brought them here and it is religious freedom which remains at the foundation of all of our privileges and liberties in America.

This seems to be forgotten in today's political arena. For the first time in American history, a proposed presidential cabinet appointee has been attacked not for illegal or improper acts, but because his political/legal philosophy is in agreement with his Christian faith. That is politically incorrect.

Former Missouri Senator and Governor John Ashcroft has a stellar history of working in his home state to protect individual liberties, including the rights of the unborn. He has given every man and woman an equal opportunity for advancement. Notwithstanding, because of his firm commitment to the sanctity of life and to other conservative principles, he is now said to be unqualified to serve as the nation's chief law enforcement officer, Attorney General. We must oppose this attitude. To apply religious faith to cultural and societal issues is important to our future.

SLI is committed to the same principles for which Senator Ashcroft stands. We are also committed to opposing the tyranny of political correctness and the eradication from the public square of all *indicia* of faith. Please join us with your prayers and financial support for this year. We will keep you informed on a continuing basis of our efforts.

As a last thought, please be praying for our nation and the crisis which it faces. Also, be praying for religious leaders to give them boldness, and for some even the need, to relate our religious faith to cultural and societal issues.

Yours Very Truly,

A. ERIC JOHNSTON

AN EDUCATIONAL UPDATE FROM
THE SOUTHEAST LAW INSTITUTE, INC.

To: **SLI Supporters**
From: **A. Eric Johnston**
Date: **February, 2001**
Re: **Religious Freedom in Alabama – Part II**
The Alabama Prayer Statute, Public Schools and the Federal Courts

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Last month, we talked about our efforts to protect religious freedom in Alabama through Alabama laws and Alabama courts. This month, our memo deals with the federally protected religious rights in Alabama.

History

Until 1962, religious speech took place in America's public schools without question. However, in 1962, the U.S. Supreme Court decided the case of *Engel v. Vitale* finding unconstitutional an official public school prayer. This began a series of cases which removed virtually all religious expression from public schools. Some of it had to do with cultural pressures to recognize increasing religious plurality in America. However, most of it had to do with the secularizing of America.

Numerous cases were decided by the federal courts favoring the establishment clause over the free exercise clause of religion. That is, anytime religious speech took place in a public school, it was viewed as an unconstitutional establishment of religion. The courts gave little attention to the student's free exercise rights. It was not until 1991 that a federal court in the case of *Jones v. Clear Creek Indep. School Dist.*, recognized a student's right to engage in religious speech and prayer so long as it was "student-initiated" and not required or sponsored by the school. This began a series of legislative and legal maneuvers to reaffirm student's rights and bring a measure of morality back into public schools.

The Alabama Prayer Statute and Lawsuit

Alabama was one of the leaders in this effort. In 1993, the Alabama Legislature passed a statute (§ 16-1-20.3) which recognized the constitutional rights of students to pray and engage in religious speech on public school premises. SLI initiated this effort, did the research and drafted the statute. SLI provided legal assistance and testimony during the legislative process. It was signed into law and was an example for other states to follow.

For thirty years there had been a continuing diminution of religious speech in public schools. Because of ACLU lawsuits, public school officials were afraid to let students say anything religious. While some school systems permitted religious speech, many did not. One of the primary purposes for Alabama's statute was to call attention to the constitutionally given rights and, if necessary, invite litigation to settle the issue. The strategy paid off and in 1996 the case of *Chandler v. James* was filed. I was appointed by Governor James to represent the State. The State argued for religious freedom. However, Federal Judge Ira Dement found the Alabama statute unconstitutional and issued an injunction prohibiting school officials from "permitting" student-initiated religious speech. The court order was incorrect, confusing, and overbearing, even to the point of

appointing a school monitor. This egregious order was appealed and the 11th Circuit Court of Appeals reversed Judge Dement and entered an order recognizing the right to student-initiated prayer and religious speech.

In June, 2000 the U.S. Supreme Court decided *Doe v. Santa Fe Indep. School Dist.* which ruled on the more narrow issue of whether students could pray at public school sporting events. That case involved a school policy which the Supreme Court said was unconstitutional because the school directed the student-initiated prayer. After that ruling, the ACLU asked the 11th Circuit to reconsider *Chandler v. James* (now *Chandler v. Siegelman*), which it did and again upheld the right to student-initiated religious speech in public schools.

The final opinion in *Chandler v. Siegelman* entered in October, 2000 made clear that students at public schools have the right without school limitation to pray and engage in devotional or religious speech on school premises and at school events. The only limitation is that this speech not be directed or sponsored by the school.

This 11th Circuit opinion is the leading case on the issue and will possibly be the catalyst which will begin a swing towards accommodation and protection of free religious speech in public schools. While the Alabama statute was a model for other states to follow, the court decision which resulted from that strategy, *Chandler v. Siegelman*, may be the model for other courts to follow.

Conclusion

SLI's efforts to restore religious freedom through these two strategies will provide the potential for very significant protection. SLI's goal was not and is not to officially require anyone to worship or believe in any particular religion. The public square must not be sanitized of religious speech, but should accommodate and permit individuals to make their own choices, then pursue them. We are pleased we could be a part of this process and we hope to continue being a part of it with your assistance.