

**AN EDUCATIONAL MEMO FROM
THE SOUTHEAST LAW INSTITUTE**

To: Southeast Law Institute Supporters
From: A. Eric Johnston
Date: January, 2001
Re: Religious Freedom in Alabama – Part I
The Alabama Religious Freedom Amendment and the Alabama Supreme Court

Introduction

This is the first of two memos on religious freedom in Alabama. This memo will deal with the Alabama Religious Freedom Amendment (“ARFA”) and the Alabama Supreme Court’s role in protecting religious freedom in Alabama. The second memo will deal with Alabama’s public school prayer statute and federal court rulings. Over the last several years, SLI has developed and worked on these two strategies for renewed recognition of individual free exercise of religion rights and more individual freedom and constitutional protection.

The Alabama Religious Freedom Amendment

In our June-September, 1998 educational memos we provided a four-part series on religious freedom and the ARFA. The ARFA is an amendment to the Alabama Constitution approved by voters in November, 1998. As a result of adverse U.S. Supreme Court decisions, Americans were deprived of very important religious freedom protection. Until 1990, the religious freedom standard was if the government tried to burden or restrict religion, it must (1) prove it had a compelling interest for doing so and (2) it was accomplished in the least burdensome way.

In response to those court opinions, on its own initiative SLI researched, drafted and testified before the Alabama Legislature concerning an amendment to the Alabama Constitution which would re-institute that compelling interest test for the State of Alabama. It was approved by the legislature and then by the voters, and it is now the law of the State of Alabama. SLI’s goal was to put in place a law which could be used by Alabama’s courts to restore the religious freedom we had lost. We can now use the compelling interest test to protect churches, religious organizations and individuals from improper state regulation, such as in education, zoning and similar issues.

Enforcement in the Alabama Courts

Prior to the Alabama Religious Freedom Amendment, most religious freedom cases were litigated in the federal courts. With the approval of the ARFA, Alabama state courts have the authority to judge religious freedom issues.

Important to this authority is the understanding and support of religious freedom by members of the Alabama Judiciary. There are many trial court judges in Alabama who will be the first courts who see these cases. There may be a variety of opinions, but as in most cases, they will ultimately be appealed to the Alabama Supreme Court.

During the last year’s campaign, I was honored to serve as moderator for three Judicial Forums sponsored by the Christian Coalition. As such, I was responsible for preparing and asking questions of the candidates. Based on their answers and my own personal knowledge of and acquaintance with them, I believe the candidates who were elected are well qualified and properly supportive of religious freedom. Added to our Supreme Court were four new members. Chief Justice Roy Moore, Justice Lyn Stuart, Justice Bernard Harwood and Justice Tom Woodall. Along with Justice Gorman Houston, Justice Harold See and Justice Champ Lyons, we will have a Supreme Court who will oversee and properly apply religious freedom protection in the State of Alabama.

Conclusion

The ARFA and the election of judges who properly understand the principles of religious freedom offer Alabamians significant future protection for their religious freedom. In an ever increasing secularized society, remaining constantly vigilant and ready to protect and enforce our rights are necessary.

This statement is for educational purposes only. It is not intended to provide legal advice. We hope if you have questions or know of those who do, you will contact us and we can assist through referral to one of our cooperating attorneys.