SOUTHEAST LAW INSTITUTE™

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Dear SLI Supporter:

Christmas is a time to reflect on what is important. New Year's is a time we make resolutions concerning how to accomplish important things. We have returned from the holidays satiated and satisfied, and with renewed spirits for the challenges in the year ahead.

SLI ended the year with a report on what we were able to accomplish last year. We would like to begin the New Year telling you what we will be able to accomplish. But like the Apostle Paul, we cannot say what we will surely do tomorrow, for the necessity of today is sufficient for our efforts.

Our educational memo this month addresses an evil with which we have wrestled before, and it is one that will return, yet, time and time again. The Supreme Court misused Thomas Jefferson's "wall of separation" language. What Mr. Jefferson really meant is that the beautiful garden of the church must have a wall protecting it from the state. There is a prospect of a breach in the wall.

While we do not know what else may be ahead, we do know that we will be contacted by a parent, child, minister, or possibly even you, because of a problem concerning a protected constitutional right. We know there will be problems and we hope to respond appropriately.

In the near future, we will provide information about efforts in the Alabama Legislature. This is an election year and there is opportunity for passing good legislation. We have already begun drafting legislation for pro-life and other issues. We expect to see gambling, homosexual rights, and other efforts brought to the front.

The state has the "Choose Life" tags ready for order at your local department of motor vehicles office. You will be required to complete an application and pay a $50 fee. When 1,000 plates are ordered, they will be made. If that goal is not reached you can obtain a refund.

We will keep you informed. If any questions arise during the year or if you need assistance, or know someone who does, do not hesitate to call us. Join with us, financially and prayerfully, to help us do our work. Thank you for your concern and support.

The Southeast Law Institute,

A. Eric Johnston

AEJ/jfj

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

To: **SLI Supporters**
From: **A. Eric Johnston**
Date: **January 2002**
Re: **WHOSE CHILDREN ARE THEY? - Part I**

History

Since the 1920's, parents have had the right to control the education of their children, including the right to choose the form of education. In the 1960's, Supreme Court rulings began removing religious speech and activities from public schools. As a result, churches began forming religious-based schools and parents exercised their constitutional rights of choosing religious-based education. However, in the 1970's, state officials attempted to control and regulate church schools. You may remember news reports of pastors such as Reverend Sillivan, the doors of whose mid-western church were padlocked, because he refused to submit his school to state regulation.

Similar problems made it to Alabama, which resulted in the passage of two laws protecting religious-based education from state encroachment, *viz.*, Section §38-7-3, *1975 Code of Alabama*, for preschool and Section§16-28-1(2), *ibid*, for school grades K-12. These laws have been important tools at our disposal to protect religious freedom. However, they were passed by legislative action and they can be repealed by legislative action. Within the last three years, there has begun a corrosive process on these protections.

Recent Developments

When you have a constant presence in the judicial and political arenas dealing with religious freedom and similar issues, as does SLI, you first begin to sense a change, and then, you begin to notice a change. Suddenly, you realize there has been change and you realize that more is to come.

One of the first things we noticed was a growing antagonism toward non-public education. There were problems with students transferring from non-public schools to public schools; attempts to pass criminal background check legislation would have placed even pastors on lists subject to state approval; and hostilities by local school officials toward non-public school students, parents, and administrators. We overcame each of these problems through legal and political efforts. However, these turned out to be minor compared to the more subtle, but organized and larger efforts to control children.

Thus far, three state actions or plans have occurred. First, the Alabama High School Athletic Association (AHSAA) passed rules penalizing non-public schools in sports participation classification. Second, the state board of education ruled it would not recognize three of the four methods of non-public school accreditation. Third, a Governor's Task Force proposes to rewrite daycare rules, which will result in church operations being state-regulated.

AHSAA

The AHSAA is an organization composed of all the public schools in the state of Alabama and a number of non-public schools, including church schools. Its purpose is to organize and administer inter-

school athletic events. It classifies schools into competitive categories based on the population of the school. While the AHSAA deems itself a private association, based on the *Brentwood vs. Tennessee Secondary School Athletic Association* Supreme Court decision in 2001, it would be a state entity. We have always seen it as a state entity, regardless of its protestations to the contrary. SLI filed a brief in the *Brentwood* case.

In 2000, without proper reason, the AHSAA declared that non-public schools classification would be based on an index of 1.35. In other words, the school population would be multiplied by 1.35 in order to classify it for sports competition. The net effect of this was to move most schools up a category causing them to play larger schools. Non-public schools were therefore much less competitive on the field and in sports related scholarships, although some excelled in their efforts. This was blatant discrimination against non-public schools, particularly church schools that had been chosen by parents who believe religion is an important part of education.

Next Month

This is an exhibition of hostility toward a valid parental choice of education. Does the state have the authority to control these important events concerning you children? Next month, we will address two attempts at state regulation that are even more significant. In the meantime, SLI will continue its work on these issues as they are in fact developing.

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.