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Dear Friends and Supporters,

We continue to hear comments that America is a divided nation. This appears to come from liberals who lost the “war on values.” However, many of us seem to agree with that assessment.

At the same time of this talk of a divided nation, some democrats, including the National Democratic Party, also say they too have values. Of course, everyone has values. The question is what are your “values?” I believe our lexicon of the common understanding of words would suggest that when the term “values” is used in this context it is referring to the traditional Judeo-Christian based values that enjoy a significant place in America’s history. America’s departure from those values to values of abortion, gay marriage, and other such values, are values, but not our historical values. Historical values are now known as conservative values.

But that does not answer the question of, are we divided? Yes, to the extent we have different values, but that has been and will always be true. Sore losers want to make something more of it and so they suggest America is in some kind of trouble. President George W. Bush is blamed for many things, including being the “great divider.”

We all have opinions and we always will, but that is why we have republicans, democrats, and a mixture of other independent, political activist, and special interest groups. We are not divided. We live in a diverse nation. Yet, in the important matters, we must come together. Therefore, do not be one of those who say we are divided, but recognize that while we may have some political, religious and other philosophical differences, we are still Americans and not a nation of tribes.

In Alabama, we are not as divided as some may say. There has been a noticeable legislative change by democrats who often are on the other side of historical values, but who are now supporting core conservative efforts, viz., same-sex marriage and civil union prohibition legislation and recognition of unborn human life. Are they simply being political because of the “red state” phenomenon in the last presidential election, or have they sincerely seen the error of their ways and are seeking to do the right things? A man is known by his actions. An election year approaches. The real truth may not be known until after the 2006 General Election in Alabama. My hope is that members of the Alabama Legislature, who are supporting pro-family efforts now, will also be supporting those efforts then. Or, like Hillary Clinton’s new concern for abortion, are they just pandering?

The same-sex marriage issue was the first and is the leading legislation considered in this year’s General Session. This month’s Educational Update explains why it is so important.

In conclusion, permit me to add that we have spent a great amount of concentrated time in the Alabama Legislature on not only the same-sex marriage issue, but also bills concerning fetal homicide, political speech, and other important issues. Please help us in this effort by making as generous a gift as you can at this time. SLI is honored to provide service in the trenches of this warfare and we appreciate the support you give us.

Yours very truly,

A. Eric Johnston
General Counsel

AEJ/pmm

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

To: SLI Supporters
Date: March 2005
From: A. Eric Johnston
Re: The Legal Issues of Same-Sex Marriage and Civil Union

THE QUESTION

We have been asked many times about what is the proper legal approach to prohibit same-sex marriage and civil union. Why do we need an Alabama constitutional amendment? Same-sex marriage or civil union are issues which are threatening traditional marriage in virtually every state in the union. Massachusetts has led the way with legalizing same-sex marriage on May 17, 2004.

Legislative bills in the current Alabama legislative session are on their way to a vote by the people. When the Legislature has finished its work, SLI will give a complete analysis of the bill that is ultimately passed. In the meantime, there is a lot of debate and in the House of Representatives, Rep. John Rogers asked: "Why are we arguing about something that is already illegal?" This memo is to answer that question.

THE LAW

The best remedy to the situation is a federal constitutional amendment. This would prohibit same-sex marriage and civil union throughout the country on a uniform basis and similarly avoid the issue of whether states must recognize such relationships from other states. A federal constitutional amendment is a long and difficult process. Article V of the U.S. Constitution requires first a vote of two-thirds of both the House and Senate of the U.S. Congress and then affirmation by two-thirds of the legislatures of the states. In the meantime, there is great concern that states may be required to recognize unnatural marriages and civil unions because of the Full Faith and Credit Clause of the United States Constitution, Article IV, Section 1.

One of the best explanations to begin an understanding of the situation is in an Attorney General's Opinion dated April 20, 2000 to state Senator Bobby E. Denton from then Attorney General Bill Pryor. The opinion can be found at www.ago.state.al.us or contact SLI (AEJ@SoutheastLawInstitute.org or 205-408-8893) and we will send you a copy. Let us explain that opinion and the current situation.

Alabama has the Alabama Marriage Protection Act, § 30-1-19, 1975 *Code of Alabama* ("AMPA"). It states marriage is only between a man and a woman and we need not give recognition to same-sex marriages that occur outside the State of Alabama. There is also a federal law, 1 USCA, Section 7, the Defense of Marriage Act ("DOMA"), which states that no state shall be required to recognize a same-sex marriage under the laws of another state. Taken together, these provide a fairly strong defense against giving full faith and credit to a same-sex marriage from another state. Note that neither prevents a "civil union."

The United States Supreme Court has held that a state need not give full faith and credit to another state's law which violates the legitimate public policy of the state. *Nevada v. Hall*, 440 U.S. 410 (1980). Two other cases, *Phillips' Petroleum Co. V. Shutts*, 472 U.S. 797 (1985) and *Allstate Insurance Co. v. Hague*, 449 U.S. 302 (1981) together summarize that "a forum State can constitutionally apply its own law instead of another state's conflicting law, so long as it has sufficient contact or aggregation of contacts creating State interests such that application of its law: (1) is neither arbitrary or fundamentally unfair; (2) it is not an unfair surprise to the litigants; and (3) serves to further a legitimate public policy." The Alabama case of *Osoinach v. Watkins*, 180 So. 577 (Ala. 1938), held that a marriage of two Alabama residents in Georgia, valid under Georgia law but incestuous under Alabama law, was void and would not be recognized in Alabama. These cases seem to put us in a fairly secure position.

THE DILEMMA

AMPA, DOMA, and the court cases noted above suggest Alabama has a very strong public policy which can protect marriage; but neither address civil union. Further, it must be noted this Attorney General's opinion and the cases were decided in 2000, prior to the now infamous case of *Lawrence v. Texas*, 539 U.S. 558 (2003) which held a Texas criminal law against sodomy unconstitutional. The U.S. Supreme Court appears to be on a collision course with morals in America today. In order to anticipate this, it is wise for the State of Alabama to restate its public policy in even stronger and more definitive terms that is through an amendment to the Alabama Constitution.

It is uncertain what Congress or the federal courts will do in this situation. If we look at recent federal court cases, such as those about the Pledge of Allegiance, Ten Commandments, intelligent design disclaimers in textbooks, *etcetera*, we see the possibility of federal courts overriding what we think is right. Morals in America are changing, the face of America is changing, and the courts and legislatures seem to be following suit. It is incumbent that Alabama legislators protect the sovereignty of the state for the welfare of its citizens.