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Dear Friends and Supporters,

Over the past few weeks, we have been working hard to provide information on a number of subjects to various groups. As you know, one of our primary goals is education. This education may have been helpful for understanding issues in the 2004 general election for president on down. Of course, as a 501 (c)(3) organization, SLI may not get involved in candidate races. We are not allowed to make any recommendations or endorsements. However, whether it is a political race or a personal problem, education is knowledge and knowledge helps you make right decisions.

We have recently spoken to the Baptist Christian Life Commission, at the Home Missions Conference for Oak Mountain Presbyterian Church, and to a number of other groups, including bible studies, supper clubs, and others. We participated in the Theology and Life Conference at Briarwood Presbyterian Church. Issues like same-sex marriage, abortion, stem cell research and cloning are on everyone's minds.

Unexpected issues pop up from time to time and we are always ready to respond. For example, one of the issues on the Alabama ballot was Amendment 2. By the time you receive this newsletter, you will know the outcome of the election. Before the election, we prepared an analysis of the proposed amendment and we may provide additional information to you on this if it remains pertinent. For the time being, let us say that Amendment 2 proposed to make a significant change in the status of public education rights in Alabama, while masquerading as a measure to remove inappropriate racist language from the Alabama Constitution. These were two unrelated issues. The racist language should be removed and not soon enough. On the other hand, whether Alabama will treat public education as a constitutional right is a very complex subject which has not been debated.

We are also continuing to work on issues involving transfers of students between non-public and public schools. We have mentioned this issue off and on for quite some time and it continues to evolve with certain problems, but with positive expectations for the future. Our goal is to protect parental choice and to remove any discrimination against school children. Also, because the 2005 legislative session draws near, we are working on a number of bills with representatives and senators so they will be ready for the coming session.

Our Educational Update this month is an answer to a question that many have been asking us. Why was Roy Moore's case rejected by the U.S. Supreme Court, while it agreed to hear Ten Commandment cases from two other states?

We hope each of you will have a bountiful Thanksgiving season. We wish to give you thanks for your support for us. Until next month, I am,

Yours Very Truly,

A. Eric Johnston
General Counsel

AEJ/mct

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

To: SLI Supporters
Date: November 2004
From: A. Eric Johnston
Re: Battle for the Ten Commandments: Chapter 3

As Chief Justice of the Alabama Supreme Court, Roy Moore erected a granite monument which contained a number of inscriptions, but most prominently the Ten Commandments. A federal court ordered the monument's removal, all appeals were exhausted, including a request to the United States Supreme Court for a review, and all failed. Additionally, Roy Moore was removed as Chief Justice of the Alabama Supreme Court. This is the third, but not the last, in a series of Educational Updates on the Ten Commandments issue.¹

Not long after the U.S. Supreme Court refused to review Roy Moore's case, it did agree to review cases involving Ten Commandment monuments from the states of Texas and Kentucky. The U.S. Supreme Court reviews only a few cases each year. Most of the time it is only when there is a significant difference among the eleven federal judicial circuits that it will review cases. So why did it agree to review cases from the Fifth Circuit (Texas) and the Sixth Circuit (Kentucky), yet refused to review a case from the Eleventh Circuit (Alabama)?

We believe the answer is in the presentation and facts of the cases. A distinction can be made between the Alabama case and the Texas and Kentucky cases. The Texas and Kentucky cases are more representative of the facts in a number of lawsuits around the country involving display on public property of the Ten Commandments.

The Alabama Case

The circumstances of Roy Moore's case were more aggravated than the other two. That is to say, the issue of whether the Ten Commandments should be displayed on public property was not as clearly, or, perhaps, as ordinarily stated as in the other cases. The Alabama case involved participation of a religious organization with a public official to place a 2 ½ ton granite Ten Commandments monument in a prominent public building and based on a legal position that it was an "acknowledgment of God." It had both a religious and historical nature. It also involved the issue of whether a public official was required to publicly acknowledge God in some concrete (granite?) way.

The Texas and Kentucky Cases

Texas involved a granite monument placed on public property by the Fraternal Order of Eagles in 1961 as a commendation for their fight against juvenile delinquency. This is a more secular presentation of the same document. In Kentucky, the Ten Commandments was represented as part of the foundation of American law, being a framed paper inscription, along with the Magna Carta and the Declaration of Independence. This would also be a more secular context and of a historical rather than a religious nature.

The Fifth Circuit Court of Appeals agreed that while the Texas monument was religious in nature, it was also an important historical document which could be permitted. On the other hand, the Sixth Circuit Court of Appeals disagreed with Kentucky and found that the display of the three documents was an establishment of religion.

Discussion

The central issue in all of these cases is whether the Ten Commandments, which is clearly a religious document, can also be appropriately recognized in a secular way as a historical or foundational document. Because there are many permutations on the variety, styles, sizes, locations, and reasons for the Ten Commandments being installed, posted or affixed, the U.S. Supreme Court must find common factors which will address the issue of when the Ten Commandments may be displayed by public officials or on public properties. We believe that what the Supreme Court was saying when it rejected Roy Moore's appeal was that his religious motivation to do so, along with participation of a religious organization, would not be acceptable. The Supreme Court would probably have found those actions unconstitutional if it had reviewed the case. We hope it is the desire of the Supreme Court to not simply say public display of the Ten Commandments is unconstitutional, but that it find the common elements which will permit its recognition as a religious, historical and foundational document. The Texas and the Kentucky cases, being decided differently by each of those courts of appeal, provide that opportunity without the aggravated circumstances of the Alabama case.

Conclusion

Roy Moore's case is over. His monument will not be returned to the rotunda of the Alabama Judicial Building. Whether or to what extent the Ten Commandments may be publicly displayed will be answered by the U.S. Supreme Court next spring. SLI authored a bill for the Alabama Legislature called the "Historic Documents Act" which would have permitted posting of the Ten Commandments along with other historic documents.² The legislative findings would have been clear that the posting was both religious and secular. It is not wrong for an action to have multiple origins or reasons. One does not diminish the other. Our hope and prayer is that the Supreme Court will recognize the Ten Commandments in all its aspects and allow them to be presented publicly.

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1. *Glassroth v. Moore*: Battle for the Ten Commandments, SLI Update, December 2002.
Battle for the Ten Commandments: Chapter Two, SLI Update, October 2003.
 2. "The Historic Documents Act", or The Ten Commandments: To Post or Not to Post, SLI Update, March 2001.