

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

To: SLI Supporters
Date: September 2005
From: A. Eric Johnston
Re: A Reminder for Public School Officials and Teachers: Students Have Religious Rights

The Alabama Education Association (“AEA”) has provided public school teachers three publications explaining the United States Constitution’s religious free exercise rights of students in public schools: *The Bible & Public Schools, A First Amendment Guide* and *A Teacher’s Guide to Religion in the Public Schools*, both published by the First Amendment Center at Vanderbilt University, and *Safe Schools for Alabama’s Children, An Educator’s Guide*, published by the Alabama Attorney General’s office. We congratulate the AEA for this important step.

Background

The origins of these documents demonstrate how important vigilance and participation are in protecting our constitutional rights. Religious controversy began in the 1960s with the removal from public schools of prayer by *Engel v. Vitale*, 370 U.S. 421 (1962) and Bible reading by *School Dist. of Abington Township v. Schempp*, 374 U.S. 203 (1963). *Stone v. Graham*, 449 U.S. 39 (1981) removed the Ten Commandments from public schools and *Wallace v. Jaffree*, 472 U.S. 38 (1985) prohibited a moment of silent prayer or meditation. *Lee v. Weisman*, 505 U.S. 577 (1992) prohibited clergy-given prayer at a public school graduation, though chosen to be ecumenical and nonsectarian.

Among other cases, *Lemon v. Kurtzman*, 403 U.S. 602 (1971), established the infamous *Lemon* test, requiring government action to have a secular purpose, the primary effect neither advancing nor prohibiting religion, and not fostering excessive government entanglement with religion. This test is so subjective that its application to virtually any religious activity on public property finds an establishment of religion. These cases overwhelmed the free exercise clause.

A number of cases began to matriculate in the federal courts on free exercise issues in the 1990s. As a part of this, SLI drafted a legislative bill which became law (Section 16-1-20.3, 1975 *Code of Alabama*) in 1993, recognizing student free exercise rights. Though a federal court action was filed and the law was held unenforceable, it acted as a catalyst that resulted in two important court decisions.

An Alabama federal trial court judge followed the lead of the ACLU attorneys and held virtually any religious activity in public schools by students to be unconstitutional. Though the ACLU gave lip service to the constitutional rights of students, their real goal was to remove all religion from the public schools in Alabama. The appeals court said “they (ACLU) contend, however, that student-initiated religious speech in the public schools is state prayer”

On appeal, the 11th Circuit ruled in *Chandler, v. James*, 180 F.3d 1254 (11th Cir. 1999) (*Chandler I*) that student-initiated religious speech is permitted and “must be without oversight, without supervision, subject only to the same reasonable time, place, and manner restrictions as all other student speech in school.” Later, the U.S. Supreme Court issued its opinion in *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000) holding unconstitutional a school policy that permitted students to vote on whether or what type of invocation would be held before a school athletic event. The 11th Circuit then issued its *Chandler II* opinion, *Chandler v. Siegelman*, 230 F.3d 1313 (11th Cir. 2000) reemphasizing that genuinely student-initiated religious activity is completely constitutional.

What Does This Mean?

Public school students may, among other things, engage in religious speech not only silently when saying grace, but in the hallways, on subjects dealing with a religious historic context, in school reports or artwork, in Bible studies or religious clubs under certain circumstances, and before any student audience, whether attendance is mandatory or otherwise, so long as the school does not interfere with or tell the student what to say. The best demonstration of the latter is commencement. If the valedictorian has accomplished so much during his or her school career that he or she is selected for this honor, then he or she should have the ability to give an appropriate address to the assembly. If that student decides to say something of a religious nature or offer a prayer, it is completely within his or her right. School officials should avoid participating in the valedictorian’s presentation.

Conclusion

Alabama public school officials and teachers should know that only the Attorney General’s publication which has been distributed to them is completely accurate. The other two publications are partially correct. They were written prior to *Chandler I and II* and do not address properly student-initiated prayer or religious activity, while the Attorney General’s publication does. We encourage school officials and teachers to contact us with any questions and we will be glad to provide information at no charge and without obligation. SLI attorneys have many years of experience, including representing the state in *Chandler I and II*. Along with the AEA, we encourage officials and teachers to recognize student religious rights and we thank them for it.