

SOUTHEAST LAW INSTITUTE™

A. ERIC JOHNSTON
President
General Counsel
Telephone: (205) 968-0900

3800 Colonnade Parkway, Suite 545
Birmingham, Alabama 35243
E-mail: SELawInstitute@aol.com

HARRY O. YATES
Executive Director
Associate Counsel
Facsimile: (205) 968-6534

September 2001

Dear SLI Supporter:

You have, no doubt, heard that while on his vacation, President Bush made a decision on fetal stem cell research. His decision came earlier than had been anticipated and news of it was covered with much of the usual fanfare and controversy. Unfortunately, in an attempt to appease both sides, his decision did not uphold the sanctity of life. This, my friends, means the debate is still open.

Most of you probably did not receive our August newsletter and Educational Memo in time to communicate with President Bush, before his decision. Our memo advised against the use of federal funds for stem cell research and explained why there should be a uniform federal law which prohibits and criminalizes any research of this nature - - public or private. The President's decision did nothing to protect human life. In fact, it suggests this gruesome research may possibly hold an answer to our medical needs.

Pro-life groups are unanimous in their condemnation of President Bush's decision. The simple fact is, if there is any degree of success with the research on the "stem cell lines" (tissue from already dead embryos), there will be overwhelming pressure to expand the research to additional embryos, alive and dead.

While there are no barbed wire fences, no ovens, and no gas chambers, the potential victims of today's stem cell research are every bit as real and human as victims earlier this century. They simply do not have a voice and we must speak on their behalf and for their protection. Please use the information from August's memo to communicate with the listed officials.

Meanwhile, summer vacation is over, everyone is back to work, the kids are back in school, and our work continues. Each of you have children, grandchildren or family members with children. Our work, which is covered in this month's Litigation Memo, describes some very immediate needs involving our families. Please send your most generous contribution and then urge your friends and family to make contributions too. We will do everything we possibly can and if you do the same, our efforts will go so much further. If we had the resources we could easily dedicate ourselves 100% of the time to causes such as the ones covered in our memo. Since that is not currently possible, SLI lawyers will continue as "tent makers" and just sustain our efforts.

Please help us keep the issues of religious freedom and sanctity of life at the forefront. We are grateful for everything you do. I cannot emphasize this enough - - we simply cannot do this work without you. With personal regards, I am,

Sincerely,

A. Eric Johnston

AEJ/dcw

LITIGATION MEMO FROM THE SOUTHEAST LAW INSTITUTE

To: Southeast Law Institute Supporters

From: A. Eric Johnston

Date: September 2001

Re: Religious Freedom and the State: Involving Our Schools and Effecting Our Families

In 1971, the legislature passed a law which protected church run daycares from too much state regulation. Similarly, in 1982, the legislature passed a law which protected church run schools from too much state regulation. For the next 15 years, we saw very little efforts by anyone to diminish this very important protection for religious freedom. This month, we want to bring to your attention two legal matters which require our immediate participation.

I. *Kids Care, Inc., et. al. v. State of Alabama Department of Human Resources, et. al.* Case #: CV-2001-814-GR

Private preschool (daycare) centers have filed a lawsuit attacking the laws which regulate preschool programs. Included in the lawsuit is a challenge to a statute which protects church operated programs.

Recognizing the First Amendment right of free exercise of religion, the Alabama legislature passed the "Child Care Act of 1971", Section 38-7-3, *et sequel, 1975 Code of Alabama*. This Act included an exemption for "preschool programs which are an integral part of a local church ministry or a religious non-profit elementary school...". The Act placed minimal requirements on religious preschool programs, but, provided safeguards for the protection of children in the operation of the programs. The Act did not attempt to regulate religious preschool programs, because that would have been unconstitutional. At the same time, other provisions of the Act properly regulated public and other private (non-religious) preschool programs.

The Alabama Christian Education Association (ACEA) has assumed the responsibility for being a watchdog of religious freedoms related to religious preschool and school programs. ACEA has asked SLI to provide legal representation. The Attorney General's office has invited us to participate in the lawsuit. We are monitoring the lawsuit and deciding whether to actually intervene as a party or whether to participate by filing briefs. **The extent to which we participate is directly related to the amount of financial support we would have for the effort.** SLI desires to participate to the fullest extent possible. We do not believe the state can possibly represent the interests of the church as well as the church can represent its own interests.

Our position in this lawsuit is not to do anything to increase the chance that a child may be harmed because of inadequate state participation in the program. That protection exists. The privately owned daycares, jealous of churches' protected status, are trying to throw out the entire law which would possibly bring church daycares under state domination.

II. PROPOSED SCHOOL CRIMINAL BACKGROUND CHECK LEGISLATION

In 1999, SLI ended a four year struggle to keep the legislature from passing a law which would have unconstitutionally regulated the hiring practices of church schools. A criminal background check bill was passed for all schools, public and non-public, including church schools, which protects school children from pedophiles and other sexual predators. We ultimately built in some protection for church schools by omitting pastors, rabbi's and others from the regulation and by placing the burden for the checks on employees and not churches. Similarly, a preschool program bill was passed the next year, modeled on the school law. SLI participated substantially in both of those efforts and was primarily responsible for the drafting of both laws.

The Alabama Education Association (AEA) sought to kill the school law. It used churches as an excuse to kill the legislative bill on several occasions, claiming that churches were keeping the bill from passing. Churches were not trying to kill the bill, but were trying to keep an unconstitutional burden from being placed on their operations. Otherwise, they supported the bill.

A new specter has now arisen. The AEA suggests it would like the present school teachers checked. The Governor joined in the chorus and believes every teacher should be checked, including home school teachers (parents), who were exempted by the 1999 law. We are not sure of their motivations and there is room for much speculation. In all events, we are again faced with a conflict not of our making and the prospect of church school regulation through the might of the AEA and the State of Alabama.

We do not oppose appropriate legal safeguards protecting children. There are ways to accomplish that constitutionally. Unless we engage in the process, religious freedom will be diminished by some well intentioned, but misguided people, and some ill intentioned, but well guided people. This legislation is expected to come up in the Special Session, beginning August 28, 2001 and if nothing passes at that time, it will again come up in the 2002 Regular Session.

III. CONCLUSION

You may not receive this newsletter until some of the above events have taken place. We will already have expended substantial time, expense and effort. We do so with the faith that our supporters will see our need and come to our aide. The battle may be ongoing, even into next year. Please continue to be in prayer for this and make your most generous financial contribution.