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

To: **Interested Persons**
Date: **August 2025**
From: **A. Eric Johnston**
RE: **SCOTUS Affirms Parents' Rights to Protect Children's Values**
The Alabama Legislature Needs to Step Up

Two SCOTUS cases just decided will be helpful in the struggle to protect children from pornography and LGBTQ+ activities and materials. Recent issues in public libraries and public schools have highlighted the openness with which these activities and materials have been displayed, particularly during the permissive and activist years of the Biden Administration. Great turmoil exists in places like Prattville and Fairhope where the public libraries and schools are dealing with these issues.

Two Supreme Court cases just released in June, enforce parents' rights and protect children. In *Free Speech Coalition v. Paxton*, a Texas law preventing minors from accessing obscene materials online was tested in court. Commercial pornographic sites were required to have proof of age for anyone to use a site. The pornography industry contested the law on the basis that without giving proof of age it denied adults access to sites otherwise legally available to them. They contended it violated the adults' privacy rights. The court upheld the right of the state to protect children.

In a 6/3 opinion, Justice Clarence Thomas writing for the court, enforced the law which prohibits the availability of "material harmful to minors." This is the legal term for protecting children from obscenity of all sorts. In *Miller v. California* (1973), SCOTUS set forth the test of what is adult obscenity. In *Ginsburg v. New York*, (1968), the court defined what was obscene from a child's perspective:

> *"…a state may prevent minors from accessing work that (a) taken as a whole, and under contemporary* ***community standards****, appeal to the prurient interest of minors; (b) depict or describe specifically defined sexual conduct in a way that is patently offensive for minors; and (c) taken as a whole, lack serious literary, artistic, political, or scientific value for minors."* Emphasis added.

The court recognizes in these days of online access, that protection is even more important. It emphasized "…the First Amendment leaves undisturbed states' power to impose age limits on speech that is obscene to minors. That power, according to both 'common sense' and centuries of legal tradition, includes the ordinary and appropriate means of exercising it." The court held that Texas' interest in shielding children from sexual content is important, even compelling.

The other recent case was *Mahmoud v. Taylor*, in which Maryland public schools were required to honor parents' rights to opt their children out of classes where LGBQT+ inclusive story books were being used to teach the children acceptance of the various perverted sexual programs and activities of that agenda. Christian and Muslim parents objected on the basis the materials violated their free exercise of religion on what they taught at home, including sex and gender standards.

Initially, the school board allowed parents to opt out of the program, but when hundreds objected and wanted to opt out, the school system determined not to allow any opt out and forced the children to hear the story telling. The parents objected and they were told they could move their children out of public school to private education, an expense many could not afford.

The court held that there are few acts more important than the religious education of children. Parents' religious rights in education were determined in 1973 in the case of *Wisconsin v. Yoder*. This is the well-known case where Amish children were not required to go to public schools past the eighth grade. For many years, the progressive agenda has sought to minimize the *Yoder* opinion asking courts to hold it not applicable. *Mahmoud* reenforced the *Yoder* parental rights.

The school board attempted to minimize the issues. However, the court reviewed in detail in the opinion the sexually graphic nature of the story books being presented to the children in kindergarten

through the fifth grade. Of course, these are very impressionable years for children. Children respect their teachers and believe what they say. They are role models. However, the role models were teaching things that were conflicting with religious beliefs taught in the churches and homes of the parents. The court said "these books carry with them 'a very real threat of undermining' the religious beliefs that parents wish to instill in their children." The school system was saying teach your kids religion at home, but we will teach what we want to at school. The school system did not wish to respect the religious beliefs of the parents and what they wanted to teach their children, rather the school board was promoting an agenda.

These cases make clear the right, even the obligation, of the Alabama Legislature to enact laws to protect Alabama's children. Perhaps, the most significant thing it could do would be to pass Representative Arnold Mooney's bill to amend the Alabama Anti-Obscenity Enforcement Act to remove the exemption of public schools and public libraries from that law. That law criminalizes "obscenity" for adults and "harmful to minors" materials. These are legal terms meant to define, prohibit and penalize pornographic materials and to respect the mores of the community.

The operational beauty of this test is that the determination is made based on local community standards as determined by a jury, that is a jury of local citizens. With legal and factual safeguards of the jury system of America, we are assured, as far as humanly possible, the decision will be correct. No bureaucrat or biased agent decides. It is a "jury" of carefully selected local citizens who review the evidence and decide.

This concept seems to be lost on some legislators and some district attorneys. Some legislators and lobbyists have suggested we change the wording of the quoted test. They fail to realize these are the constitutional limits decided by SCOTUS and are not subject to legislative change. DA's resist the obligation to enforce the law and protect minors. Some consider enforcement of the Alabama Obscenity Enforcement Act to not be worth their while. Is protection of minors from sexual deviancy not important? Admittedly, there are few prosecutions of obscenity in these days. The availability of internet porn is so easy. Seems like everyone has it or that it is ok.

In the 1990's, before the internet, pornography was found only in adult theatres and bookstores. "Pornography" is a generic term which would encompass sexually explicit materials, though "obscenity" and "harmful to minors" are the actual legal terms. Alabama Attorney General Jimmy Evans successfully closed these theatres and bookstores with prison sentences and huge fines. SLI lawyers, deputized as Deputy Attorneys General participated in those cases and saw the success of Mr. Evans' task force.

One of the purposes of criminal prosecutions is deterrence. Enforcement of the Alabama Obscenity Enforcement Act would have the same result for librarians and schoolteachers. That may sound harsh, but the reality is few if any would be prosecuted. Likely, the passage of Representative Arnold's law is all that would be necessary.

While these recent SCOTUS cases are not directly on point, they encourage passage of laws to protect children. This would also include passage of a new public school sex education law. There has been a bill in the Alabama Legislature sponsored by Representative Susan Dubose to update the existing statute for public schools. Alabama must focus on the abstention model without active sex options.

Recognizing the need to regulate what is available to children and to regulate is not only desirable, but legal. Similarly, enforcement of the finally passed law by Representative Chris Sims and Senator Clyde Chambliss, Act 2025-406 is completely legal. It requires internet providers to have a filter on devices that minors may use to access unlawful materials.

SCOTUS is giving new life to the U.S. Constitution's Tenth Amendment, which reserves to the states the ability to regulate. Alabama can take advantage of the rights reserved to it as a state. Many legislators file bills to protect our children. Leadership of the Senate and House must resist the lobbyists for the perverse sexual interests and give these bills priority for becoming law.