

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

To: Interested Persons
Date: October 2026
From: A. Eric Johnston
RE: Prohibition of Sexual or Gender Oriented Performances to Children

In first 2024 and later, Representative Arnold Mooney introduced legislation to update the Alabama Anti-Obscenity Enforcement Act (“AAOEA”). The reason is that public libraries were producing drag shows for minors at public libraries. These productions took place in a number of public libraries around the state.

There was significant opposition to the activities led by now Lieutenant Governor candidate John Wahl. Those issues still exist. Communities are still fighting the efforts of the LGBTQ+ community to introduce various forms of sexual perversion to minors. This includes not only printed and pictorial materials, but drag shows, i.e., men dressed as women performing sexually provocative acts. No legislation passed.

Representative Mooney first filed a bill that would have updated the AAOEA to make it clear that sexual or gender-oriented performances included in the definition of “sexual conduct” would include the following:

“Any sexual or gender-oriented conduct that knowingly exposes minors to persons who are dressed in sexually revealing, exaggerated or provocative clothing or costumes, or are stripping, or engaged in leud or lascivious dancing, presentations, or activities in K-12 public schools and public libraries, where minors are expected and known to be present without parental presence or consent.”

When that bill faced significant opposition, Representative Mooney suggested alternatively that the AAOEA already addressed this issue and the problem with the public schools and public libraries could be addressed by removing the exemption that public schools and libraries enjoyed under the law. In 1989 when the AAOEA was passed, public morals were such that no one would envision that a public school or public library would conduct obscene productions in the presence of minors. In order to get the AAOEA passed, however, due to opposition by the American Library Association, those exceptions were included. That association has been very supportive of protecting offensive materials and productions in public libraries, principally earlier for printed materials, but now for live drag shows.

There are two leading SCOTUS decisions on whether obscenity is protected speech. The court recognized it is not protected speech toward minors in *Ginsburg v. New York* (1968) and then applied to adults in *Miller v. California* (1973). The judicial test for what is obscenity for both minors and adults is stated verbatim from those cases in the AAOEA. In spite of these long-standing, clearly articulated decency standards, supporters of the drag shows and some uninformed legislators argued the standards are vague and unconstitutional.

The state of Florida has led the way on this issue similar to Mooney’s. In *HM Florida-ORL, LLC v Governor of Florida*, the Eleventh Circuit Court of Appeals reviewed an effort by the state of Florida to protect children from provocative drag shows. In an *en banc* review by all sitting judges of the Eleventh Circuit Court of Appeals, the court cited a more recent SCOTUS decision, *Free-Speech Coalition, Inc. v. Paxton*, which cited *Ginsburg* and *Miller* obscenity standards;

“Under Paxton’s “Miller-for-Minors” test, a state may prevent minors from accessing works that (a) taken as a whole and under contemporary community standards, appeal to the prurient interest of *minors*; (b) depict or describe specifically define sexual conduct in a way that is blatantly offensive for *minors*; and (c) taken as a whole, lack serious literary, political, or scientific value *for minors*.” (Emphasis in original).

Alabama is in the Eleventh Circuit Court of Appeals circuit. We are subject to this case and its ruling. Should Representative Mooney choose to bring his bill back or should John Wahl further pursue proper public library standards, this case should satisfy any naysayer that the AAOEA is not vague and unconstitutional.

Although constitutional authority already existed for that proposition, this recent Eleventh Circuit case makes it clear that drag shows should not be permitted in the presence of minor children. The case specifically held the state has a compelling interest in protecting children and that the law requires only a rational basis review and is presumptively constitutional. “The [Florida] Act bans admitting a child of any age to a performance that depicts nudity, sex, or leud conduct when a performance satisfies *Miller’s*-three-part obscenity test.”

Alabama’s law meets that standard, it is constitutional, and “it is evident beyond the need for elaboration that a state’s interest in safeguarding the physical and psychological well-being of a minor is compelling.”

SLI was principal draftsman of the AAOEA. We are supportive of this updated effort to protect our children.

We hope the legislature will step up to protect Alabama’s children as the Florida legislature has done.

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