

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

**To:** Interested Persons  
**Date:** November 2022  
**From:** A. Eric Johnston  
**RE:** Bingo Gambling Finally Stopped? What Comes Next?

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The Alabama Constitution prohibits gambling. Several amendments from the 1980's permitted traditional paper card bingo in a few counties. With the advent of technology, these morphed into slot machines claiming to be bingo.

Since 2010, when Governor Bob Riley created a task force to prosecute illegal slot machine gambling in Alabama, the illegal operations have continued. Violation of the gambling laws were mere misdemeanors, resulting in the payment of simple fines. Governor Robert Bentley deprived the task force of manpower to enforce forfeiture of the machines. Law enforcement in counties like Macon and Lowndes was not consistent in enforcing the criminal statutes. Consequently, illegal gambling continued unabated rendering millions of dollars of profits to the gambling interests.

Even after about a dozen cases were handed down by the Alabama Supreme Court finding the so-called "bingo" machines were in fact "slot" machines, the illegal interests continued. When Steve Marshall was elected Attorney General, he realized the inadequacy of the minor criminal punishments and brought lawsuits against the gambling interests in Macon and Lowndes County on the basis that the continuing illegal gambling enterprises constituted a public nuisance and should be permanently enjoined. That is, a court order not permitting them to operate. A violation of such an order would result in contempt permitting owners and operators to be put in jail for potentially long periods of time.

The initial court proceedings ran into the usual problems with local law enforcement authorities. The circuit courts there found excuses not to enjoin the illegal operations. The AG's office presented unimpeachable evidence of the illegal nature of the operations. The traditional paper card bingo as defined by the Supreme Court was not being played, rather it was electronic slot machines.

In *State v. Epic Tech, LLC* and *State v. White Hall*, etc., decided September 30, 2022, the Alabama Supreme Court addressed these issues. The state contended that the continued operations were a public nuisance and a nuisance *per se*. The defendant's contended that the operations were not a nuisance because existing criminal laws could be enforced and because the operations gave significant local charitable monetary support. The court determined those excuses would not preclude the enjoining of activities otherwise harmful to the public.

The court reviewed the earlier cases and stated, "in fact, every single element involved in the game commonly known as bingo is eliminated in the operation of these machines." The court also noted that "attempts had been made by 'state' officials to enforce the laws of this state and stop illegal gambling. The state's efforts have been to no avail and the defiance of state law continues... . This continued defiance of state law presents a textbook case for the issuance of the injunctive relief for a public nuisance... ." The evidence proves the gaming machines "were illegal gambling devices in defiance of the repeated holdings of the Supreme Court of Alabama!" The court said:

The Supreme Court has recognized the 'harm' of illegal gambling and its plethora of opinions upholding the prohibition of "the vicious system of lottery schemes and the evil practice of gaming, all their protean shapes, tending, as centuries of human experience now fully attest, to mendicancy and idleness of the one hand, and more profligacy and debauchery of the other... In other words, the public policy of the state... is that illegal gambling is harmful. *Emphasis the court's.*

The court concluded that part of the opinion by saying "accordingly, because 'electronic bingo' machines are illegal under Alabama law, they – and enterprises engaging in their use – constitute a public nuisance *per se*." Because there were myriad decisions finding these machines and these operations illegal and the failure of local law enforcement to punish them, it "supports the state's assertion that it does not have any other remedy to abate the public nuisances alleged here... The defendants have no right to engage in, and, thus, cannot be harmed by being enjoined from continuing in, an illegal enterprise."

Steve Marshall has done an excellent job enforcing a remedy that should bring these illegal operations to an end. There will be more legal delays by defendants, but the end is in sight. However, this is likely to incentivize the gambling operations to get laws passed by the Alabama Legislature

permitting them to once again operate gambling enterprises, but their plans are on a much grander scale. Simple electronic slot machines are not the goal. As we know from legislative bills filed in the last few years, they plan full-fledged casino gambling at many different venues in the state. The effort to stop illegal gambling in Alabama is closing one chapter, but we are opening another one.

### **A Short Primer on the Process**

Efforts have mainly failed due to in-fighting among gambling interests. With the very real possibility that “bingo slot gambling” is no longer possible, they may coalesce. As that next chapter opens, it may be helpful to understand the system. We begin with a little background. The clash of values in Florida has made public the new reality of business. Disney Channel, a huge business, tried to exercise its LGBTQ+ muscle to require children in K-3 public schools to be taught gender affirming lessons. The state of Florida reacted by passing a law that would forbid that.

Not long ago “business” was allied, from one extent to another, with conservative values. Now, however, principally lead by tech corporations, the wealthiest openly support the liberal socialist agenda. They support abortion, critical race theory, LGBTQ+ and other liberal initiatives. In 2019, when the Alabama Human Life Protection Act (prohibiting abortion) was considered by the Alabama Legislature, significant business pressure was placed on legislative leaders and the governor not to pass and sign the bill. Similarly, when the VCAP bill (prohibiting sex change procedures on minors) was being considered in 2021 and 2022, big business attempted to keep the bill from passage. Alabama leaders ultimately did the right thing and both bills became law.

The Wall Street Journal has explained in several articles the significant well-funded efforts in numerous state legislatures to stop pro family bills. We know how well-funded the Human Rights Campaign is and how active it has been in furtherance of aberrant sex lifestyles. What is not well known are the millions of dollars being paid to lobbyists to further the liberal agenda by business.

It is important to understand the process. There are three kinds of lobbyists. There are those who publicly speak at hearings, provide memoranda of facts or law to legislators, have informational meetings, press conferences and who are public and known for their issues and efforts. These are groups such as Eagle Forum of Alabama, ALCAP, Citizens for a Better Alabama and others.

Second, there are those who openly represent various interests, but who operate on a less public level. Their clients are known, but publicly they are quiet in their efforts. Gambling is an example of the type of issue in which these lobbyists work.

Then, there are those who operate entirely clandestinely. You do not know who they are, who they represent, what their goals are or even what they may be opposing or supporting particular legislation. It is this latter group who secretly oppose bills that promote sanctity of life, traditional marriage, religious freedom, individual rights and liberties and similar issues, and secretly promote bills that legalize gambling and marijuana.

Another fact is that the latter two types of lobbyists are well funded. A May 10, 2021, Wall Street Journal article said \$8 million was paid to 130 lobbyists by pro-marijuana interests. In reality, we may soon face “Let the People Vote” on gambling. The Governor, many Legislators, and many lobbyists quote this mantra. Thus far gambling bills have stalled. There are many reasons. However, many feel that it is inevitable that a bill will pass calling for a vote of the people to amend the Alabama Constitution to permit unlimited gambling. When that happens, the vested interests in gambling will spend millions of dollars advertising the benefits of gambling. Here is why we know.

A May 4, 2022, Wall Street Journal article reported on gambling in California. Online betting interests were being opposed by Indian tribes who have a gambling monopoly at this time. The article reported that the online gambling interest put \$100,000,000 into their campaign account. It also reported that the Indian tribes had as much as \$250,000,000 to spend on the issue. We know that the Poarch Indians have spent generously on advertising here in Alabama, even though there has been nothing significant to vote on. When a bill reaches the ballot level, we know that millions of dollars will be paid out of the gamblers coffers to affect the vote. How can individuals, churches and non-profit organizations compete with this?

On the other hand, the first lobbyist group described above, operates out of conviction with minimal funding. They operate with thousands, rather than millions of dollars. To date, these lobbyists have relied on conservative legislators to protect traditional values. It is becoming increasingly difficult, particularly on the gambling issue. As age demographics change, finding support to oppose gambling, marijuana and LGBTQ+ issues, and to support sanctity of life, traditional marriage, free speech, religious rights and other such issues will become more difficult. This is the next chapter.