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In this week's SWALU, we report on one case from the Alabama Supreme Court regarding the right of a party subject to criminal enforcement proceedings to contest the proceedings in a civil action--the latest bingo decision, and one case from the Eleventh Circuit Court of Appeals regarding the constitutionality and application of Ala. Code § 16-50-20 relating to Alabama State University Board service beyond age seventy.

**Tyson v. Macon County Greyhound Park, Inc., d/b/a VictoryLand, \_\_\_ So. 2d \_\_\_ (Ala. 2010) (Civil court lacked subject matter jurisdiction over an action seeking to enjoin the enforcement of the criminal laws of the State of Alabama.)** Tyson, in his official capacity as special prosecutor and task force commander of the Governor's Task Force on Illegal Gaming, arrived at the premises of Macon County Greyhound Park, Inc. (VictoryLand) without a warrant for the purpose of seizing allegedly illegal gambling devices.

VictoryLand brought an action in the Macon Circuit Court seeking an injunction and declaratory relief against Tyson, alleging VictoryLand's activities were lawful and that the seizure of the gambling machines would result in irreparable injury to VictoryLand. The Macon Circuit Court entered a temporary restraining order against Tyson, barring further action by him pending a full hearing on the issue. Tyson filed an emergency motion with the Alabama Supreme Court to stay or vacate the trial court's order, alleging the trial court lacked subject-matter jurisdiction over a civil action seeking to enjoin the enforcement of criminal laws.

The Alabama Supreme Court found in favor of Tyson, holding that as a general rule, a court could not interfere with the enforcement of criminal laws through a civil action. The court noted that there was an exception to the general rule in instances where the exercise of jurisdiction was necessary to avoid "irreparable injury" to a plaintiff who concedes its actions violate a criminal statute, but who alleges the statute is "void." The court, however, determined that the exception was not applicable under the facts at issue because VictoryLand "strenuously" maintained its innocence. Accordingly, the Alabama Supreme Court vacated the trial court's order and dismissed the action.

**Clark v. Riley, \_\_\_ F. 3d \_\_\_ (11th Cir. 2010) (Ala. Code § 16-50-20(a) constitutionally prohibits an individual from serving on the Board of Trustees for Alabama State University (ASU) beyond their seventieth birthday.)** Dr. Reed, a member of the Board of Trustees for ASU, brought an action against Alabama Governor Bob Riley in his representative capacity alleging that the provisions of Alabama Code Section 16-50-20(a), which prohibit an individual from serving on the Board of Trustees after the age of seventy, did not apply to him for two reasons: (1) The exemption found in Section 16-50-20(b) for members serving on the board as of 1986 exempted him from the age limit requirement of Section 16-50-20(a); and (2) The statute denied individuals over the age of seventy equal protection of the law in violation of the Fourteenth Amendment.

The district court ruled in favor of Riley on the first issue, finding the exemption provided under Section 16-50-20(b) should be read narrowly so as only to apply to Board of Trustee members who were over the age of seventy when the statute was initially enacted. The district court also ruled in favor of Riley on the second issue, finding that the statute did not violate the Fourteenth Amendment because there were multiple rational bases for treating trustees over the age of seventy differently. Clark appealed the decision to the Eleventh Circuit Court of Appeals.

The Court of Appeals for the Eleventh Circuit affirmed the decision of the district court. The court summarily dismissed Clark's equal protection action, applying rational basis review to determine the age classification used in the statute was rationally related to legitimate state interests which had been enumerated in prior cases. The court next found that Section 16-50-20(b) should be read narrowly so as to provide an exemption to the age requirement in Section 16-50-20(a) only in instances where a trustee serving on the Board of Trustees was age seventy or older as of 1986.

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