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BINGO IN ALABAMA: MORE THAN JUST A GAME

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“Today's decision casts a cloud upon this Court's prior decisions, as well as numerous trial court judgments addressing the legality of various bingo operations. What has been an orderly process, I suspect, will soon resemble a three-ring circus.”

Tyson v. Macon County Greyhound Park, Inc.<sup>1</sup>

For some Alabamians, bingo is a harmless form of entertainment. For others, it is a sinful activity and must be prohibited. For others still, it was a vital economic force in their community. For politicians, it is an issue that cannot be ignored and stirs emotions (and potentially votes) on all sides. These divergent and often passionate perceptions have combined to birth Alabama's Bingo Wars, and everyone seems to be entrenched for a protracted engagement.

In this article, I do not advocate for one side or another or aim to convince you of the propriety of electronic bingo or lack thereof. Instead, by guiding you through a brief history of bingo in our state and discussing the cost of inaction on the issue, I hope to show that whatever your view on bingo, specifically electronic bingo, bingo in Alabama is more than just a game.

### I. History of Bingo: From Lotto to the Bingo Wars

“Throughout history, it has been the inaction of those who could have acted; the indifference of those who should have known better; the silence of the voice of justice when it mattered most; that has made it possible for evil to triumph.”

•Haile Selassie

Careful consideration of the impact of the Bingo Wars in this state first requires a brief overview of the historical origins of the game and relevant Alabama law. The game commonly known as **\*510** bingo has its origins in the game of “lotto,” which dates back to 16th century Italy.<sup>2</sup> Through the centuries, the game evolved and changed, from carnival games to church basements to modern gaming facilities. Electronic bingo found favor with gaming companies, as:

[t]he advantage for the bingo hall is that it allows the players to keep track of far more cards than is humanly possible, increasing potential revenue because players pay by the card. The computers also make it easier for the disabled to play. And there is some hope that computers will impart a more modern image to bingo.<sup>3</sup>

In Alabama, bingo is permitted by constitutional amendment in eighteen jurisdictions.<sup>4</sup> But for those amendments authorizing bingo, the game would be outlawed under [Article IV, Section 65 of the Alabama Constitution](#),<sup>5</sup> which expressly prohibits lotteries in Alabama. It is well-settled law in Alabama that the game commonly known as bingo is a lottery for purposes of the constitutional prohibition.<sup>6</sup> Alabama's “public policy is emphatically declared against lotteries, or any scheme in the nature of

a lottery, both by Constitution \*511 and by statutes.”<sup>7</sup> Guided by that policy, “courts have shown a general disposition to bring within the term ‘lottery’ every species of gaming, involving a disposition of prizes by lot or chance.”<sup>8</sup>

One exception to the criminal gambling statutes of Ala. Code §§ 13A-12-20 to -75 (1975) is Ala. Code § 13A-12-76, commonly referred to as the “Chuck E. Cheese Law,” which exempts certain “bona fide coin-operated amusement machines” from the criminal gambling statutes. In *Ex Parte Ted's Game Enterprises*, the defendant asserted that its video-game machines involved “some skill,” and therefore were legal “bona fide coin-operated amusement machines.”<sup>9</sup> The *Ted's Game Enterprises* court noted “[t]he phrase ‘bona fide coin-operated amusement machines’ is defined, in part, as ‘every machine of any kind or character used by the public to provide amusement or entertainment the result of whose operation depends in whole or in part upon the skill of the player . . . .’”<sup>10</sup> In rejecting the defendant's assertion that it fell within the “Chuck E. Cheese Law” exception, the court held “that § 13A-12-76 may not, without contravening Art. IV, § 65, of the Alabama Constitution, be applied so as to legalize games or activities in which skill does not predominate over chance in determining the outcome.”<sup>11</sup> The *Ted's Game Enterprises* court made clear that “chance” was the watchword when it came to legal gaming devices and that the Alabama Legislature did not have the power to promulgate laws legalizing devices “in which chance predominates over skill in determining the outcome.”<sup>12</sup>

Changing technology brought the electronic bingo debate to Alabama's statehouse and then to Macon and Greene County voters. In a November 4, 2003, referendum, the voters of Macon County approved a proposed constitutional amendment that became Amendment No. 744 to the Alabama Constitution.<sup>13</sup> Amendment 744 authorized “[t]he operation of bingo games for prizes or money by nonprofit organizations for charitable, educational, or other lawful purposes shall be legal in Macon County” and was ratified in June 2004.<sup>14</sup> Amendment 744 further provided that “[t]he sheriff shall promulgate rules and regulations for the licensing and \*512 operation of bingo games within the county.”<sup>15</sup> Amendment 743, which specifically provided that bingo could be played “on a card or electronic marking machine” in Greene County, was also ratified in June 2004.<sup>16</sup> Soon thereafter, electronic bingo machines began appearing in other locations across the state. As the number of electronic bingo machines grew, so did the level of concern surrounding the legality of electronic bingo. In December 2004, then-Attorney General Troy King announced the results of his “unprecedented, hands-on evaluation and review of gambling occurring in Alabama”<sup>17</sup> and declared as legal the electronic bingo games found at VictoryLand and Greenetrack, the two largest electronic bingo facilities in the state and located in Macon County and Greene County, respectively.<sup>18</sup> The first shot of what would become the Bingo Wars had been fired.

In his report, Attorney General King observed that:

bingo has evolved from its origins hundreds of years ago to cards where the numbers are covered by buttons or other markers, to sheets of paper where the numbers are daubed with a paint pen, to laptop computer-like devices where multiple cards can be played simultaneously, to video consoles where the bingo game is simulated using computer chips.<sup>19</sup>

The Alabama Attorney General identified the elements of electronic bingo as follows: (1) “a grid of five horizontal and five vertical squares;” (2) “numbers randomly selected;” (3) a “preordained winning pattern;” (4) “[s]pinning wheels and other video graphics must not affect game play;” and (5) “players on the machines must compete against one another.”<sup>20</sup> These findings and conclusions were intended to “bring clarity to the law allowing both the proponents and opponents of gambling to know the legal bounds within which gambling must operate in Alabama and allowing those charged with enforcing the law to do so more effectively.”<sup>21</sup>

Attorney General King's definition of bingo was consistent with numerous other jurisdictions in America. For instance, in the Indian Gaming Regulatory Act, 25 U.S.C. § 2703(7)(A) et seq., Congress defines bingo as:

**\*513** (i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith) -  
 (I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,  
 (II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and  
 (III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards . . . .<sup>22</sup>

While definitions and our understanding of words change over time, the essential character of a defined object or action does not necessarily change. As Attorney General King recognized, “[J]ust as no one would contend that e-mails are any less a form of correspondence that are letters written with a quill pen, but instead represent a technological evolution in correspondence, similarly, bingo games that are depicted on a video console can still be bingo — albeit a technologically advanced form of bingo — but bingo nonetheless.”<sup>23</sup> Whatever our contemporary understanding of the word “bingo,” the major elements of the bingo game have remained consistent from the Renaissance to modern computer-driven games: bingo is a game that is played for prizes, on a card with designated numbers, where the numbers (or symbols) are selected at random, and the players are playing against each other.

With the passage for multiple constitutional amendments allowing bingo, the question of “what is bingo” came under increasing political and legal fire. The second shot in the Bingo Wars involved the Mega-Sweeps electronic gaming operation at the Birmingham Race Course and resulted in *Barber v. Jefferson County Racing Association, Inc.*<sup>24</sup> On December 15, 2005, the owners of the Race Course (“JCRA”) began operating “Quincy’s MegaSweeps,” which was a “sweepstakes promotion at the race course to promote the race course and its lawful activities as well as the opening of an internet café and digital communications center.”<sup>25</sup> One week later, Jefferson County Sheriff Mike Hale began executing a warrant for the seizure of all MegaSweeps records and computer equipment.<sup>26</sup> Later that same day, the JCRA filed a complaint against Sheriff Hale **\*514** seeking a declaratory judgment that MegaSweeps was legal, enjoining Sheriff Hale from interfering with its operation, and declaring the “‘Alabama gambling statutes upon which the search and seizure [were] based’ are ‘unconstitutionally vague,’” specifically the definition of gambling in *Ala. Code § 13A-12-20*.<sup>27</sup> With the consent of the parties, the trial court issued an injunction that prevented further seizure of the equipment and returned all property removed as well as the operation of MegaSweeps pending resolution of the declaratory judgment action.<sup>28</sup> Both the machine manufacturer and David Barber, then-Jefferson County District Attorney, filed motions to intervene in the case, which the trial court granted.<sup>29</sup> Following a bench trial, the trial court found that MegaSweeps was not a lottery and did not involve the use of slot machines or other illegal gambling devices.<sup>30</sup> The trial court went on to enjoin Sheriff Hale “from further actions against [the MegaSweeps] operations at the [race course], provided [the owners] operate the [MegaSweeps] as represented.”<sup>31</sup>

Although Sheriff Hale did not appeal the trial court’s decision, Barber filed an appeal. The appeal was so politically controversial that three justices filed statements of “nonrecusal.”<sup>32</sup> The appellate court characterized the issues before it as “(1) whether the MegaSweeps operation at the race track involve[d] the use of slot machines and, if so, (2) whether the definition of gambling in *§ 13A-12-20, Ala. Code 1975*, [was] unconstitutionally vague.”<sup>33</sup> Finding against the JCRA, the appellate court found that “the trial court erred in focusing on the function of the MegaSweeps readers in isolation. When integrated as they are with the servers, central database, and related computer equipment, the readers are slot machines as that term is defined by *§ 13A-12-20(10)* and *§ 13A-12-27*.”<sup>34</sup> The appellate court went on to find that “*§ 13A-12-20* [was] not unconstitutionally vague.”<sup>35</sup> Accordingly, the trial court’s judgment in favor of JCRA was reversed and relief rendered for Barber.<sup>36</sup>

**\*515** In December 2008, Alabama Governor Riley, believing that electronic bingo machines were in fact illegal slot machines, bypassed Attorney General King and signed Executive Order Number 44, which created the Governor's Task Force on Illegal Gaming.<sup>37</sup> Executive Order Number 44 provided:

that the Task Force shall serve as a resource for local prosecutors and law enforcement officials who request assistance in the investigation and prosecution of gambling-related crimes. The Task Force may provide technical assistance, investigative support, law enforcement personnel, and any other assistance requested by local authorities reasonably necessary to enforce Alabama's anti-gambling laws.<sup>38</sup>

The Task Force was headed initially by former Jefferson County District Attorney David Barber, the named plaintiff in the JCRA appeal. On January 25, 2009, Governor Riley appointed Mobile County District Attorney John M. Tyson, Jr. as Task Force Commander.

For a time, the battleground for the Bingo Wars moved back into the courtroom. The Alabama Supreme Court established a six-point test for permissible electronic bingo machines in *Barber v. Cornerstone Community Outreach, Inc.*<sup>39</sup> The Cornerstone court held that legal bingo must exhibit the following six "characteristics":

1. Each player uses one or more cards with spaces arranged in five columns and five rows, with an alphanumeric or similar designation assigned to each space.
2. Alphanumeric or similar designations are randomly drawn and announced one by one.
3. In order to play, each player must pay attention to the values announced; if one of the values matches a value on one or more of the player's cards, the player must physically act by marking his or her card accordingly.
4. A player can fail to pay proper attention or to properly mark his or her card, and thereby miss an opportunity to be declared a winner.
5. A player must recognize that his or her card has a "bingo," i.e., a predetermined pattern of matching values, and in turn announce to the other players and the announcer that this is the case before any other player does so.

**\*516** 6. The game of bingo contemplates a group activity in which multiple players compete against each other to be the first to properly mark a card with the predetermined winning pattern and announce that fact.<sup>40</sup>

Following *Cornerstone*, it appeared that electronic bingo machines satisfying the six-point test would be legal in Alabama. But the Task Force stepped up its efforts against electronic bingo across the state in early 2010, beginning with the attempted raids on Country Crossing in Houston County<sup>41</sup> and VictoryLand<sup>42</sup> in Macon County on January 29, 2010. Court filings ensued,<sup>43</sup> and Governor Riley and Attorney General King, who remained at odds over the electronic bingo issue, lobbed verbal grenades at each other.<sup>44</sup> In an interesting turn, in early February 2010 the Christian Coalition, which opposes gambling, released a poll showing that nearly two-thirds of Alabamians opposed Governor Riley's attempted raids on electronic bingo facilities.<sup>45</sup> During the wait for the Alabama Supreme Court's ruling on the legality of the attempted raids, both Country Crossing and VictoryLand closed their doors,<sup>46</sup> leaving thousands unemployed. On February 4, 2010, the Alabama Supreme Court cleared the way for a raid on VictoryLand;<sup>47</sup> however, **\*517** as the facility was closed, the Task Force declined to attempt a raid at that time.

Governor Riley and Commander Tyson then turned their attention to Greenetrack,<sup>48</sup> with the Governor advising the facility to close its doors.<sup>49</sup> Meanwhile, VictoryLand reopened in early March,<sup>50</sup> albeit without its liquor license.<sup>51</sup> A local trial

court entered an order enjoining the Task Force from raiding the facility, ruling that Commander Tyson, as District Attorney of Mobile **\*518** County, had no authority in Macon County.<sup>52</sup> A volatile legal debate as to whether Governor Riley's Task Force or Attorney General King should be in command of the situation ensued.<sup>53</sup> Governor Riley appealed a trial court's determination that the Task Force fell under Attorney General King's domain,<sup>54</sup> and the Alabama Supreme Court agreed with Governor Riley's position that the Task Force and its special prosecutor, Commander Tyson, were his to control "lest the law go unenforced."<sup>55</sup> As of March 2010, the Task Force had spent over a half-million dollars in raids and attempted raids of electronic bingo facilities.<sup>56</sup>

The Bingo Wars gave additional heat to the summer of 2010, with the raid of Greenetrack by the Task Force being called "economic racism" by "enraged" legislative leaders,<sup>57</sup> some of whom participated in a mass arrest at the facility in protest of the raid.<sup>58</sup> The rhetoric was charged, with some political leaders going so far as to investigate a potential secession of Greene County from the state.<sup>59</sup> Over 900 machines were removed from the Greenetrack facility, **\*519** leaving VictoryLand as the only non-Indian electronic bingo facility operating in the state.<sup>60</sup>

The year 2010 was an election year in Alabama. Democratic gubernatorial candidate Ron Sparks vowed during his 2010 campaign that, if elected, he would make a special session on gambling a priority in his administration.<sup>61</sup> Both Sparks and his opponent, Republican Dr. Robert Bentley, agreed that the people of Alabama should vote to settle the gambling issue.<sup>62</sup> Following their November election, Governor-elect Robert Bentley and Attorney General-elect Luther Strange issued a joint statement regarding the future administration's stance on the Bingo Wars.<sup>63</sup> Contrary to the previous administration's position, Governor-elect Bentley "assign[ed] all pending cases and investigative authority to the Attorney General's office" and "transferred the primary responsibility for ensuring that Alabama's gambling laws are enforced statewide to Attorney General-elect Luther Strange."<sup>64</sup> The statement further affirmed that the state's legal position on electronic bingo would "continue" to be the following:

1. Any machine that meets the definition of a slot machine or gambling device pursuant to [Sections 13A-12-20 \(5\) and \(10\) of the Code of Alabama \(1975\)](#) will be seized, gambling proceeds will be seized, forfeiture actions will be pursued; and any persons who are in the possession of illegal slot machines or who are promoting illegal gambling will be prosecuted, period.
2. Absolutely no constitutional amendment in the State of Alabama authorizes the use of machines that accept cash or credit and then dispense cash value prizes based upon chance. Machines with those features are slot machines and are not made legal by any bingo amendment. Likewise, no local bingo rule, regulation or ordinance can legally authorize slot machines.
- \*520** 3. The six factors defining bingo laid out by the Alabama Supreme Court in the Cornerstone case will be applied strictly. Those factors cannot be changed, diluted, waived, redefined or reinterpreted by local rule, local regulation, or local definitions, nor through purported certifications from a gaming laboratory.
4. The Attorney General's office will provide guidance to prosecutors after the transition, but the operators of gambling establishments throughout our state should clearly understand the legal position of the State of Alabama moving forward beginning on January 17, 2011.<sup>65</sup>

In his first day as Alabama's 53rd governor, Governor Bentley made good on a campaign promise and signed an executive order to "revoke, repeal and rescind Executive Order 44, dated December 30, 2008, as amended by Amendment Number 1,"<sup>66</sup> abolishing the Governor's Task Force on Illegal Gambling and effectively returning the Bingo Wars to the Attorney General.<sup>67</sup> Logically, it would seem to follow that any bingo facility whose machines complied with the so-called "Cornerstone Test" would be legal and free from fear of prosecution by the Task Force. However, in light of the Alabama Supreme Court's decision

in *Tyson v. Macon County Greyhound Park, Inc.*,<sup>68</sup> rather than being the law of the state, Cornerstone is, in the words of one court, “akin to an advisory opinion, which may be persuasive but is not binding.”<sup>69</sup> To describe the current legal status of electronic bingo as “muddled” is putting it mildly.

## II. Cost of Inaction: Bingo, Employment, and Livelihoods

“There are risks and costs to a program of action. But they are far less than the long-range risks and costs of comfortable inaction.”

- John Fitzgerald Kennedy

**\*521** While the Bingo Wars formally rage in courtrooms, their reach extends far beyond the rail. Alabama's largest electronic bingo facilities were located in Greene County (Greenetrack) and Macon County (VictoryLand). The Greenetrack and VictoryLand bingo facilities provided significant social and economic benefits such as jobs, governmental funding, and access to social services, including health care. Both bingo facilities provided employment and an opportunity to break the cycle of poverty in their respective counties. Taxes on the facilities and the increased income of their employees benefited both state and local governments. Greenetrack employed roughly 400 people.<sup>70</sup> The facility contracted with more than 80 local charities that used their funding to provide services for the surrounding community.<sup>71</sup> Similarly, VictoryLand employed around 2,000 people, many of whom were county residents,<sup>72</sup> and provided financial backing to 60 charities.<sup>73</sup> With the closing of the bingo facilities in 2010, these employees suddenly found themselves unemployed and unpaid, and these charities no longer received the financial support that the bingo facilities were providing. As a result, the December 2010 unemployment rate in Greene County was 18.6%, while the rate in Macon County was 12.4%.<sup>74</sup> Many of the previously-supported charities have faced significant budget and operating cuts.<sup>75</sup> In December 2010, Greene County had the highest rate of bankruptcy filing in the nation.<sup>76</sup>

**\*522** Much concern has been raised over the increased unemployment rates as a result of the closing of Greenetrack and VictoryLand. Notwithstanding this attention, however, the discussion around Greenetrack and VictoryLand seems to omit many of the disconcerting consequences resulting from their closings, as most of the focus has been on the economic consequences of increased rates of poverty in the counties. These consequences are certainly dreadful and require immediate attention. However, the negative impacts of unemployment extend far beyond the purely economic impacts. Unemployment's “cost,” for lack of a better word, is far more complicated and multidimensional, impacting individuals, families, and communities not only economically but also socially and psychologically. Without these bingo facilities and without other potential sources of employment, these counties will face consequences that extend beyond the reach of poverty. In fact, Dr. Amartya Sen writes, “The separate problems [of unemployment] are, of course, interrelated, but each is significant in its own way, and they have to be distinguished from one another. Their negative effects are cumulative, and they act individually and jointly to undermine and subvert personal and social life.”<sup>77</sup> Many of these broader implications of unemployment apply directly to the current situation in Greene and Macon Counties.

### Decreased economic output

One of the more obvious and discussed effects of unemployment is the decrease in economic output and the increased fiscal burden borne by the government.<sup>78</sup> Reasonably enough, the fewer people and businesses participating in the economy in a given area, the less money reinvested into the community in the form of employee income and taxes. With less tax revenue to fund social programs, these programs may face severe budget shortages that threaten the quality of the support they provide their constituents. In the case of Greenetrack, for instance, 92% of bingo profits were directed towards local nonprofits, which included government-funded programs such as public schools and emergency services.<sup>79</sup> Further, Greenetrack's lease

stipulated a payment to the county of \*523 \$150,000 per annum.<sup>80</sup> The facility contributed an additional \$336,000 to the Greene County Volunteer Fire Department each year,<sup>81</sup> and its revenue to the Greene County School System totaled nearly \$800,000 in 2008 alone.<sup>82</sup> Likewise, VictoryLand's nearly \$300,000 in occupational taxes and almost \$2,000,000 in ad valorem taxes comprised more than one-third of Macon County's budget.<sup>83</sup> Since the bingo facility opened in 2004, over \$7 million has been generated for local nonprofits and charities.<sup>84</sup> The revenue foregone by the closing of these two companies will have — and has already had — a significant impact on the potential services available for Greene County and Macon County residents.

Of course, another strictly economic consideration with increased unemployment is the increased fiscal burden borne by the government and those who are in fact still employed.<sup>85</sup> With a decreased workforce, the government will be able to generate less income with which to provide unemployment benefits to those without work. With the decrease in taxes — not only from businesses but also from individuals — the government must stretch its decreased funding to cover the increased number of people in need of welfare and unemployment benefits. Thus, Sen writes that “the point to be stressed is the need to look not only at the income loss of the unemployed, but also the impact that a lower volume of aggregate output has on others.”<sup>86</sup> A higher percentage of the government's total income is used towards the provision of such benefits, further constraining the funding available for additional social services. This consideration cannot be overlooked, as it will have a significant impact on the two counties given their high rates of unemployment and poverty even while the bingo facilities were operating.

### Social Exclusion

Of course, the impacts of unemployment reach far beyond the strictly economic ones. As Sen notes, “even at the individual level \*524 of the unemployed person, the penalties of unemployment can be enormously more serious than income distribution statistics may suggest.”<sup>87</sup> Unemployment leads to increased levels of social exclusion and isolation, specifically in terms of access to social services.<sup>88</sup> Perhaps the most glaring example of the social exclusion as a result of the closing of the two bingo facilities is the impact upon the educational system and the educational opportunities for Greene and Macon County residents. Both Greenetrack and VictoryLand encouraged and funded public schools in the area, thus increasing students' opportunities for accessing this social service. Specifically, Greenetrack offered per semester college scholarships to the children of its employees and to every Greene County high school student with a 2.0 GPA who maintained good grades in college.<sup>89</sup> Since the closing of the bingo facility, every one of the recipients of these scholarships has been notified that their scholarship has been canceled.<sup>90</sup> Both Greenetrack and VictoryLand worked to offer opportunities of education to members of their communities; without the funding that enabled students from these two counties to attend college, many people may be unable to partake in the public school secondary and tertiary educational system.

Another social benefit particularly popular currently is that of health insurance. In the United States, employment frequently coincides with employer-provided health insurance, obviously an extremely important social service that enables employees and their families to access necessary health care. When employees lose their jobs, they and their families lose access to this social service, therefore making the level and quality of health care dependent upon their personal ability to fund such care. Even in families far wealthier than the average family in Greene or Macon County, routine health care can be entirely unaffordable, thus forcing families to make a decision between visiting the doctor and paying their other bills. Times of emergency health care, of course, can drive families that choose to pursue care into the throes of permanent and inescapable debt. That both VictoryLand<sup>91</sup> and Greenetrack<sup>92</sup> provided \*525 health insurance to their employees helped enable access to affordable, appropriate health care. With the closing of the two facilities, many families will have their employer-provided health-care benefits revoked. In two counties already dominated by poverty, losing the access to health care may have drastic impacts not only on the former employees but also on their families and their children.

### Psychological Harm, Ill Health, and Mortality

Research strongly suggests that unemployment coincides with increased psychological harm and increased mortality, as unemployment has been known to “play havoc with the lives of the jobless.”<sup>93</sup> Perhaps as a result of despondency, decreased self-confidence, or the pressures of trying to support a family, rates of suicide show a staggering increase in unemployed populations. In fact, in America suicide rates in the unemployed are a shocking two or three times the national average, especially for men, and the longer the unemployment, the higher the rates of suicide.<sup>94</sup> During the Great Depression, suicide rates showed a 20% increase to 17 per 100,000 people from 14 per 100,000 people.<sup>95</sup> Even in the current recession, the impacts of the high unemployment rates are abundantly clear; the National Suicide Prevention Lifeline shows an increase in phone calls from 13,423 in 2007, when the economy had yet to downturn, to 57,625 in 2009,<sup>96</sup> when the national unemployment rate was 9.9% in December.<sup>97</sup> It would appear that employment offers confidence and a sense of belonging that is absent when a person is faced with indefinite unemployment. Of course, the impact of suicide in a family cannot be observed in isolation and from the perspective of only the affected individual. Such loss impacts the future earning capacity of a family, for instance, and it could also affect the emotional and social development of any children that lived in the family. It should be noted that the charities or government organizations that people in Greene or Macon Counties might have utilized to cope with their unemployment may \*526 themselves have been impacted or closed as a result of the loss of funding from bingo proceeds.

Unemployment also impacts life expectancy without consideration of suicide, and research suggests that this decreased life expectancy is as much a result of decreased self-confidence as it is the loss of material means due to decreased income.<sup>98</sup> Unemployed populations show elevated rates of cardiovascular disease, cancer, obesity, alcohol consumption, and smoking.<sup>99</sup> Unemployed male populations die at twice the rate of male populations that remain employed.<sup>100</sup> With heightened stress or decreased motivation, mortality and health complications increase in unemployed populations. As a result of the bingo facilities' closings, the problem further compounds upon itself in Greene and Macon Counties, as the populations' newly unemployed no longer have health insurance with which to address these new health complications. Furthermore, even if they had health insurance, hospitals in the Greene County area are facing significant funding problems as a direct result of not receiving funding from bingo. In fact, 25% of the Greene County Emergency 911 budget came from Greenetrack funding.<sup>101</sup> The mental and physical repercussions of unemployment combined with the decreased funding of the health system do not bode well for a healthy future in Greene and Macon Counties.

### Loss of Human Relations and Disruption of Family Life

Beyond strictly physical and mental repercussions, unemployment has also been linked with significant social disruption, and “[i]t may also weaken the harmony and coherence within the family.”<sup>102</sup> Research suggests that this type of psychological disruption is a consequence of unemployment and not the cause of it.<sup>103</sup> With the lack of an organized working life, people can become depressed, as well as removed from and disinterested in social interactions. In an effort to avoid conversation about jobs, the unemployed have been documented to avoid social interactions, thus removing themselves from their communities and support systems.<sup>104</sup> The unemployed may also be prone to crises of identity, \*527 second-guessing their character and personality due to their unemployment, perhaps because there is so much importance upon job and career in today's culture. Such a crisis of identity would significantly change social relations, especially with children or with a spouse. Furthermore, an unemployed member of a family can disrupt social life in such a way as to undermine the harmony and coherence in the family.<sup>105</sup> Not surprisingly, unemployment also correlates with increased divorce rates, especially for men; one study suggested that divorce rates are twice as high for families in which a husband had been unemployed for a full year.<sup>106</sup>

Increased rates of divorce and social isolation can be expected to occur in Greene and Macon Counties as a result of the bingo facility closings. Once again, the impact of the closings extends beyond the initial problem — in this case, decreased familial



stability. The contracted charities and governmental institutions that would provide counseling or other such services to the affected individuals and families have also lost much of their funding as a result of the Greentrack and VictoryLand closings. As previously mentioned, Greentrack contracted with roughly 80 charities in the Greene County area,<sup>107</sup> and VictoryLand contracted with roughly 60 charities in the Macon County area.<sup>108</sup> Without this support for county residents, the familial problems that frequently accompany unemployment could go poorly addressed or completely unaddressed due to the lack of services available for community members. The lack of such services to assist families in these difficult times may result in more stressful and damaging family interactions that would presumably have significant and intergenerational impacts upon the children in those families.

### **Racial and Gender Inequality**

Evidence also strongly suggests that unemployment results in heightened racial tension and gender inequality. In times of economic trouble and unemployment, racial tensions can escalate, exacerbating distance between members of different races.<sup>109</sup> Language of intolerance also increases, which can lead to further hardening of racist mindsets and, in more serious cases, race-related violence and extremism. Gender relations frequently suffer as well \*528 during times of general unemployment such as in Greene and Macon Counties. Research suggests that women, especially young women, are most hindered from entering the workforce during times of unemployment.<sup>110</sup> The inability of women to enter the workforce can prohibit them from earning a living, thus stifling women's financial and social independence. These circumstances can inhibit women from accessing similar opportunities as men, thus reinforcing previous gender inequalities. Young women have a particularly difficult time during times of general unemployment, as their inability to enter the workforce can have significant impacts on motivation, self-confidence, and future willingness to attempt entry into the workforce. Such dynamics encourage perceptions of gender inequality and certainly harden financial and social gender inequality.

A particular note should be made about the case of Greene and Macon Counties. Both counties raise interesting racial concerns insofar as they relate to bingo, as 81.5% of Greene County<sup>111</sup> and 82.6% of Macon County is black.<sup>112</sup> While the decisions to shut down bingo facilities and to return the members of these communities to poverty were not based upon skin color, members of these counties would be entitled to ask difficult questions about the motivations behind these decisions. There is natural fallout of racial friction simply from an analysis of the demographics and the racial breakdowns in the two counties. It would seem rational to suspect motivations of racism when significant portions of the county are unemployed, the hospital has been shut down due to lack of funding, and the schools are closed due to insufficient finances. Friction of this sort must be acknowledged as an unfortunate fact, especially given Alabama's tragic racial history, and the members of statewide government need to acknowledge that such accusations would not be entirely without some substantiation simply by an observation of the racial demographics in the counties.

### **\*529 Decreased Social Values and Feelings of Responsibility**

Widening inequality and feelings of frustration can also lead to resentment and irresponsible behavior in the unemployed populations. As the unemployed become increasingly cynical about their present and future careers, they have been found to develop a strong "us" versus "them" mentality towards the wealthy, employed population.<sup>113</sup> Such bitterness towards the societal arrangements discourages people from becoming active members in their communities. For instance, people can become less likely to become involved in activities sponsored by organizations such as charities. This detachment from current society can also result in heightened crime rates, especially among unemployed youth.<sup>114</sup> Sen notes: [t]he observed association of crimes with youth unemployment is, of course, substantially influenced by the material deprivation of the jobless, but a part is played in that connection also by psychological influences, including a sense of exclusion and a feeling of grievance against a world that does not give the jobless an opportunity to earn an honest living.<sup>115</sup>

Additionally, unemployment lowers self-esteem so dramatically that many unemployed people have been found to experience significant anxiety at the thought of entering or reentering the work force.<sup>116</sup> Work becomes an overwhelming concept about which the person may feel she is unable to cope. Such feelings of inadequacy have been seen to result in decreased motivation to enter the workforce, thus perpetuating the problem of unemployment.

### III. Conclusion

“War grows out of the desire of the individual to gain advantage at the expense of his fellow man.”

- Napoleon Hill

As is readily apparent, unemployment deprives in many areas other than simple income. Were unemployment's impact strictly financial, the provision of reasonable unemployment benefits — in the form of cash transfers or health insurance, for instance — would offset these impacts. The above discussion clearly argues \*530 that income transfers are unconvincing solutions to the results of unemployment. As the consequences of unemployment are more complicated than strictly financial, the concerned parties in the Bingo Wars must fully understand the implications of their actions; obviously, the closing of Greenetrack and VictoryLand will continue to have significant impacts beyond the income foregone by their operation.

Unemployment is a problem with individual and cumulative consequences. It could be argued, in fact, that the greatest impacts of these closings have yet to be seen due to the longer-term nature of some of the costs. For example, the child whose parent worked at Greenetrack until it closed may have significantly altered life opportunities as a result of his parent's unemployment status. Likewise, a student who may have received a scholarship from bingo proceeds to assist with the funding of higher education may no longer be able to attend college. These changes in opportunity may place these children on completely different life trajectories than were available to them under the scenario in which the bingo facilities remained open. Such potential impacts and their projected consequences have yet to be fully understood or considered, and in many cases, these impacts are directly related to the closing of Greenetrack and VictoryLand. Given the abundance of research arguing unemployment's broad consequences as well as the current socio-economic contexts in the two counties, the costs of unemployment in Greene and Macon County are significantly broader and more nuanced than initially understood.

The impacts of unemployment are individually negative and combine to create greater negatives for the individuals and communities affected. For instance, a young man unable to find employment at VictoryLand or elsewhere in Macon County may become disgruntled and frustrated with the current order of society at the time. As a result, he may dabble in reckless and irresponsible behavior that leads to his committing a felony for which he is arrested, charged, and convicted. As a result of this felony, the young man is requiring the resources and time of the local police, court system, and penal system. These consequences of his unemployment, of course, are both individually negative but also compound upon themselves by creating a situation worse than the two issues in isolation. His committing a crime is certainly negative on its own. Furthermore, the arrest would use the funding for the police force which would then be foregone from use in other areas such as public school education. Without appropriate funding, the school systems in the area might not be able to provide the students with a strong education to readily prepare them to enter the workforce \*531 upon graduation. These students may in turn be unable to find employment, thus perpetuating the problem. The situation continues to snowball further. Similar arguments for the individual and cumulative costs of unemployment could be made with any number of the aforementioned unemployment consequences, thus placing Greene and Macon Counties, as counties with significant unemployment as a result of the Bingo Wars, at an increased risk for broad-reaching problems. As Sen writes, “These costs diminish the lives of all, but are particularly harsh on the minority — a large minority — of families severely afflicted by persistent unemployment and its far-reaching damages.”<sup>117</sup>

Employment, conversely, offers an antidote to many of the problems resulting from unemployment. By offering income and health insurance, employment with Greenetrack and VictoryLand helps to address the financial problems of poverty and

exclusion from social services. Employment can also provide a sense of purpose, self-worth, and motivation that has significant benefits on an individual but also familial level. Under legislation such as that for Greenetrack and VictoryLand, an operating bingo business with employed staff provides significant benefits to the community at large. With the bingo funding, charities can open and provide support to the people in the surrounding community who need their services, such as the Greene County hospital or the nursing home.

Employment also adds benefits that are not considered when discussing purely the consequences of unemployment. While the absence of these benefits is not a cost of unemployment per se, they are certainly benefits foregone during general unemployment. Most notably, employment supports and builds other businesses in the area. Known as the “Multiplier Effect,” this phenomenon describes the amplification of money in a community as a result of an increase in income or other spending.<sup>118</sup> For the purpose of explanation, Bingo Facility A opens in Macon County and employs 300 people at a salary of \$20,000 per annum. Thus, Bingo Facility A injects \$6,000,000 per year into the community in the form of income. The employees of Bingo Facility A will then spend their money in their community on food, haircuts, or home repairs, among other things. This money then supports other local businesses and services, providing employment opportunities and income \*532 for the people who work at the different businesses. The cycle continues, multiplying the initial income and supporting a vast swath of the economy of a given area. In fact, the Tuscaloosa News quoted Greenetrack President and CEO Luther W. “Nat” Winn, Jr. as suggesting as many as 1,200 jobs dependent on income streams derived from Greenetrack employees could be lost.<sup>119</sup> It should be noted that in March 2011, the labor force in Greene County was estimated to be 3,122 people.<sup>120</sup> The loss of 1,200 to 1,300 people would represent more than a third of the Greene County labor force, thus inflicting an ever more debilitating rate of unemployment upon the area.

The cost of failing to respond to the bingo closings in Alabama could have significant and broad consequences that impact this generation and the generations to come. Unemployment undermines individual, familial, and social lives. These impacts are difficult to address, especially as income transfers are an unconvincing antidote to curing the problems of unemployment. Their potential negativity for the Greene and Macon Counties is disconcerting and urgent, and these considerations must be made when assessing the impact of closing Greenetrack and VictoryLand.

In any war there are casualties, and that certainly is true in this engagement. In any war there is “collateral damage,” and in the Bingo Wars there has been much more collateral damage than actual casualties. The long-term financial, political, and personal effects of the collateral damage will linger in this state for some time, and as demonstrated herein, continue to damage our state's reputation and have a devastating impact on thousands of Alabama citizens. If the Bingo Wars have taught us anything, it is this: bingo is far more than just a game.

#### Footnotes

- <sup>a1</sup> Attorneys/employee at White Arnold & Dowd in Birmingham, Alabama.
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- <sup>2</sup> *Baker v. Walker County*, No. CV-2007-0400, 2009 WL 7174438 (Ala. Cir. Ct. Oct. 26, 2009).
- <sup>3</sup> Andrew Pollack, Still Your Grandmother's Bingo, but Supercharged, N.Y. TIMES, Nov. 29, 1997, available at <http://www.nytimes.com/1997/11/29/business/still-your-grandmother-s-bingo-but-supercharged.html>.
- <sup>4</sup> To date, the Alabama Legislature has passed 18 charitable bingo constitutional amendments related to the following jurisdictions: Jefferson County - ALA. CONST. 1901 amend. 386, amended by ALA. CONST. 1901 amend. 600; Madison County - ALA. CONST. 1901 amend. 387; Montgomery County - ALA. CONST. 1901 amend. 413; Mobile County - ALA. CONST. 1901 amend. 440; Etowah County - ALA. CONST. 1901 amend. 506; Calhoun County - ALA. CONST. 1901 amend. 508; St. Clair County - ALA. CONST. 1901 amend. 542; Walker County - ALA. CONST. 1901 amend. 549; City of Jasper - ALA. CONST. 1901 amend. 550; Covington County - ALA. CONST. 1901 amend. 565; Houston County - ALA. CONST. 1901 amend. 569; Morgan County - ALA.

CONST. 1901 amend. 599; Russell County - ALA. CONST. 1901 amend. 612; Lowndes County - ALA. CONST. 1901 amend. 674; Limestone County - ALA. CONST. 1901 amend. 692; Town of White Hall - ALA. CONST. 1901 amend. 732; Greene County - ALA. CONST. 1901 amend. 743; Macon County - ALA. CONST. 1901 amend. 744.

5 [Article IV, Section 65 of the Alabama Constitution](#) reads as follows:

The legislature shall have no power to authorize lotteries or gift enterprises for any purposes, and shall pass laws to prohibit the sale in this state of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery; and all acts, or parts of acts heretofore passed by the legislature of this state, authorizing a lottery or lotteries, and all acts amendatory thereof, or supplemental thereto, are hereby avoided.

[ALA. CONST. art. IV, § 65 \(1901\)](#).

6 See, e.g., [City of Piedmont v. Evans](#), 642 So. 2d 435, 436 (Ala. 1994).

7 Ex parte [Ted's Game Enters.](#), 893 So. 2d 376, 380 (Ala. 2004) (internal citations and emphasis omitted).

8 Id. (internal citations omitted).

9 Id. at 381.

10 Id. at 380-81 (omission and emphasis in original) (internal citations omitted).

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22 [25 U.S.C. § 2703\(7\)\(A\)](#).

23 Alabama Attorney General, *supra* note 17.

24 [960 So. 2d 599 \(Ala. 2006\)](#).

25 Id. at 601-02 (emphasis in original).

26 Id. at 601.

27 Id. at 601-02.

28 Id. at 602.

29 Id.

- 30 [Barber, 960 So. 2d at 602.](#)
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Alabama Supreme Court agreed with Tyson, issuing its opinion only days after the attempted raid. *Id.* In vacating the trial court's order, the Tyson Court applied what it characterized as a "general rule" "that a court may not interfere with the enforcement of criminal laws through a civil action; instead, the party aggrieved by such enforcement shall make his case in the prosecution of the criminal action." *Id.* As VictoryLand did not claim that the statute at issue was void (to the contrary, VictoryLand asserted it was in compliance with the applicable laws), the court found that it did not fall within the exception to this general rule "whereby the equitable powers of the court can be invoked to avoid irreparable injury when the plaintiff contends that the statute at issue is void." *Id.* at 589-590. Accordingly, the Tyson court vacated the trial court's opinion and dismissed the action as well as the appeal. *Tyson*, 43 So. 3d. at 591. Justice Woodall disagreed with the majority's reasoning, and in his dissent observed "[t]oday's decision casts a cloud upon this Court's prior decisions, as well as numerous trial court judgments addressing the legality of various bingo operations. What has been an orderly process, I suspect, will soon resemble a three-ring circus." *Id.* at 595 (Woodall, J. dissenting).

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