Rel: September 25, 2020

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2020

1180675

State of Alabama

v.

Epic Tech, LLC, et al.

Appeal from Lowndes Circuit Court
(CV-17-900069)

1180794

State of Alabama

v.

Epic Tech, LLC, et al.

Appeal from Macon Circuit Court
(CV-17-900150)

WISE, Justice.

These appeals have been consolidated for the purpose of writing one opinion. In case no. 1180675 (hereinafter referred to as "the Lowndes County case"), the State of Alabama, the plaintiff below, appeals from the Lowndes Circuit Court's order granting the motions to dismiss filed by Epic Tech, LLC; White Hall Enrichment Advancement Team d/b/a Southern Star Entertainment; White Hall Entertainment; and the White Hall Town Council (hereinafter collectively referred to as "the Lowndes County defendants"). In case no. 1180794 (hereinafter referred to as "the Macon County case"), the State appeals from the Macon Circuit Court's order granting the motions to dismiss filed by Epic Tech, LLC, and K.C. Economic Development, LLC, d/b/a VictoryLand Casino ("KCED")(hereinafter collectively referred to as "the Macon County defendants"). We reverse and remand.

Facts and Procedural History

The Lowndes County Case

On October 26, 2017, the State sued the Lowndes County defendants in the Lowndes Circuit Court, asserting a public-nuisance claim. On that same day, the State also filed a

motion for a preliminary injunction pursuant to Rule 65(a), Ala. R. Civ. P. The State subsequently filed two amendments to its complaint. In its second amended complaint, the State asserted that it was "seeking declaratory and injunctive relief to abate a public nuisance of unlawful gambling, pursuant to § 6-5-120[, Ala. Code 1975]." It also alleged that the Lowndes County defendants' "continued operation of illegal slot machines and unlawful gambling devices" constituted a public nuisance. The State requested that the Lowndes Circuit Court enter an order declaring the gambling activities conducted by or through the Lowndes County defendants to be a public nuisance and "permanently enjoining the [Lowndes County defendants] from providing such unlawful gambling activities."

The Lowndes County defendants filed motions to dismiss the State's complaint in which they alleged that the Lowndes Circuit Court did not have subject-matter jurisdiction over the State's request for a declaratory judgment and injunctive relief; that the complaint failed to state a claim upon which relief could be granted; and that the State had failed to join the operators of Wind Creek Casino Montgomery and Wind Creek

Casino Wetumpka (hereinafter collectively referred to as "the Wind Creek casinos") as indispensable parties pursuant to Rule 19, Ala. R. Civ. P.

The Lowndes Circuit Court subsequently conducted a hearing. During the hearing, the court decided that it would hear arguments and rule on the motions to dismiss before it proceeded further on the State's motion for a preliminary injunction. On April 26, 2019, the Lowndes Circuit Court entered a judgment granting the motions to dismiss. In its judgment, the court found that it did not have subject-matter jurisdiction "to adjudicate the legal issues for injunctive and declaratory relief." It also found that, even if it did have subject-matter jurisdiction, "the Complaint, as amended, would be dismissed for failure to state a claim upon which relief could be granted and for failure to include indispensable parties."

The Macon County Case

On October 4, 2017, the State sued the Macon County defendants in the Macon Circuit Court; it subsequently amended its complaint. In its amended complaint, the State asserted that it was "seeking declaratory and injunctive relief to

abate a public nuisance of unlawful gambling, pursuant to § 6-5-120[, Ala. Code 1975]." It also alleged that the Macon County defendants' "continued operation of illegal slot machines and unlawful gambling devices" constituted a public nuisance. The State requested that the Macon Circuit Court enter an order declaring the gambling activities conducted by or through the Macon County defendants to be a public nuisance and "permanently enjoining the [Macon County defendants] from providing such unlawful gambling activities."

The Macon County defendants filed motions to dismiss the complaints against them. Like the Lowndes County defendants, the Macon County defendants asserted that the Macon Circuit Court did not have subject-matter jurisdiction over the State's request for a declaratory judgment and injunctive relief; that the complaint failed to state a claim upon which relief could be granted; and that the State failed to join the operators of the Wind Creek casinos as indispensable parties.

The Macon Circuit Court subsequently conducted a hearing. During the hearing, the court decided to hear arguments and rule on the motions to dismiss before it proceeded further on the State's motion for a preliminary injunction. On June 14,

2019, the Macon Circuit Court entered a judgment granting the Macon County defendants' motions to dismiss on the grounds that it lacked subject-matter jurisdiction; that the State had failed to state a claim upon which relief could be granted; and that the State had failed to join the operators of the Wind Creek casinos as indispensable parties.

These appeals followed.

Discussion

I.

The State argues that the Lowndes Circuit Court and the Macon Circuit Court (hereinafter collectively referred to as "the circuit courts") erroneously determined that they did not have subject-matter jurisdiction over its claims for declaratory and injunctive relief and that it had failed to state claims upon which relief could be granted.

In its complaints in both cases,[1] the State alleged that the Lowndes County defendants and the Macon County defendants (hereinafter collectively referred to as "the defendants") "operate, administer, license and/or provide gambling devices"

[1]The factual allegations, the public-nuisance claims, and the claims for relief in the second amended complaint in the Lowndes County case and the amended complaint in the Macon County case are virtually identical.

for casinos located in their respective counties. It further alleged that, at those casinos, the defendants "provide hundreds of slot machines and gambling devices in open, continuous, and notorious use." The complaints also included the following factual allegations:

> "Gambling is generally illegal in Alabama, and slot machines are particularly so. The State's general prohibition on gambling is so fundamental that the People enshrined it in the Constitution. See Ala. Const, art. IV, § 65. The Legislature has specifically criminalized possession of slot machines and other gambling devices. Ala. Code [1975,] § 13A-12-27. Nevertheless, because of the immense profits associated with organized gambling, the industry frequently has tried to 'evade[]' these prohibitions, as the Alabama Supreme Court put it in Barber v. Jefferson Cnty. Racing Ass'n, 960 So. 2d 599 (Ala. 2006), by asserting that 'loophole[s]' in Alabama law were much larger than they in fact were. Id. at 614. For example, in 2006, the Alabama Supreme Court rejected the industry's attempt to pass off what were slot machines as machines that were playing a 'legal sweepstakes.' Id. at 603-15. The Alabama Supreme Court held that substance is more important than legal technicality; accordingly, gambling devices are illegal if they 'look like, sound like, and attract the same class of customers as conventional slot machines.' Id. at 616. See also Ex parte State, 121 So. 3d 337 (Ala. Mar. 1, 2013); Barber v. Cornerstone Comm. Outreach, 42 So. 3d 65 (Ala. 2009); State ex rel Tyson v. Ted's Game Enterprises, 893 So. 2d 376, 380 (Ala. 2004).
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> "... The Alabama Supreme Court has repeatedly held that the game of bingo cannot be played on electronic machines in the State of Alabama. See HEDA v. State, 168 So. 3d 4 (Ala. 2014); State v.

$223,405.86 et al., 203 So. 3d 816 (Ala. 2016); State v. 825 Electronic Gambling Devices, [226] So. 3d [660] (Ala. 2016).

"... Defendants' gambling devices are slot machines completely reliant on games of chance. Someone who wants to play one of Defendants' gambling devices can insert money directly into the face of the machine and/or load money onto a swipe card that the player inserts into the machine. The player then presses a button to bet a certain amount of money. Once the bet is placed, the player presses a button to start the spinning of slot reels that appear on the gambling devices. On the machines, the slot reels are digital; simulating the mechanical reels found on traditional slot machines. Seconds later, the machine displays the game's result. If the customer wins, then his or her credits go up; if not, the credits go down. The player can then either play again or cash out to receive money for any credits he or she has remaining.

"... All it takes to operate the gambling devices at Defendants' casinos is a touch of a button. With a touch of a button, the machines initiate a game and/or bring that game to conclusion.

"... Defendants' devices may display a small 'bingo card' to the side, below, or above the slot reels. However, the predominant display on all Defendants' gambling devices is a large, digital or mechanical representation of 'reels' commonly seen on acknowledged slot machines.

"... Defendants' gambling devices replicate a game of chance in an electronic format. There is no interaction between players. There is no competition to be the first person who covers a bingo card. No player must call out 'bingo.' There is no holder of a bingo card who covers randomly

> drawn numbers on the card. No player can 'sleep a bingo' or forfeit a prize based on his or her failure to recognize a predetermined winning pattern. The player does not need to pay attention, listen to alphanumeric designations drawn one-by-one, or match them up to a bingo card. Instead the player presses a single button, watches slot-machine reels spin, and is told whether he or she has won by the gambling device. As such, as the Supreme Court of Alabama has held, the machines are illegal and not permitted to play the game commonly known as bingo in Alabama.
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> "... Defendants' gambling devices play like, look like, sound like, and attract the same class of customers as acknowledged slot machines."

The State further alleged:

> "The Defendants' devices used at the casinos do not play the game 'commonly known as bingo' as defined by Alabama law. See Barber v. Cornerstone Comm. Outreach, 42 So. 3d 65 (Ala. 2009); HEDA v. State, 168 So. 3d 4 (Ala. 2014); State v. $223,405.86 et al., 203 So. 3d 816 (Ala. 2016); State v. 825 Electronic Gambling Devices, [226] So. 3d [660] (Ala. 2016).
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> "... The Defendants' devices used at the ... [casinos] are prohibited gambling devices, as defined in Alabama Code [1975,] § 13A-12-20(5). They are machines or equipment used in the playing phases of gambling activity between persons or machines. Id.
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> "... The Defendants' devices used at the [casinos] are slot machines or readily convertible to slot machines, as defined in Alabama Code [1975,] § 13A-12-20(10). As a result of the insertion of an object, Defendants' devices operate with the aid of a physical act by the player to eject something of value based on the element of chance.

"... Defendants do not have legal authority to operate, advance, or profit from unlawful gambling activity in violation of Article IV, Section 65 of the Alabama Constitution (1901) and Ala. Code [1975,] § 13A-12-20 et seq.

"... Defendants because of their engaging in interstate commerce in the State of Alabama, have an obligation to comply with Alabama's laws. This includes the prohibition of the possession, promotion or transportation of gambling devices and records. See Ala. Code [1975,] § 13A- 12-20 et seq. The Defendants have engaged in all these illegal behaviors by contracting and offering the games in [their respective counties].

"... This continued operation of illegal slot machines and unlawful gambling devices by Defendants is a public nuisance. See Ala. Code [1975,] § 6-5-120 et seq.; Restatement (Second) of Torts § 821B; Try-Me Bottling Company et al v. State of Alabama, 178 So. 231 (Ala. 1938).

"... The continued operation of slot machines and unlawful gambling devices by Defendants works hurt, inconvenience, or damage to the public interest.

"... The public policy of Alabama is emphatically against lotteries or any scheme in the nature of a lottery.

"... The State has an interest in the welfare of the people within her domain and, of consequence, in enforcement of the State's declared public policy against lotteries or gift schemes. Try-Me Bottling Co. at 235.

"... Defendants' operation of lotteries and their use of slot machines and unlawful gambling devices are enjoinable in suit by the State by virtue of this Court's equity jurisdiction to abate

> a public nuisance. See Try-Me Bottling Company et al v. State of Alabama, 178 So. 2d 231 (Ala. 1938).
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> "... The State of Alabama, through its Attorney General, is a proper party to file an action to enjoin the public nuisance of unlawful gambling in the State of Alabama."

A. Jurisdiction as to the State's Requests for a Declaratory Judgment

In State ex rel. Tyson v. Ted's Game Enterprises, 893 So. 2d 355, 361-62 (Ala. Civ. App. 2002), aff'd, 893 So. 2d 376 (Ala. 2004), the State filed a complaint seeking the forfeiture of video-gaming machines, currency, and documents that law-enforcement officers had seized from various businesses in Mobile County. Ted's Game Enterprises ("Ted's"), the owner and distributor of the machines, was served with the complaint. The State alleged that the machines were "'slot machines and video gambling devices, paraphernalia, currency and records,' which pursuant to the criminal gambling statutes, were contraband and were used and intended for use in unlawful gambling activity." 893 So. 2d at 358. The State subsequently filed an amended complaint. In the amended complaint the State requested, in part, a "judgment declaring that the machines owned and distributed by Ted's are illegal 'slot machines' and 'gambling devices' under

Alabama's criminal gambling statutes and that they are not 'bona fide coin-operated amusement machines' protected by § 13A-12-76[, Ala. Code 1975,] from the prohibitions of those gambling statutes." Id. The State subsequently voluntarily dismissed its forfeiture claims as to 12 of those machines that had been returned to Ted's but did not dismiss its declaratory-judgment action. The State also filed a second amended complaint that "added a new claim seeking declaratory judgment as to the constitutionality of § 13A-12-76 in relation to Alabama Constitution 1901, Art. IV, § 65." 893 So. 2d at 359. Ted's and one of the businesses from which the machines had been seized filed a joint answer to the complaint asserting the defenses of res judicata and collateral estoppel. They also filed joint motions for a summary judgment and for a judgment as a matter of law. The trial court denied those motions. After a hearing on the merits, the trial court concluded that the eight machines that were still in the State's possession were illegal gambling devices that were not protected by § 13A-12-76 and were subject to forfeiture. Ultimately, the trial court entered an amended judgment in which it held that § 13A-12-76 "did not authorize

the operation of a lottery and was 'not unconstitutional for that reason.'" 893 So. 2d at 360. The State appealed the trial court's decision to this Court. Ted's argued that the State did not have standing to pursue the appeal. In addressing one of Ted's standing arguments, this Court stated:

> "First, Ted's states in a footnote in its brief to this Court that 'it does not affirmatively appear that the State is a "person" under the Declaratory Judgment Act entitled to assert this action. Ala. Code [1975,] §§ 6-6-220, 6-6-223.'
>
> "Ted's cites no authority, however, to indicate that the Legislature did not intend that the State, like other persons, could avail itself, in an appropriate case, of the remedies afforded by the Declaratory Judgment Act. We note that other jurisdictions that have adopted the Uniform Declaratory Judgment Act have construed the term 'person' to include the State. See, e.g., State v. General American Life Ins. Co., 132 Neb. 520, 272 N.W. 555 (1937); see also, 26 C.J.S., Declaratory Judgments, §§ 133-34, pp. 225-28 (2001) (noting that a state, a political subdivision of a state, the attorney general of the state, and other state officers and county officers may generally file an action for declaratory relief).
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> "'To enforce its rights or redress its wrongs, as a political corporation, a state may ordinarily avail itself of any remedy or form of action which would be open to a private suitor under similar circumstances.' Ex parte State ex rel. Attorney General, 245 Ala. 193, 195, 16 So. 2d 187, 188 (1943); see also Ala. Code 1975, § 6-5-1(a) ('The state may commence an action in its own name and is entitled to all remedies provided for the enforcement of rights between individuals without

> giving bond or security or causing an affidavit to be made, though the same may be required as if the action were between private citizens.'); Consolidated Indem. & Ins. Co. v. Texas Co., 224 Ala. 349, 140 So. 566 (1932).
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> "The purpose of the Declaratory Judgment Act 'is to settle and to afford relief from uncertainty and insecurity with respect[] to rights, status, and other legal relations and is to be liberally construed and administered.' Ala. Code 1975, § 6-6-221; see also Thompson v. Chilton County, 236 Ala. 142, 144, 181 So. 701, 703 (1938) ('the Declaratory Judgment Act was designed to supply the needs of a form of action that will set controversies at rest before they lead to repudiation of obligations, the invasion of rights, and the commissions of wrongs' (emphasis added)). In light of the invasive power the State wields when it seeks to enforce statutory provisions against its citizens, the State's right to seek a declaratory judgment with respect to matters such as those at issue here appears to be particularly appropriate."

893 So. 2d at 361-62. Similarly, in these cases, in which the State is seeking to enjoin an alleged public nuisance, the State's right to seek a judgment declaring whether the defendants' electronic-bingo machines are illegal and constitute a public nuisance "appears to be particularly appropriate." Id. at 362.

In its order, the Lowndes Circuit Court concluded, in pertinent part:

> "Because the State's requested relief would require the Court to make factual determinations as to

> whether the Defendants' activity and conduct in Lowndes County is criminal, the Court lacks jurisdiction over the State's Complaint for declaratory judgment."

The Lowndes Circuit Court based this conclusion on this Court's decisions in Tyson v. Macon County Greyhound Park, Inc., 43 So. 3d 587 (Ala. 2010), and State v. Greenetrack, Inc., 154 So. 3d 940 (Ala. 2014).

However, Macon County Greyhound Park and Greenetrack are factually distinguishable from the case presently before us. Neither Macon County Greyhound Park nor Greenetrack involved an action in which the State sought to have conduct declared a public nuisance. Rather, in those cases, private parties instituted collateral proceedings seeking to have gaming devices declared legal after the State had seized those devices and other items from their premises. Our decisions in Macon County Greyhound Park and Greenetrack were based on the separation-of-powers doctrine and the fact that a court should not interfere with the executive branch's authority to enforce the laws of this State. However, in this case, the executive branch instituted judicial proceedings to aid in its efforts to enforce the laws of the State. Thus, this case does not implicate the same separation-of-powers concerns that were at

issue in Macon County Greyhound Park and Greenetrack. Additionally, neither Macon County Greyhound Park nor Greenetrack speaks to the issue whether the State, in an action seeking to enjoin an alleged public nuisance, can seek a judgment declaring that conduct is, in fact, illegal and constitutes a public nuisance. Therefore, the Lowndes Circuit Court's reliance on Macon County Greyhound Park and Greenetrack was misplaced.

B. Jurisdiction as to the State's Requests for Injunctive Relief

In both cases, the circuit courts concluded that they did not have jurisdiction to enjoin the commission of criminal offenses and that, therefore, the State had failed to state a claim upon which relief could be granted.

Section 6-5-121, Ala. Code 1975, provides, in pertinent part:

> "A public nuisance is one which damages all persons who come within the sphere of its operation, though it may vary in its effects on individuals. ... Generally, a public nuisance gives no right of action to any individual, but must be abated by a process instituted in the name of the state."

(Emphasis added.) "The state, under its police power, has the authority to abate nuisances offensive to the public health,

welfare, and morals." College Art Theatres, Inc. v. State ex rel. DeCarlo, 476 So. 2d 40, 44 (Ala. 1985).

> "Traditionally, continuing activity contrary to public morals or decency have constituted public nuisances. Price v. State, 96 Ala. 1, 11 So. 128 (1891); Ridge v. State, 206 Ala. 349, 89 So. 742 (1921); Hayden v. Tucker, 37 Mo. 214 (1866); Federal Amusement Co. v. State, ex rel. Tuppen, 159 Fla. 495, 32 So. 2d 1 (1947); Abbott v. State, 163 Tenn. 384, 43 S.W.2d 211 (1931); Perkins on Criminal Law, p. 395 (Foundation Press, 1969); Wood, Law of Nuisances, § 68, p. 87, vol. 1 (3d ed., 1893); 66 C.J.S. Nuisance § 18 d, p. 766. Under the police power, a court of equity with proper legislative authorization can assume jurisdiction to abate a nuisance notwithstanding the fact that the maintenance of that nuisance may also be a violation of the criminal law. Ridge v. State, supra; Evans Theatre Corporation v. Slaton, 227 Ga. 377, 180 S.E. 2d 712 (1971), cert. denied[,] 404 U.S. 950, 92 S. Ct. 281, 30 L. Ed. 2d 267 (1971)."

General Corp. v. State ex rel. Sweeton, 294 Ala. 657, 663, 320 So. 2d 668, 672–73 (1975)(emphasis added).

In Try-Me Bottling Co. v. State, 235 Ala. 207, 178 So. 231 (1938), the State sought and received injunctive relief against Try-Me Bottling Co. based on an allegation that Try-Me was conducting "a lottery or gift enterprise in the nature of a lottery in disregard of the laws of this State." 235 Ala. at 209, 178 So. at 232. In that case, Try-Me conducted a promotion whereby it printed amounts ranging from five cents

to one dollar on a bottle cap for bottled drinks. The amount was located under the cork on the bottle cap. Purchasers of the bottled drink would lift the cork and look for a number. If the cap had a "'lucky' number," it was redeemable in cash by the dealer. The dealer would then be reimbursed by Try-Me. 235 Ala. at 210, 178 So. at 233. The corporation president and manager of Try-Me noted that a lot of the bottle caps were thrown out in the trash and then picked up by children. This Court noted that "[n]o skill is required, the 'lucky' number determines the value." Id.

In addressing the merits of the case in Try-Me, this Court stated:

> "The question of what constitutes a lottery or gift enterprise in the nature of a lottery has been here recently considered in Grimes v. State, Ala. Sup., [235 Ala. 192,] 178 So. 73 [(1937)], and needs no reiteration.
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> "Under that authority, there can be no doubt that defendants' advertising scheme comes within the definition of a lottery as therein set forth, and therefore runs counter to our constitutional and statutory provision for the suppression of lotteries and gambling devices generally. Section 65, Constitution 1901; Section 4247, Code of 1923; Gen. Acts 1931, p. 806.
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> "Our decisions recognize the general rule that courts of equity have no jurisdiction to enjoin the commission of offenses against the criminal laws of

the State. Pike County Dispensary v. Mayor, etc., Brundidge, 130 Ala. 193, 30 So. 451 [(1901)].

"On the other hand, if the facts presented disclose the need of equity intervention for the protection of rights cognizable by equity, then injunctive relief may be granted, though as an incident thereto the writ may also restrain the commission of a crime. Or, as otherwise stated, equity will not withhold the remedy of injunctive relief merely because the acts constituting a nuisance are also of a criminal nature. Numerous illustrative cases are noted in the annotations found in 40 A.L.R. p. 1145 et seq.; 91 A.L.R. p. 316 et seq. Some authorities have persistently held to the view that equity will grant injunctive relief only when property rights are involved, but this court long since repudiated any such theory as wholly unsound. State v. Ellis, 201 Ala. 295, 78 So. 71, L.R.A. 1918D, 816 [(1918)], and authorities therein cited, including that of Stead v. Fortner, 255 Ill. 468, 99 N.E. 680, 684 [(1912)], wherein was the following language here pertinent: 'The maintenance of the public health, morals, safety, and welfare is on a plane above mere pecuniary damage, although not susceptible of measurement in money, and to say that a court of equity may not enjoin a public nuisance because property rights are not involved would be to say that the state is unable to enforce the law or protect its citizens from public wrongs.'

"The bill, therefore, rests for its equity upon the well-recognized and ancient jurisdiction of equity courts to restrain by injunction public nuisances. Ridge v. State, 206 Ala. 349, 89 So. 742 [(1921)]; State v. Ellis, 201 Ala. 295, 78 So. 71, 72, L.R.A. 1918D, 816 [(1918)].

"But defendants insist there is no public nuisance shown, and that at most only a violation of the criminal statute is involved. We cannot agree.

> The device under the cap of the bottle is for convenience referred to in the argument as the 'flicker device,' and, as previously observed, they are so distributed as to average 15 cents a case. It is an advertising scheme, as more fully indicated by the following handbills distributed to the public by defendants:
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> "'....'
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> "According to the marking of the 'flicker,' any one finding these bottle caps or crowns may be entitled to receive from 5 cents to $1. Of course, the larger number have no such marking. And, as we have observed, children often find these crowns in trash piles, and it is quite evident they are widely distributed over the State. These 'flicker devices' are manufactured at defendant's plant. Perhaps the language of section 4281, Code of 1923, may not be interpreted so as to include the 'flicker device' here involved, though it may tend in some degree to demonstrate the legislative mind as to those places where gambling devices are kept, and denominate them common nuisances. But such a device is clearly embraced in the broad and comprehensive language of the Act 'To Suppress The Evils of Gambling Devices' of July 1931, General Acts 1931, p. 806, with, perhaps, particular reference to subdivision (h) of section 1, page 807: 'Any machine, mechanical device, contrivance, appliance or invention, whatever its name or character, intended for the purpose of winning money or any other thing by chance or hazard.'
>
> "And being thus embraced within the influence of this act, these 'flicker devices,' manufactured at defendant's plant, are unlawfully in defendants' possession and subject to seizure (section 5 of the act, p. 808) and condemnation, forfeiture, and destruction (sections 6 and 9 of the act, pp. 808, 809) under decree of a court of equity. Their

possession is under section 4, p. 807, also made a misdemeanor.

"And under section 4247, Code of 1923, any person who conducts a lottery or any gift enterprise or scheme in the nature of a lottery is likewise guilty of a misdemeanor.

"Statutes of this character were passed in obedience to the mandate of section 65 of our Constitution, which expressly denies to the Legislature any power to authorize lotteries, and directs the passage of 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.' In this State, therefore, the public policy is emphatically declared against lotteries or any scheme in the nature of a lottery, both by Constitution and by statutes.

"The attitude of this State in reference to such practices was well expressed by this court in Johnson v. State, 83 Ala. 65, 3 So. 790, 791 [(1888)], in the following language: 'This construction is in full harmony with the policy of the constitution and laws of Alabama prohibitory of the vicious system of lottery schemes and the evil practice of gaming, in all their protean shapes, tending, as centuries of human experience now fully attest, to mendicancy and idleness on the one hand, and moral profligacy and debauchery on the other. No state has more steadfastly emphasized its disapprobation of all these gambling devices of money-making by resort to schemes of chance than Alabama. For more than 40 years past -- we may say, from the organization of the state, with some few years of experimental leniency -- the voice of the legislature has been loud and earnest in its condemnation of these immoral practices, now deemed so enervating to the public morals.'

"True, the lawmaking body has not in so many words declared the use of such devices a nuisance, but it is our view that in substance and effect this has been done.

"We have said these 'flicker devices' come within the condemnation of the 1931 act and their possession unlawful. They can be used for no lawful purpose, and are scattered unlawfully throughout defendants' trade territory.

"In Lee v. City of Birmingham, 223 Ala. 196, 135 So. 314, 315 [(1931)], speaking to a like question, this court observed that 'it is held by respectable authority that, if a gambling device is prohibited by statute, its operation may be considered a nuisance, and abated upon proper proceedings.'

"And in Mullen & Co. v. Moseley, 13 Idaho 457, 90 P. 986, 990, 12 L.R.A., N.S., 394, 121 Am. St. Rep. 277, 13 Ann. Cas. 450 [(1907)], (cited in the Lee Case, supra), the court said: 'It has been urged by counsel for appellants that, in order to authorize the destruction of these machines, it was necessary for the Legislature to declare them a nuisance. The Legislature has in effect done so. It has prohibited their use in any manner or form, and has also directed that, when any such instruments are found within this state, they shall be seized and destroyed. Making their use a crime and rendering them incapable of any legitimate use reduces them to the condition and state of a public nuisance which they clearly are. This amounts as effectually to declaring them a nuisance as if the word "nuisance" itself had been used in the Statute.'

"The mere prosecution for a misdemeanor here involved will not give complete relief. The State is interested in the welfare of the people within her domain, and, of consequence, in the enforcement of the declared public policy against lotteries or

gift schemes in the nature thereof. And, as said by the Illinois court, Stead v. Fortner, 255 N.E. 468, 99 N.E. 680 [(1912)], here approvingly quoted in State v. Ellis, supra: 'As we have noted above, this court has never regarded a criminal prosecution, which can only dispose of an existing nuisance and cannot prevent a renewal of the nuisance, for which a new prosecution must be brought, as a complete and adequate remedy for a wrong inflicted upon the public. The public authorities have a right to institute the suit where the general public welfare demands it and damages to the public are not susceptible of computation. The maintenance of the public health, morals, safety, and welfare is on a plane above mere pecuniary damage, although not susceptible of measurement in money; and to say that a court of equity may not enjoin a public nuisance because property rights are not involved would be to say that the state is unable to enforce the law or protect its citizens from public wrongs.'

"And, as observed by this court in the Ellis Case, supra, 'whether the maintenance of a public nuisance is or is not punishable in the law courts as a crime is an immaterial incident so far as the preventive jurisdiction of equity is concerned; for equity ignores its criminality, and visits upon the offender no punishment as for a crime.'

"The Pike County Dispensary Case [Pike County Dispensary v. Mayor, etc., of Town of Brundidge, 130 Ala. 193, 30 So. 451 (1901)], upon which defendants lay some stress, involved no question of public nuisance. At that time there had been no such declared policy as presented in the instant case concerning lotteries. The education and interest of the public in the evils there involved were gradual, and became later crystallized into definite statutes on the subject. As we stated in the beginning, that case is authority only against equity jurisdiction for prevention of crime, and nothing more."

235 Ala. at 210-13, 178 So. at 233-35 (emphasis added).

In their motions to dismiss, the defendants based their arguments that the circuit courts did not have jurisdiction to enjoin criminal behavior on this Court's prior decision in Wilkinson v. State ex. rel. Morgan, 396 So. 2d 86 (Ala. 1981). Additionally, the Lowndes Circuit Court specifically based its conclusion that it did not have jurisdiction to enjoin the commission of criminal offenses, and that, therefore, the State had failed to state a claim upon which relief could be granted, on Wilkinson.

In Wilkinson,

> "[t]he State of Alabama sought and received a permanent injunction to abate an alleged gaming nuisance under the provisions of [Ala.] Code 1975, § 13-7-90, viz:
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> > "'All places maintained or resorted to for the purpose of gaming and all places where gaming tables or other gaming devices are kept for the purpose of permitting persons to game thereon or therewith are declared to be common nuisances and may be abated by writ of injunction issued out of a court upon a complaint filed in the name of the state by the attorney general or any district attorney whose duty requires him to prosecute criminal cases in behalf of the state in the county wherein the nuisance is maintained, ...'

> "The State alleged that the conducting of bingo games by defendants constituted 'gaming' within the purview of the statute. Defendant Gateway Malls, Inc., is the owner of the property on which the bingo games were played. The other defendants are the alleged operators of the games.
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> "Defendants raised a defense of discriminatory enforcement, claiming other bingo operations and additional gambling activities were taking place with impunity in Jefferson County and throughout the state. They also filed counterclaims to enjoin the state from an alleged discriminatory enforcement of [Ala.] Code 1975, § 13-7-90. These were denied in the trial court's decree granting the state a permanent injunction."

396 So. 2d at 87–88. The defendants appealed to this Court the trial court's order entering the permanent injunction.

On appeal, this Court held that the permanent injunction was due to be dissolved. This Court noted that § 13-7-90, Ala. Code 1975, had been repealed by the enactment of new criminal code in Title 13A; that the complaint in that case had relied solely on the provisions of § 13-7-90; that the trial court had relied solely on § 13-7-90 to find a nuisance; that there were not any independent claims or findings of a nuisance; and that the repeal of § 13-7-90 destroyed the premise on which the injunction had been issued. Relying on Try-Me Bottling, supra, the State argued that, even if § 13-7-90 had been repealed, the trial court still had the authority

to issue the injunction. This Court addressed that assertion as follows:

> "We agree that a court of equity may have the authority to enjoin a nuisance, even if it also constitutes a crime, in some circumstances.
>
> > "'Our decisions recognize the general rule that courts of equity have no jurisdiction to enjoin the commission of offenses against the criminal laws of the State. Pike County Dispensary v. Mayor, etc., Brundidge, 130 Ala. 193, 30 So. 451 [(1901)].
> >
> > "'On the other hand, if the facts presented disclose the need of equity intervention for the protection of rights cognizable by equity, then injunctive relief may be granted, though as an incident thereto the writ may also restrain the commission of a crime.'
>
> "Try-Me Bottling Co., 235 Ala. at 210, 178 So. 231 (Emphasis added).
>
> "However, that authority has not been established in the instant case. For instance, there are no findings here, as made in Try-Me, that the mere prosecution for a misdemeanor would not give complete relief. The Try-Me court was also concerned with the detrimental effect of the lottery scheme on children. Children were found to be rooting about in trash piles to find bottle caps with lucky numbers. Any such findings in the instant case were pretermitted by complete reliance on [Ala.] Code 1975, § 13-7-90, to establish an enjoinable nuisance."

Wilkinson, 396 So. 2d at 90. Thus, Wilkinson did not overrule Try-Me. In fact, it recognized that, even though § 13-7-90 had been repealed, the principles set forth in Try-Me were still applicable. Therefore, this Court's decision in Wilkinson does not support a conclusion that a circuit court does not, under any circumstances, have jurisdiction to grant injunctive relief merely because the conduct complained of constitutes a criminal offense.

Based on the foregoing, the circuit courts erred when they determined that they did not have subject-matter jurisdiction over the State's requests for injunctive relief and that the State had failed to state claims upon which relief could be granted.

C. The Macon Circuit Court's Additional Findings

In its judgment, the Macon Circuit Court stated, in pertinent part:

> "The Complaint fails to state a claim for which relief can be granted; jurisdiction in equity is not available for the State's claims; the State has other available remedies for the alleged violation of the State's criminal laws and ... the Defendants' alleged conduct alone, without other demonstrable harm, is not a public nuisance; and even assuming the conduct is a public nuisance, the Wind Creek Casinos are not parties here and without them injunctive relief will not provide full and complete

> relief or protect the public health, safety, or welfare -- the almost 5,000 electronic bingo machines operated by them nearby will continue to operate unhampered, unrestricted, and unmolested. The Court is also troubled by the precedent that would be set by a judgment in favor of the State where there is no statute declaring Defendants' alleged conduct to be a public nuisance. Other laws are broken daily in Macon County such as the laws imposing a speed limit which are readily ignored by members of the public, specifically on I-85, and the State is fully knowledgeable of the ongoing violations. The breaking of these laws sometimes has catastrophic consequences and results in damage to property, persons and death. However, there is no effort to enjoin the committing of other crimes. As such, the Court would exercise its discretion by refusing to enjoin Defendants' conduct merely for the sake of its alleged criminality, especially where Defendants' alleged conduct would, if a crime, be a misdemeanor and no tangible and specific harm to the public is alleged to arise from it."

The Macon Circuit Court's findings in this regard appear to go to the merits of the State's claim for injunctive relief. However, the Macon Circuit Court did not conduct a hearing on the State's motions for a preliminary or permanent injunction. Rather, it specifically stated that it was considering only the motions to dismiss filed by the Macon County defendants. Therefore, it appears that any such finding is premature.

To the extent the Macon Circuit Court's statements in this regard apply to its conclusion that the State has failed

to State a claim upon which relief can be granted, such a holding is not supported by this Court's prior caselaw.

> "'The appropriate standard of review under Rule 12(b)(6)[, Ala. R. Civ. P.,] is whether, when the allegations of the complaint are viewed most strongly in the pleader's favor, it appears that the pleader could prove any set of circumstances that would entitle [it] to relief. In making this determination, this Court does not consider whether the plaintiff will ultimately prevail, but only whether [it] may possibly prevail. We note that a Rule 12(b)(6) dismissal is proper only when it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief.'
>
> "Nance v. Matthews, 622 So. 2d 297, 299 (Ala. 1993) (citations omitted)."

Ex parte Drury Hotels Co., [Ms. 1181010, February 28, 2020) ___ So. 3d ___, ___ (Ala. 2020).

> "'"To be entitled to a permanent injunction, a plaintiff must demonstrate success on the merits, a substantial threat of irreparable injury if the injunction is not granted, that the threatened injury to the plaintiff outweighs the harm the injunction may cause the defendant, and that granting the injunction will not disserve the public interest."'
>
> "[Grove Hill Homeowners' Ass'n v. Rice,] 43 So. 3d [609,] 613 [(Ala. Civ. App. 2010)] (quoting TFT, Inc. v. Warning Sys., Inc., 751 So. 2d 1238, 1242

> (Ala. 1999), overruled on other grounds, Holiday Isle, LLC v. Adkins, 12 So. 3d 1173 (Ala. 2008))."

Grove Hill Homeowners' Ass'n, Inc. v. Rice, 90 So. 3d 731, 734 (Ala. Civ. App. 2011).

The Macon Circuit Court found that the Macon County defendants' conduct "alone, without other demonstrable harm, is not a public nuisance." It further stated that it

> "would exercise its discretion by refusing to enjoin Defendants' conduct merely for the sake of its alleged criminality, especially where Defendants' alleged conduct would, if a crime, be a misdemeanor and no tangible and specific harm to the public ... is alleged to arise from it."

This Court has stated:

> "A nuisance is thus defined by both the statutes and the decisions in this state:
>
> "A nuisance is anything that works hurt, inconvenience, or damage to another; and the fact that the act may otherwise be lawful does not keep it from being a nuisance. The inconvenience complained of must not be fanciful, nor such as would affect only one of fastidious taste, but it should be such as would affect an ordinarily reasonable man.
>
> "Nuisances are either public or private. A public nuisance is one which damages all persons who come within the sphere of its operation, though it may vary in its effects on individuals. ... Generally, a public nuisance gives no right of action to any individual, but must be abated by a process instituted in the name of the state; a private nuisance gives a right of action to the

> person injured. Code, §§ 5193-5196. 'Nuisance' signifies 'anything that worketh inconvenience,' and a common or public nuisance is defined to be an offense against the public, either by doing a thing which tends to the annoyance of all persons, or by neglecting to do a thing which the common good requires. State v. Mayor and Aldermen of Mobile, 5 Port. 279, 30 Am. Dec. 564 [(1837)]; Ferguson v. City of Selma, 43 Ala. 398 [(1869)]."

City of Selma v. Jones, 202 Ala. 82, 83-84, 79 So. 476, 477-78 (1918).

In the Macon County case, the State alleged that the Macon County defendants' gaming devices were illegal slot machines and that the operation of those machines constituted unlawful gambling activity. It further alleged that the Macon County defendants "do not have the authority to operate, advance, or profit from unlawful gambling activity in violation of Article IV, Section 65 of the Alabama Constitution (1901) and Ala. Code [1975,] § 13A-12-20 et seq."

This Court has stated:

> "Section 65 of the Constitution of Alabama of 1901, in prohibiting a lottery or 'any scheme in the nature of a lottery,' was intended to provide a broad proscription of the evils suffered by earlier generations who, after experiencing the effects firsthand, found lotteries to be 'among the most dangerous and prolific sources of human misery.' 34 B.C.L. Rev. at 12-13, citing A.R. Spoffard, Lotteries in American History, S. Misc. Doc. No. 57,

> 52d Cong., 2d Sess. 194-95 (1893) (Annual Report of the American Historical Society)."

Opinion of the Justices No. 373, 795 So. 2d 630, 643 (Ala. 2001) (emphasis added).

Section 13A-12-27, Ala. Code 1975, provides:

> "(a) A person commits the crime of possession of a gambling device if with knowledge of the character thereof he manufactures, sells, transports, places or possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody or use of:
>
> "(1) A slot machine; or
>
> "(2) Any other gambling device, with the intention that it be used in the advancement of unlawful gambling activity.
>
> "(b) Possession of a gambling device is a Class A misdemeanor."

Section 13A-12-22, Ala. Code 1975, provides:

> "(a) A person commits the crime of promoting gambling if he knowingly advances or profits from unlawful gambling activity otherwise than as a player.
>
> "(b) Promoting gambling is a Class A misdemeanor."

In Try-Me, this Court stated:

> "In this State, therefore, the public policy is emphatically declared against lotteries or any scheme in the nature of a lottery, both by Constitution and by statutes.

"The attitude of this State in reference to such practices was well expressed by this court in Johnson v. State, 83 Ala. 65, 3 So. 790, 791 [(1888)], in the following language: 'This construction is in full harmony with the policy of the constitution and laws of Alabama prohibitory of the vicious system of lottery schemes and the evil practice of gaming, in all their protean shapes, tending, as centuries of human experience now fully attest, to mendicancy and idleness on the one hand, and moral profligacy and debauchery on the other. No state has more steadfastly emphasized its disapprobation of all these gambling devices of money-making by resort to schemes of chance than Alabama. For more than 40 years past -- we may say, from the organization of the state, with some few years of experimental leniency -- the voice of the legislature has been loud and earnest in its condemnation of these immoral practices, now deemed so enervating to the public morals.'

"True, the lawmaking body has not in so many words declared the use of such devices a nuisance, but it is our view that in substance and effect this has been done.

"We have said these 'flicker devices' come within the condemnation of the 1931 act and their possession unlawful. They can be used for no lawful purpose, and are scattered unlawfully throughout defendants' trade territory.

"In Lee v. City of Birmingham, 223 Ala. 196, 135 So. 314, 315 [(1931)], speaking to a like question, this court observed that 'it is held by respectable authority that, if a gambling device is prohibited by statute, its operation may be considered a nuisance, and abated upon proper proceedings.'

"And in Mullen & Co. v. Moseley, 13 Idaho 457, 90 P. 986, 990, 12 L.R.A., N.S., 394, 121 Am. St. Rep. 277, 13 Ann. Cas. 450 [(1907)], (cited in the

> Lee Case, supra), the court said: 'It has been urged by counsel for appellants that, in order to authorize the destruction of these machines, it was necessary for the Legislature to declare them a nuisance. The Legislature has in effect done so. It has prohibited their use in any manner or form, and has also directed that, when any such instruments are found within this state, they shall be seized and destroyed. Making their use a crime and rendering them incapable of any legitimate use reduces them to the condition and state of a public nuisance which they clearly are. This amounts as effectually to declaring them a nuisance as if the word "nuisance" itself had been used in the Statute.'"

235 Ala. at 212, 178 So. at 234-35 (emphasis added). Similarly, if the gaming devices at issue in the Macon County case constitute illegal gambling devices, they can be used for no lawful purpose and their "'operation may be considered a nuisance, and abated upon proper proceedings.'" Try-Me, 235 Ala. at 235, 178 So. at 212 (quoting Lee v. City of Birmingham, 223 Ala. 196, 197, 135 So. 314, 315 (1931)).

The Macon Circuit Court also held that the State had other adequate remedies. However, as this Court noted in Try-Me:

> "The mere prosecution for a misdemeanor here involved will not give complete relief. The State is interested in the welfare of the people within her domain, and, of consequence, in the enforcement of the declared public policy against lotteries or gift schemes in the nature thereof. And, as said by

> the Illinois court, Stead v. Fortner, 255 N.E. 468, 99 N.E. 680 [(1912)], here approvingly quoted in State v. Ellis, [201 Ala. 295, 78 So. 71 (1918)]: 'As we have noted above, this court has never regarded a criminal prosecution, which can only dispose of an existing nuisance and cannot prevent a renewal of the nuisance, for which a new prosecution must be brought, as a complete and adequate remedy for a wrong inflicted upon the public. The public authorities have a right to institute the suit where the general public welfare demands it and damages to the public are not susceptible of computation. The maintenance of the public health, morals, safety, and welfare is on a plane above mere pecuniary damage, although not susceptible of measurement in money; and to say that a court of equity may not enjoin a public nuisance because property rights are not involved would be to say that the state is unable to enforce the law or protect its citizens from public wrongs.'"

235 Ala. at 212, 178 So. at 235.

Additionally, this Court's myriad decisions dealing with the legality of electronic bingo machines supports the State's assertion that it does not have any other adequate remedy to abate the public nuisances alleged here. In State v. $223,405.86, 203 So. 3d 816 (Ala. 2016), this Court addressed the State's appeal from an order dismissing a forfeiture action against KCED on equal-protection grounds and the trial court's conclusion "that 'the Macon County voter when voting on [Local Amendment, Macon County, § 1, Ala. Const. 1901 (Off. Recomp.) ('Amendment No. 744'),] understood it to be all forms

of bingo."[2] 203 So. 3d at 822. In addressing the equal-protection issue, this Court stated:

> "This Court, however, may take notice of our own prior decisions.
>
> "The efforts of the State to enforce Alabama's gambling laws and to prevent misuse of local constitutional amendments legalizing bingo have resulted in at least a dozen decisions by this Court during the last six years.[5] We began our analysis in one of those cases, State v. Greenetrack, Inc., 154 So. 3d 940 (Ala. 2014), by noting the widespread efforts undertaken by State law-enforcement officials and by county and State courts to shut down so-called 'electronic-bingo machines' in locale after locale throughout Alabama:
>
> > "'[T]he State takes note of our holding in [Barber v.] Cornerstone [Community Outreach, Inc., 42 So. 3d 65 (Ala. 2009),] and our reliance upon Cornerstone last year in Ex parte State, 121 So. 3d 337, 359 (Ala. 2013). The State also notes that, consistent with these holdings, judges have in recent months issued warrants to the State to seize so-called "electronic bingo machines" in Greene, Houston, Jefferson, and Lowndes Counties and judges in Jefferson and Houston Counties have issued various final rulings finding this sort of gambling illegal.'

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[2]In State v. $223,405.86, this Court issued a writ of mandamus disqualifying one of the Macon County circuit court judges from presiding over the forfeiture case. After "[a]ll the other eligible judges in the Fifth Judicial Circuit, which includes Macon County, voluntarily recused themselves," Montgomery Circuit Judge William Shashy was appointed to preside over that case. 203 So. 3d at 821.

> "154 So. 3d at 948. Indeed, Greenetrack itself and other cases evidence continuing activity on the part of the State since the February 19, 2013, raid at VictoryLand [casino] to enforce Alabama's gambling laws against other casinos operating in the State. See, e.g., Houston Cty. Econ. Dev. Auth. v. State, 168 So. 3d 4 (Ala. 2014) (Houston County); Alabama v. PCI Gaming Auth., 801 F.3d 1278 (11th Cir. 2015) (relating to a challenge by the State to the operation of tribal casinos in Alabama).
>
> "_____
>
> "[5]See Houston Cty. Econ. Dev. Auth. v. State, 168 So. 3d 4 (Ala. 2014); State v. Greenetrack, Inc., 154 So. 3d 940 (Ala. 2014); Ex parte State, 121 So. 3d 337 (Ala. 2013); Chorba-Lee Scholarship Fund, Inc. v. Hale, 60 So. 3d 279 (Ala. 2010); Riley v. Cornerstone Cmty. Outreach, Inc., 57 So. 3d 704 (Ala. 2010); Barber v. Cornerstone Cmty. Outreach, Inc., 42 So. 3d 65 (Ala. 2009); Ex parte Rich, 80 So. 3d 219 (Ala. 2011); Surles v. City of Ashville, 68 So. 3d 89 (Ala. 2011); Tyson v. Jones, 60 So. 3d 831 (Ala. 2010); Etowah Baptist Ass'n v. Entrekin, 45 So. 3d 1266 (Ala. 2010); Tyson v. Macon Cty. Greyhound Park, Inc., 43 So. 3d 587 (Ala. 2010); and Macon Cty. Greyhound Park, Inc. v. Knowles, 39 So. 3d 100 (Ala. 2009)."

203 So. 3d at 826. Subsequently, in addressing the meaning of the term "bingo" in Amendment No. 744, this Court stated:

> "Section 65 of the Alabama Constitution of 1901 prohibits 'lotteries,' 'gift enterprises,' and 'any scheme in the nature of a lottery.' The elements of a lottery that violate § 65 of the Constitution of Alabama are '(1) a prize, (2) awarded by chance, and (3) for a consideration.' Pepsi Cola Bottling Co. of Luverne, Inc. v. Coca-Cola Bottling Co., Andalusia, 534 So. 2d 295, 296 (Ala. 1988). It is this so-called 'anti-lottery provision' that stands

as the constitutional bar not just to what is known in contemporary parlance as a 'lottery,' but to slot machines and all other forms of gambling in Alabama. In 1981, the Justices of this Court, quoting Yellow-Stone Kit v. State, 88 Ala. 196, 7 So. 338 (1889), explained that '"[t]he 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...."' Opinion of the Justices No. 277, 397 So. 2d 546, 547 (Ala. 1981).[9]

"The efforts to circumvent § 65 have taken on a seemingly endless variety of imaginative forms over a long period. For over 100 years, the appellate courts of this State have addressed cases involving efforts by gambling interests to evade this prohibition in an endless variety of new and inventive ways. See, e.g., Grimes v. State, 235 Ala. 192, 193, 178 So. 73, 73 (1937) (noting that the language of § 65 was adopted from the Alabama Constitution of 1875 and that '[t]he lust for profit by catering to and commercializing the gambling spirit has given rise to many ingenious devices'). As this Court explained in 2006 in responding to yet another of those attempts:

> "'The owners [of the gambling establishment] propose that they have found, and exploited, a "loophole" in the law.... Alabama's gambling law, however, is not so easily evaded. It is "'the policy of the constitution and laws of Alabama [to prohibit] the vicious system of lottery schemes and the evil practice of gaming, in all their protean shapes.'"'

"Barber v. Jefferson Cty. Racing Ass'n, Inc., 960 So. 2d 599, 614 (Ala. 2006) (quoting Opinion of the Justices No. 83, 249 Ala. 516, 517, 31 So. 2d 753, 754 (1947), quoting in turn Johnson v. State, 83

Ala. 65, 67, 3 So. 790, 791 (1887) ([final] emphasis added in Barber)).

"The latest 'protean shape' conceived by those who would own or operate casinos in Alabama has been electronic machines claimed to constitute the game of 'bingo' within the meaning of various local constitutional amendments that allow bingo in certain counties for charitable or similar purposes. Before directly examining this recent conception, it is helpful to consider our courts' response to earlier 'protean shapes' conceived in an effort to circumvent § 65.

"One of the earliest rejections by our courts of attempts to misuse local bingo amendments occurred a little over 20 years ago. In City of Piedmont v. Evans, 642 So. 2d 435 (Ala. 1994), this Court held that 'instant bingo' was a form of lottery prohibited by § 65. The Court narrowly construed the term 'bingo' as found in Amendment No. 508, Ala. Const. 1901 (now Local Amendments, Calhoun County, § 1, Ala. Const. 1901 (Off. Recomp.)), while citing with approval the definition of that term employed by a related municipal ordinance:

> "'"'That specific kind of game, or enterprise, commonly known as "bingo," in which prizes are awarded on the basis of designated numbers, or symbols, which are drawn, at random, by the operator of said game and which are placed by the persons playing, or participating in said game, on cards, or sheets of paper, which contain, or set out, numbered spaces, upon which said designated numbers or symbols, may be placed by the persons playing or participating in said game.'"'

"City of Piedmont, 642 So. 2d at 437 (emphasis added).

"Three years later, in Foster v. State, 705 So. 2d 534 (Ala. Crim. App. 1997), a unanimous Court of Criminal Appeals held in an opinion authored by then Judge Cobb that, where 'bingo' is authorized but not otherwise defined by local constitutional amendment, that term means nothing '"other than the ordinary game of bingo."' 705 So. 2d at 538 (quoting Barrett v. State, 705 So. 2d 529, 532 (Ala. Crim. App. 1996)). The Foster court upheld the appellant's conviction and 12-month prison sentence for promoting gambling and possession of a gambling device where the appellant had contended that the gambling activity he operated was 'bingo' within the meaning of the local bingo amendment and of a city ordinance adopted pursuant to that amendment. The court acknowledged '"this state's strong public policy against lotteries as expressed in § 65 of the Alabama Constitution,"' declared that bingo is a 'narrow exception to the prohibition of lotteries in the Alabama Constitution,' and, accordingly, held that 'no expression in [an] ordinance [governing the operation of bingo] can be construed to include anything other than the ordinary game of bingo,' lest the ordinance be 'inconsistent with the Constitution of Alabama.' 705 So. 2d at 537-38 (emphasis added); see also Barrett v. State, 705 So. 2d 529 (Ala. Crim. App. 1996) (to similar effect).

"In more recent years, the strategy of misusing local bingo amendments has been renewed with additional vigor and creativity. Indeed, ... in just the past six years, the appellate courts of this State have rendered at least a dozen decisions engendered by the advent of so-called 'electronic bingo.'[10] No less than six of those cases addressed the meaning of the simple term 'bingo' found in those amendments,[11] including Amendment No. 744, which we addressed in one of those cases.[12] The local bingo amendments at issue in those cases were proposed and adopted following, and thus with an actual or imputed knowledge of, the holdings in Evans, Foster, and Barrett. See, e.g., Ex parte

Fontaine Trailer Co., 854 So. 2d 71, 83 (Ala. 2003)('It is an ingrained principle of statutory construction that "[t]he Legislature is presumed to be aware of existing law and judicial interpretation when it adopts [an act]. Ex parte Louisville & N.R.R., 398 So. 2d 291, 296 (Ala. 1981)."' (quoting Carson v. City of Prichard, 709 So. 2d 1199, 1206 (Ala.1998))). Consistent with the holdings in those earlier cases, we repeatedly have made clear in our more recent cases that references to 'bingo' in local bingo amendments are references to the ordinary game of bingo, and not to the electronic machines at issue in those cases.

"The first in the most recent line of cases addressing the meaning of the term 'bingo' was Barber v. Cornerstone Community Outreach, Inc., 42 So. 3d 65 (Ala. 2009). In Cornerstone, this Court addressed the meaning of the term 'bingo' in the context of Amendment No. 674, Ala. Const. 1901 (Local Amendments, Lowndes County, § 3, Ala. Const. 1901 (Off. Recomp.)), applicable to the Town of White Hall in Lowndes County. The operative language of that amendment states simply that '[t]he operation of bingo games for prizes or money by nonprofit organizations for charitable, educational or other lawful purposes shall be legal in The Town of White Hall that is located in Lowndes County....' (Emphasis added.) In addition to our reliance upon Evans and Barrett, cited above, we noted in Cornerstone that the operative language of Amendment No. 674, including the unadorned reference to 'bingo,' was the same as in other local amendments that had been adopted. See Cornerstone, 42 So. 3d at 78–80 (comparing in particular the language of Amendment No. 674 to that of Amendment No. 508 (Local Amendments, Calhoun County, § 1, Ala. Const. 1901 (Off. Recomp.)), which was at issue in Evans and which states that '[t]he operation of bingo games for prizes or money by certain nonprofit organizations for charitable, educational, or other lawful purposes shall be legal in Calhoun county'

(emphasis added)). The language at issue in the present case, in Amendment No. 744 applicable to Macon County, is identical to the language found in the White Hall and Calhoun County amendments (as it is to the other local bingo amendments governing various localities...): 'The operation of bingo games for prizes or money by nonprofit organizations for charitable, educational, or other lawful purposes shall be legal in Macon County.' (Emphasis added.)

"In fact, we noted in Cornerstone that the only local bingo amendment we could find in Alabama that had any noteworthy variation in terminology was the amendment applicable to Greene County, Amendment No. 743 (Local Amendments, Greene County, § 1, Ala. Const. 1901 (Off. Recomp.)), which specifically allows 'electronic marking machines.' Even this language, we explained, does nothing more than allow a player to physically mark an electronic screen rather than a paper card. We specifically noted that this variance in language did not change the other essential characteristics of the game described in Cornerstone, 42 So. 3d at 79–80. See also discussion of State v. Greenetrack, Inc., 154 So. 3d 940 (Ala. 2014), infra.

"Having thus noted the similarity in wording of the various local bingo amendments, this Court in Cornerstone went on to emphasize two rules of construction applicable to that wording. We first observed that,

> "'"[s]ince 1980, Alabama has adopted various constitutional amendments creating exceptions to § 65, specifically allowing the game of bingo under certain circumstances. See Ala. Const. [1901], Amendments 386, 387, 413, 440, 506, 508, 542, 549, 550, 565, 569, 599, and 612." (Emphasis added.) Thus, the bingo amendments are exceptions to the lottery

> prohibition, and the exception should be narrowly construed.'

"Cornerstone, 42 So. 3d at 78 (quoting Opinion of the Justices No. 373, 795 So. 2d 630, 634 (Ala. 2001) (second emphasis added)). In addition, we recognized in Cornerstone that,

> "'except where the language of a constitutional provision requires otherwise, we look to the plain and commonly understood meaning of the terms used in [the constitutional] provision to discern its meaning.'

"42 So. 3d at 79 (emphasis added). (Furthermore, we noted that, '"[a]lthough a legislative act cannot change the meaning of a constitutional provision, such act may throw light on its construction."' Id. at 79 (quoting Jansen v. State ex rel. Downing, 273 Ala. 166, 169, 137 So. 2d 47, 49 (1962)).)

"Based on these principles, as well as an examination of the cases cited above and persuasive authority from other jurisdictions, we held in Cornerstone that the term 'bingo' 'was intended to reference the game commonly or traditionally known as bingo.' 42 So. 3d at 86. Furthermore, we identified six elements that characterize that game, the list being nonexhaustive:

> "'Based on the foregoing, we must conclude that the term "bingo" as used in Amendment No. 674 was intended to reference the game commonly or traditionally known as bingo. The characteristics of that game include the following:
>
> "'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.
>
> "'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.'

"42 So. 3d at 86.

"Several months after the release of our opinion in Cornerstone, we decided Riley v. Cornerstone Community Outreach, Inc., 57 So. 3d 704 (Ala. 2010), in which we explained that we had recognized in Cornerstone 'that the game of bingo authorized by the local amendment was that game commonly and traditionally known as bingo, and we [had] provided a non-exhaustive list of characteristics of that game.' Riley, 57 So. 3d at 710. We also noted that 'the game traditionally known as bingo' is a game that

> "'is not played by or within the electronic or computerized circuitry of a machine, but one that is played on physical cards (typically made of cardboard or paper) and that requires meaningful interaction between those who are playing and someone responsible for calling out the randomly drawn designations corresponding to designations on the players' cards.'

"57 So. 3d at 734.

"On March 1, 2013, this Court again affirmed that the Cornerstone test was applicable to the term 'bingo' as used in Alabama's various local bingo amendments, including specifically the Macon County amendment at issue in the case now before us. See Ex parte State, 121 So. 3d 337 (Ala. 2013). This Court left no doubt that the language of Amendment No. 744 authorizes only the game 'traditionally known as bingo,' and we again affirmed the Cornerstone test. We explained that the Cornerstone test 'refers to the game commonly and traditionally known as "bingo,"' which includes the six elements of that traditional game as described in Cornerstone, and that the test was 'more than clear enough to serve as guide in measuring the facts of th[at] case' against the language of Amendment No. 744. Ex parte State, 121 So. 3d at 356.

"On April 1, 2014, this Court decided State v. Greenetrack, Inc., 154 So. 3d 940 (Ala. 2014), a case in which we yet again affirmed that the references to 'bingo' in the local bingo amendments, including, in that case, Amendment No. 743 applicable to Greene County, are references to the 'traditional game of bingo' and the nonexhaustive list of six elements of that game as set out in Cornerstone. As already noted, ... we began our analysis by noting the widespread efforts undertaken by State law-enforcement officials and by county and State courts to shut down so-called electronic-bingo machines in locale after locale throughout Alabama.

"As to the meaning of the term 'bingo' in Amendment No. 743, we held that the denial of a search warrant by a trial court judge had been made based upon 'an incorrect legal standard,' namely, an incorrect understanding of what constituted 'bingo' for purposes of Amendment No. 743. Greenetrack, Inc., 154 So. 3d at 958. We reaffirmed the ubiquitous meaning of the term 'bingo' in Alabama's various local bingo amendments:

> "'Amendment No. 743, just like the amendment at issue in Cornerstone and bingo amendments applicable to other counties, speaks of and permits the playing of "bingo games" (provided that a number of other restrictions, including charitable purposes, are met).[14] We identified in Cornerstone and we reaffirm today that the game of "bingo" as that term is used in local constitutional amendments throughout the State is that game "commonly or traditionally known as bingo," 42 So. 3d at 86, and that this game is characterized by at least the six elements we identified in Cornerstone. Id.'

"Greenetrack, Inc., 154 So. 3d at 959 (emphasis added).

"As already noted, we further explained in Greenetrack that there was only one noteworthy difference between the language of Amendment No. 743 and the other local bingo amendments throughout the State. In this regard, we noted that Amendment No. 743 allows for the use of 'electronic marking machines' rather than 'a "card" in the sense of a flat rectangular or square object made of paper, cardboard, or some similar material on which the required designations are printed.' Greenetrack, Inc., 154 So. 3d at 959. We emphasized that, in all other respects, the characteristics of bingo as that term is used in other local bingo amendments are applicable under Amendment No. 743 and reiterated and affirmed our discussion of Amendment No. 743 in Cornerstone:

> "'"Amendment No. 743 ... legalizes in Greene County a form of bingo that would include an 'electronic marking machine' in lieu of a paper card. Even [Amendment No. 743], which is the only amendment in Alabama we have located that makes any reference to the use of electronic equipment of any form, contemplates a game in all material respects similar to the game of bingo described in § 45-8-150(1), [Ala. Code 1975,] [15] and something that is materially different from the types of electronic gaming machines at issue here. Amendment No. 743 begins by saying that 'bingo' is '[t]hat specific kind of game commonly known as bingo.' The definition then explains that bingo is a game 'in which prizes are awarded on the basis of designated numbers or symbols on a card or electronic marking machine conforming to numbers or symbols selected at random.' Moreover, the equipment contemplated by Amendment No. 743 for use in a bingo game is entirely different than the equipment at issue here. Specifically, Amendment No.

> 743 defines 'equipment' for the game of bingo as follows:
>
> > "'"'The receptacle and numbered objects drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them or electronic card marking machines, and the board or signs, however operated, used to announce or display the numbers or designations as they are drawn.'"'
>
> "154 So. 3d at 960 (quoting Cornerstone, 42 So. 3d at 79–80).

"Finally, on November 21, 2014, this Court decided Houston County Economic Development Authority v. State, 168 So. 3d 4 (Ala. 2014). As we have done yet again in this opinion, we reviewed in Houston County much of the history of this Court's decisions addressing bingo over the past six years. In so doing, we once again affirmed that the unadorned term 'bingo' in Alabama's local amendments is a reference to the game 'traditionally known as bingo,' including the six elements for that game discussed in Cornerstone:

> "'This Court repeatedly has held that "bingo" is a form of lottery prohibited by Ala. Const. 1901, Art. IV, § 65. See, e.g., Barber v. Cornerstone Cmty. Outreach, Inc., 42 So. 3d 65, 78 (Ala. 2009); City of Piedmont v. Evans, 642 So. 2d 435, 436 (Ala. 1994). We therefore begin our analysis by emphasizing once again that the various constitutional amendments permitting "bingo" are exceptions to the

general prohibition of § 65 and that, as such, they must be "narrowly construed." As we held in Cornerstone:

> "'"'Since 1980, Alabama has adopted various constitutional amendments creating exceptions to § 65, specifically allowing the game of bingo under certain circumstances. See Ala. Const. [1901], Amendments 386, 387, 413, 440, 506, 508, 542, 549, 550, 565, 569, 599, and 612.' (Emphasis added.) Thus, the bingo amendments are exceptions to the lottery prohibition, and the exception should be narrowly construed."

"'42 So. 3d at 78 (quoting Opinion of the Justices No. 373, 795 So. 2d 630, 634 (Ala. 2001)).

"'In addition to this fundamental principle of "narrow construction," we also recognized in Cornerstone the need, "except where the language of a constitutional provision requires otherwise," to "look to the plain and commonly understood meaning of the terms used in [the constitutional] provision to discern its meaning." 42 So. 3d at 79. Furthermore, we noted that, "'[a]lthough a legislative act cannot change the meaning of a constitutional provision, such act may throw light on its construction."' Id. at 79 (quoting Jansen v. State ex rel. Downing, 273 Ala. 166, 169, 137 So. 2d 47, 49 (1962)). Based on the above-described rules of construction, together with an examination of persuasive authority from other jurisdictions, we held in Cornerstone that the term "bingo" "was

> intended to reference the game commonly or traditionally known as bingo." 42 So. 3d at 86. Furthermore, we identified six elements that characterize the game of bingo, the list being nonexhaustive:
>
> "'"...."
>
> "'We have since stated that our analysis in Cornerstone is applicable to the other local bingo constitutional amendments in this State. State v. Greenetrack, Inc., 154 So. 3d 940, 959 (Ala. 2014) ("[T]he game of 'bingo' as that term is used in local constitutional amendments throughout the State is that game 'commonly or traditionally known as bingo,' 42 So. 3d at 86, and ... this game is characterized by at least the six elements we identified in Cornerstone.").'

"168 So. 3d at 9–11 (first emphasis original; other emphasis added).

"Moreover, it was necessary in Houston County to elaborate upon each of the Cornerstone elements to respond to the construction given each of them by the trial court in that case. Although it is not necessary to reproduce here our elaboration upon each of the six elements, by this reference we reaffirm that analysis. Further, we reiterate our conclusion in Houston County, which summarized much of that analysis:

> "'[T]he game traditionally known as bingo is not one played by or within an electronic or computerized machine, terminal, or server, but is one played outside of machines and electronic circuitry. It is a group activity, and one that requires a meaningful measure of human interaction and skill. This includes

> attentiveness and discernment and physical, visual, auditory, and verbal interaction by and between those persons who are playing and between the players and a person commonly known as the "announcer" or "caller," who is responsible for calling out the randomly drawn designations and allowing time between each call for the players to check their cards and to physically mark them accordingly. In accordance with the previously stated list of characteristics, each player purchases and plays the game on one or more cards that, in a county such as Houston County (in which the amendment does not expressly permit "electronic marking machines"), are not electronic devices or electronic depictions of playing surfaces but are actual physical cards made of cardboard, paper, or some functionally similar material that is flat and is preprinted with the grid and the designations [required].'

"168 So. 3d at 18 (emphasis added).

"KCED concedes that the machines at issue here are not the game commonly and traditionally known as bingo and that they do not meet the six elements identified in Cornerstone and further explained in Houston County. Nonetheless, KCED takes the position that the term 'bingo' in Amendment No. 744 means something different than that term in Alabama's other 'bingo amendments.' KCED's position, however, is contrary to all the above-discussed precedents, as well as the well-settled principles of plain meaning and narrow construction upon which they are based. The language of Amendment No. 744 is clear, and the 'plain and commonly understood meaning' of the simple term 'bingo,' especially when coupled with the principle of narrow construction, necessarily

yields the same meaning as a matter of law for that term in Macon County's Amendment No. 744 as it does for the same term in Alabama's numerous other bingo amendments.

"As Justice Harwood noted in his special writing in City of Bessemer v. McClain, 957 So. 2d 1061, 1082 (Ala. 2006) (Harwood, J., concurring in part and dissenting in part): '[D]eference to the ordinary and plain meaning of the language of a statute is not merely a matter of an accommodating judicial philosophy; it is a response to the constitutional mandate of the doctrine of the separation of powers set out in Art. III, § 43, Alabama Constitution of 1901.' This principle, of course, is equally applicable to constitutional provisions.

"This Court is not at liberty to deviate from the plain meaning of the term 'bingo' nor from the principle of narrow construction heretofore noted. It simply cannot feasibly be maintained that Alabama's local bingo amendments permitting charitable 'bingo,' by their repeated use of this same unadorned term in amendment after amendment, communicate an array of different meanings. Nor can it be maintained that the meaning of each local amendment was to be decided by the judicial branch based upon what might later be proved in a courtroom regarding who said what to whom following the drafting and proposal of the amendment, or what peculiar meaning some voter or group of voters did or did not assume as to the words employed in the amendment. ... See also [Jane S.] Schacter, [The Pursuit of 'Popular Intent': Interpretive Dilemmas in Direct Democracy,] 105 Yale L.J. [107,] 124-25 [(1995)] ('[T]he problem of aggregating multiple individual intentions, substantial as it is in the context of the legislative process, is compounded by the daunting scale of direct lawmaking. Even if we granted that individual voter intent existed -- a dubious premise, I will argue -- courts simply could

not cumulate what may be millions of voter intentions.'). At best, it would be unseemly, and at worst illogical and impracticable, not to mention contrary to a proper understanding of the role of the judiciary, for this and other courts of this State to undertake to attribute some potentially different meaning to each of the 17 local bingo amendments, despite the fact that each of them uses the same language.

> "'"The intention of the Legislature, to which effect must be given, is that expressed in the [act], and the courts will not inquire into the motives which influenced the Legislature or individual members in voting for its passage, nor indeed as to the intention of the draftsman or of the Legislature so far as it has not been expressed in the act. So in ascertaining the meaning of a[n act] the court will not be governed or influenced by the views or opinions of any or all of the members of the Legislature, or its legislative committees or any other person."'

"James v. Todd, 267 Ala. [495,] 506, 103 So. 2d [19,] 28–29 [(1957)] (quoting Wiseman v. Madison Cadillac Co., 191 Ark. 1021, 88 S.W.2d 1007, 1009 (1935)); see also Fraternal Order of Police, Lodge No. 64 v. Personnel Bd. of Jefferson Cty., 103 So. 3d 17, 27 (Ala. 2012) ('Words used in [an act] must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. If the language of the [act] is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect.' (internal quotation marks omitted)); Hill v. Galliher, 65 So. 3d 362, 370 (Ala. 2010) ('"'If, giving the ... language [of the act] its plain and

ordinary meaning, we conclude that the language is unambiguous, there is no room for judicial construction.'"' (quoting Bright v. Calhoun, 988 So. 2d 492, 498 (Ala. 2008), quoting in turn City of Bessemer v. McClain, 957 So. 2d 1061, 1074-75 (Ala. 2006))).

"Based on the foregoing, there is no room for any conclusion other than that which we reached in Ex parte State: The term 'bingo' as used in Amendment No. 744 means the traditional game of bingo as has been described by this Court. The Cornerstone elements, as since expounded upon in Houston County, are yet again reaffirmed. They are applicable to the term 'bingo' in Amendment No. 744, just as they are applicable to the use of that term in Alabama's other local bingo amendments.

"In our opinion in Cornerstone, published over six years ago, we noted certain arguments made by the State at that time. It is surprising, given our opinion in Cornerstone and our opinions in subsequent cases during the ensuing six years, that the following arguments remain germane today:

> "'"First, there is no question that this case 'involve[s] a matter of public importance.' Chapman[v. Gooden], 974 So. 2d [972,] 989 [(Ala. 2007)]....
>
> "'"The issue is before the Court because [the State has] shown that there is no reasonable chance that the machines at issue could be found to be anything other than slot machines, and no reasonable chance that the computer program used to run them qualifies as the game commonly known as bingo within the meaning of Amendment 674. A ruling by

> this Court to that effect would surely put a practical end to this latest effort by gambling interests around the State to make a mockery of this State's gambling laws .... They prefer to delay, continue to rake in millions during the delay with procedural maneuvers such as those they have engaged in here and in other appeals before this Court, and ultimately pin their hopes on the possibility of political changes which they believe may come with delay."

"'....

> "'"... Despite this Court's clear, emphatic, and repeated disapproval of every artful attempt to circumvent Alabama's anti-gambling law, see, e.g., Barber v. Jefferson County Racing Assoc., 960 So. 2d 599, 614 (Ala. 2006), gambling interests, as demonstrated by this case, continue to flout those laws."'

"Cornerstone, 42 So. 3d at 76 (quoting arguments made on behalf of the State of Alabama).

"Today's decision is the latest, and hopefully the last, chapter in the more than six years' worth of attempts to defy the Alabama Constitution's ban on 'lotteries.' It is the latest, and hopefully the last, chapter in the ongoing saga of attempts to defy the clear and repeated holdings of this Court beginning in 2009 that electronic machines like those at issue here are not the 'bingo' referenced in local bingo amendments. It is the latest, and hopefully the last, chapter in the failure of some

local law-enforcement officials in this State to enforce the anti-gambling laws of this State they are sworn to uphold,[18] thereby necessitating the exercise and performance by the attorney general of the authority and duty vested in him by law, as the chief law-enforcement officer of this State, to enforce the criminal laws of this State. And finally, it is the latest, and hopefully last, instance in which it is necessary to expend public funds to seek appellate review of the meaning of the simple term 'bingo,' which, as reviewed above, has been declared over and over and over again by this Court. There is no longer any room for uncertainty, nor justification for continuing dispute, as to the meaning of that term. And certainly the need for any further expenditure of judicial resources, including the resources of this Court, to examine this issue is at an end. All that is left is for the law of this State to be enforced.

"_____

"[9]The nature and the extent of the limitations imposed by § 65 have been the subject of many opinions by this Court. See, e.g., Opinion of the Justices No. 373, 795 So. 2d 630, 634-35 (Ala. 2001) (citing William Blackstone and numerous cases to the effect that the prohibition of lotteries encompasses a wide variety of gambling, including slot machines); Minges v. City of Birmingham, 251 Ala. 65, 69, 36 So. 2d 93, 96 (1948)(quoting 34 Am.Jur. Lotteries § 6 (1941), to explain that, under the so-called 'American Rule' definition of a lottery, '"chance must be the dominant factor,"' but that this criterion '"is to be taken in the qualitative or causative sense, rather than the quantitative sense"'). See also McKittrick v. Globe-Democrat Publ'g Co., 341 Mo. 862, 881, 110 S.W.2d 705, 717 (1937) (explaining the 'qualitative sense' to mean that 'the fact that skill alone [would] bring contestants to a correct solution of a greater part of the problems does not make the contest any the

less a lottery if chance enters into the solution of another lesser part of the problems and thereby proximately influences the final result'); Horner v. United States, 147 U.S. 449, 459, 13 S. Ct. 409, 37 L. Ed. 237 (1893) (finding it dispositive that the scheme in the case before it was one in which '[t]he element of certainty [went] hand in hand with the element of lot or chance,' but that 'the former [did] not destroy the existence or effect of the latter'); and State ex rel. Tyson v. Ted's Game Enters., 893 So. 2d 355, 374 (Ala. Civ. App. 2002) (reviewing substantial authority that, under the 'American Rule,' 'whether a game or activity constitutes a "lottery" depends on whether ... skill override[s] the effect of the chance'), aff'd, 893 So. 2d 376, 377 (Ala. 2004)) (holding that § 65 prohibits any game 'in which skill does not predominate over chance in determining the outcome').

"[10]See cases cited in note 11, infra, as well as the following cases: Ex parte Rich, 80 So. 3d 219 (Ala. 2011); Surles v. City of Ashville, 68 So. 3d 89 (Ala. 2011); Tyson v. Jones, 60 So. 3d 831 (Ala. 2010); Etowah Baptist Ass'n v. Entrekin, 45 So. 3d 1266 (Ala. 2010); Tyson v. Macon Cty. Greyhound Park, Inc., 43 So. 3d 587 (Ala. 2010); and Macon Cty. Greyhound Park, Inc. v. Knowles, 39 So. 3d 100 (Ala. 2009).

"[11]See Houston Cty. Econ. Dev. Auth. v. State, 168 So. 3d 4 (Ala. 2014); State v. Greenetrack, Inc., 154 So. 3d 940 (Ala. 2014); Ex parte State, 121 So. 3d 337 (Ala. 2013); Chorba-Lee Scholarship Fund, Inc. v. Hale, 60 So. 3d 279 (Ala. 2010); Riley v. Cornerstone Cmty. Outreach, Inc., 57 So. 3d 704 (Ala. 2010); and Barber v. Cornerstone Cmty. Outreach, Inc., 42 So. 3d 65 (Ala. 2009).

"[12]Ex parte State, 121 So. 3d 337 (Ala. 2013).

"[14]In most, if not all, of the cases involving electronic gaming decided by this Court over the past six years, substantial questions would exist as to whether, even if the machines at issue had constituted 'bingo,' they were being operated for the charitable purposes required by the local bingo amendments at issue in those cases. This Court has not reached this latter issue because the machines have not met the threshold requirement of being 'bingo' within the meaning of the local bingo amendment at issue in each case.

"[15]As we explained in Cornerstone, § 45-8-150(1) (applicable to Calhoun County), describes bingo as '[t]he game commonly known as bingo,' which, it states,

> "'"is a game of chance played with cards printed with five rows of five squares each. Participants place markers over randomly called numbers on the cards in an attempt to form a preselected pattern such as a horizontal, vertical, or diagonal line, or all four corners. The first participant to form the preselected pattern wins the game. The term 'bingo' means any game of bingo of the type described above in which wagers are placed, winners are determined, and prizes or other property is distributed in the presence of all persons placing wagers in that game. The term 'bingo' does not refer to any game of chance other than the type of game described in this subdivision."'

"42 So. 3d at 79.

"[18]As noted, even the trial court in this case candidly stated to the deputy attorney general prosecuting this case: 'You know as well as I do [local law enforcement,] they're not going to do it, so it comes to [your office].' ..."

203 So. 3d at 834-45 (some emphasis added; footnotes 13, 16, 17, and 19 omitted).

Nevertheless, in State v. 825 Electronic Gambling Devices, 226 So. 3d 660 (Ala. 2016), this Court was again called upon to address whether another local amendment in Houston County authorized electronic-bingo games in that county. After determining that the games being played on the machines seized in that case did not satisfy the characteristics of the game of bingo set forth in Cornerstone, this Court stated:

> "In State v. $223,405.86, this Court emphasized, and we now reaffirm:
>
> > "'There is no longer any room for uncertainty, nor justification for continuing dispute, as to the meaning of [the term "bingo"]. And certainly the need for any further expenditure of judicial resources, including the resources of this Court, to examine this issue is at an end. All that is left is for the law of this State to be enforced.'
>
> "203 So. 3d at 845."

226 So. 3d at 672.

However, yet again, this Court is presented with new cases in which the State alleges that the defendants are operating illegal slot machines and gambling devices in their

respective counties. In its complaint in the Macon County case, the State asserted that gambling is generally illegal in Alabama; that "[t]he State's prohibition on gambling is so fundamental that the People enshrined it in the Constitution. See Ala. Cons. art. IV, § 65"; that the legislature has criminalized the possession of slot machines and other gambling devices; that, "because of the immense profits associated with organized gambling, the industry frequently has tried to 'evade[]' these prohibitions, as the Alabama Supreme Court put it in Barber v. Jefferson Cnty. Racing Ass'n, 960 So. 2d 599 (Ala. 2006), by asserting that 'loophole[s]' in Alabama law were much larger than they in fact were. Id. at 614"; and that this Court has repeatedly held that the game of bingo cannot be played on electronic machines in Alabama. It then went on to allege that the gambling devices at the Macon County defendants' casino were slot machines.

In its complaint, the State alleged that the continued operation of the illegal slot machines and gambling devices by the Macon County defendants constituted a public nuisance. It also alleged:

> "The continued operation of slot machines and unlawful gambling devices by Defendants works hurt, inconvenience, or damage to the public interest.
>
> "... The public policy of Alabama is emphatically against lotteries or any scheme in the nature of a lottery.
>
> "... The State has an interest in the welfare of the people within her domain and, of consequence, in enforcement of the State's declared public policy against lotteries or gift schemes. Try-Me Bottling Co. at 235."

Based on this Court's decision in Try-Me and this Court's subsequent decisions addressing the enforcement of the State's gambling laws in regard to electronic bingo games, it is clear that the State adequately alleged facts that would support a finding that the Macon County defendants' conduct caused harm to the public and that the State lacked another adequate remedy. Accordingly, this is not a situation where it appears beyond doubt that the State can prove no set of facts that would entitle the State to relief. Therefore, the Macon Circuit Court erred when it dismissed the State's amended complaint on this ground.

II.

The State also argues that the circuit courts erred in holding that it had failed to join indispensable parties. In

their motions to dismiss, the defendants asserted that the operators of the Wind Creek casinos were indispensable parties. In their motions to dismiss, the Lowndes County defendants asserted that:

> "The Wind Creek casinos operate openly and notoriously, and are many times larger than Macon County Greyhound Park, and entertain significantly great volumes of patrons than the establishments identified in the Complaint. Furthermore, whether 'Indian gaming' is legal or illegal is irrelevant to the State's claims because legal conduct can also constitute a public nuisance. See Ala. Code § 6-5-120 (1975) ('A "nuisance" is anything that works hurt, inconvenience, or damage to another. The fact that the act done may otherwise be lawful does not keep it from being a nuisance.').
>
> "In order to establish a public nuisance, the State of Alabama must establish proximate causation, Tennessee Coal, Iron Rail Co. v. Hartline, 244 Ala. 116, 122, 11 So. 2d 833, 837 (1943) ('"The injurious consequences or nuisance complained of should be the natural, direct and proximate cause of defendant's acts to render him liable for maintaining a public nuisance."') (Quoting Joyce's Law of Nuisances, § 476, p. 690). Whether a public nuisance is the proximate cause of the public injury requires a finding of cause in fact and legal cause. City of Chicago v. American Cyanamid Co., 823 N.E.2d 126, 133 (Ill. App. Ct. 2003). A cause in fact cannot exist where the harm continues to occur absent the defendant's conduct. See City of Chicago v. Beretta U.S.A. Corp., 821 N.E.2d 1099, 1132 (Ill. 2005) ('The relevant inquiry is whether the harm would have occurred absent the defendants' conduct. ...').
>
> "The State of Alabama cannot establish proximate causation for its alleged injury unless the State

> also seeks to enjoin all persons whose acts create or contribute to the alleged harm to the public. Thus, to obtain complete relief, the State of Alabama must join the Wind Creek Casino operators in this lawsuit. Without the Wind Creek Casino operators, complete relief cannot be accorded among the parties; and the Wind Creek Casino operators claim an interest relating to the subject of the action that to proceed in their absence would leave the present Defendants subject to a substantial risk of incurring inconsistent obligations. Rule 19(a), Ala. R. Civ. P."

The Macon County defendants included virtually identical assertions in their motions to dismiss. In response, the State asserted that the indispensable-party argument dealt with casinos operated by the Poarch Band of Creek Indians ("the Poarch Band"). During the hearing in the Lowndes County case, the State asserted that it had previously attempted to sue the Poarch Band in federal court and that the federal court had dismissed the case because, "as a state, we don't have jurisdiction on federal land so we could not pursue anything there." The State further asserted that the Poarch Band was not an essential party in either case because it was not involved in any activity in Lowndes County or Macon County.

The Lowndes Circuit Court found that the operators of the Wind Creek casinos and "their bingo software providers" were

indispensable parties and that the State had failed to join them as parties in that case. The Macon Circuit Court found that the operators of the Wind Creek casinos were indispensable parties and that the State had failed to join them as parties in that case.

Rule 19(a), Ala. R. Civ. P., provides, in pertinent part:

> "A person who is subject to jurisdiction of the court shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action."

(Emphasis added.)

In Alabama v. PCI Gaming Authority, 801 F.3d 1278 (11th Cir. 2015), the State "sued under state and federal law to enjoin gaming at casinos owned by the Poarch Band of Creek

Indians ... and located on Indian lands within the state's borders." 801 F.3d at 1282. Because the Poarch Band was immune from suit, the State "instead named as defendants PCI Gaming Authority ('PCI'), an entity wholly owned by the [Poarch Band] that operates the casinos, and tribal officials in their official capacity." Id. In that case, the State alleged that the gaming at the casinos constituted a nuisance and should be enjoined. It went on to assert why Alabama state law should apply to the casinos. In addressing the issue of tribal sovereign immunity, the Eleventh Circuit Court of Appeals stated:

> "'Indian tribes are "domestic dependent nations" that exercise inherent sovereign authority over their members and territories.' Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Okla., 498 U.S. 505, 509, 111 S. Ct. 905, 112 L. Ed. 2d 1112 (1991) (quoting Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 17, 8 L. Ed. 25 (1831)). Indian tribes therefore possess '"the common-law immunity from suit traditionally enjoyed by sovereign powers."' [Florida v. Seminole Tribe of Florida], 181 F.3d [1237,] 1241 [(11th Cir. 1999)] (quoting Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58, 98 S. Ct. 1670, 56 L. Ed. 2d 106 (1978)). A suit against a tribe is 'barred unless the tribe clearly waived its immunity or Congress expressly abrogated that immunity by authorizing the suit.' Id. Although the Supreme Court has expressed doubts about 'the wisdom of' tribal immunity, the Court nonetheless has recognized that 'the doctrine of tribal immunity is settled law and controls' unless and until Congress

decides to limit tribal immunity. Kiowa Tribe of Okla. v. Mfg. Techs., Inc., 523 U.S. 751, 756-58, 118 S. Ct. 1700, 140 L. Ed. 2d 981 (1998); see also [Michigan v.] Bay Mills [Indian Cmty.], [572 U.S. 782, 800,] 134 S. Ct. [2024,] 2037 [(2014)] ('[I]t is fundamentally Congress's job, not ours, to determine whether or how to limit tribal immunity.'). Here, the [Poarch Band] has not waived its immunity and Congress has not expressly abrogated it. The question we face is whether PCI and the Individual Defendants also enjoy tribal immunity.

"A. PCI

"Alabama argues that PCI does not share in the [Poarch Band's] immunity because PCI is a business entity separate from the [Poarch Band] that engages in commercial, not governing, activities. We conclude that PCI shares in the [Poarch Band's] immunity because it operates as an arm of the [Poarch Band].

"First, the Supreme Court has not 'drawn a distinction between governmental and commercial activities of a tribe' when deciding whether there is tribal immunity from suit. Kiowa Tribe, 523 U.S. at 754-55, 118 S. Ct. 1700. Second, we agree with our sister circuits that have concluded that an entity that functions as an arm of a tribe shares in the tribe's immunity. See Allen v. Gold Country Casino, 464 F.3d 1044, 1046 (9th Cir. 2006) ('When the tribe establishes an entity to conduct certain activities, the entity is immune if it functions as an arm of the tribe.'); Ninigret Dev. Corp. v. Narragansett Indian Wetuomuck Hous. Auth., 207 F.3d 21, 29 (1st Cir. 2000) ('The Authority, as an arm of the Tribe, enjoys the full extent of the Tribe's sovereign immunity.'); Hagen v. Sisseton-Wahpeton Cmty. Coll., 205 F.3d 1040, 1043 (8th Cir. 2000) (holding that entity that 'serves as an arm of the tribe ... is thus entitled to tribal sovereign

> immunity'). Because Alabama does not dispute that PCI operates as an arm of the [the Poarch Band], PCI shares the [Poarch Band's] immunity."

801 F.3d at 1287-88 (footnote omitted). In addressing the immunity of the individual defendants in that case, the court stated:

> "The immunity tribal officials enjoy from state law claims brought in federal court is narrower than the immunity of state officials from such claims, however. Specifically, tribal officials may be subject to suit in federal court for violations of state law under the fiction of Ex parte Young[, 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 714 (1908),] when their conduct occurs outside of Indian lands. See Bay Mills, 134 S. Ct. at 2034–35. In Bay Mills, the Supreme Court held that a tribe enjoyed immunity from suit by a state to enjoin alleged illegal gaming occurring at a casino that was not on Indian lands. However, the state had other remedies and could sue 'tribal officials ... (rather than the Tribe itself) seeking an injunction for, say, gambling without a license [under state law].' Id. at 2035 (emphasis added). This is because 'a State, on its own lands, has many other powers over tribal gaming that it does not possess (absent consent) in Indian territory'; when not on Indian lands, members of a tribe, including tribal officials, 'are subject to any generally applicable state law.' Id. at 2034–35. And tribal officials are not immune from a state law claim seeking to enjoin gaming because 'analogizing to Ex parte Young, tribal immunity does not bar such a suit for injunctive relief against individuals, including tribal officers, responsible for unlawful conduct' under state law that occurs off Indian lands. Id. at 2035 (internal citation omitted).

> "Alabama acknowledges that the Individual Defendants enjoy immunity from its state law claim if the casinos are located on Indian lands."

801 F.3d at 1290. In that case, the State argued that the Wind Creek casinos were not located on Indian lands because, it asserted, the Secretary of the Interior lacked the authority to take land into trust on behalf of the Poarch Band. The court rejected that argument, holding that the State could not "raise a collateral challenge to the Secretary's authority to take lands into trust (and consequently, the status of the [Poarch Band's] lands)" in that lawsuit. 801 F.3d at 1291. Thus, it concluded that the individual defendants were entitled to immunity as to the state-law claim. The court went on to address the State's alternative claim that the individual defendants had waived their immunity:

> "Alabama argues in the alternative that the Individual Defendants waived their immunity from the state law claim by removing the case to federal court. Alabama's argument rests on the assumption that the Individual Defendants enjoy immunity from the state law claim in federal court but not in state court. The sole case on which Alabama relies addresses state officials' immunity from state law claims in state court, not tribal officials' immunity from state law claims in state court. See Ala. Dep't of Transp. v. Harbert Int'l, Inc., 990 So. 2d 831, 840 (Ala. 2008), abrogated in part by Ex

> parte Moulton, 116 So. 3d 1119 (Ala. 2013). State law cannot limit the Individual Defendants' immunity because 'tribal immunity is a matter of federal law and is not subject to diminution by the States.' Bay Mills, 134 S. Ct. at 2031 (internal quotation marks omitted); see also Contour Spa at the Hard Rock, Inc. v. Seminole Tribe of Fla., 692 F.3d 1200, 1206 (11th Cir. 2012) (explaining that a tribe's sovereign immunity 'is not the same thing as a state's Eleventh Amendment immunity' because tribes are more akin to foreign sovereigns). Because the premise of Alabama's argument -- that the Individual Defendants were not immune from the state law claim in state court -- does not hold up, Alabama's waiver argument fails."

801 F.3d at 1293.

Based on the foregoing, the operators of the Wind Creek casinos are not subject to the jurisdiction of the either the Macon Circuit Court or the Lowndes Circuit Court. Accordingly, pursuant to Rule 19(a), the operators of the Wind Creek casinos were not necessary parties.

> "'Rule 19 ... provides a two-step process for the trial court to follow in determining whether a party is necessary or indispensable.' Holland [v. City of Alabaster], 566 So. 2d [224,] 226 [(Ala. 1990)]. The question whether a nonparty is a necessary party is governed by Rule 19(a); the question whether a party is an indispensable party is governed by Rule 19(b). ...
>
> "Under the two-step process, the trial court must first determine, under the criteria set forth in Rule 19(a), whether the nonparty in question is one who should be joined if feasible. ...

"'....'

> "If a nonparty satisfies either prong set forth in Rule 19(a)(1) or (2), then the party is a necessary party that should be joined, if feasible. Ross[v. Luton, 456 So. 2d 249 (Ala. 1984)]."

Ex parte Advanced Disposal Servs. S., LLC, 280 So. 3d 356, 360-61 (Ala. 2018).

Because the operators of the Wind Creek casinos are not necessary parties pursuant to Rule 19(a), they are not indispensable parties pursuant to Rule 19(b). See Hall v. Reynolds, 60 So. 3d 927, 929 (Ala. Civ. App. 2010). Accordingly, the circuit courts exceeded their discretion in holding that the State had failed to join indispensable parties in each of these cases.

III.

On appeal, the State further argues that "this Court should enjoin the defendants from further engaging in illegal gambling." State's brief at p. 46. Specifically, it asserts:

> "This Court has authority '[t]o issue writs of injunction,' Ala. Code [1975,] § 12-2-7(3), or, alternatively, to order circuit courts to enter such an order. See Ex parte State of Alabama, 121 So. 3d 337, 340 (Ala. 2013) (ordering circuit court to issue search warrant); see also Ala. Code [1975,] § 6-5-500 ('Injunction may be granted, returnable into any of the circuit courts in this state, by the judges of the supreme court, court of civil appeals,

> court of criminal appeals, and circuit courts.'); Ex parte State ex rel. Ala. Policy Inst., 200 So. 3d 495, 511 (Ala. 2015) (recognizing Court's authority to 'take jurisdiction where ... for special reasons complete justice cannot otherwise be done.')."

State's brief at pp. 46-47.

Article VI, § 140, Ala. Const. 1901 (Off. Recomp.), provides, in pertinent part:

> "(b) The supreme court shall have original jurisdiction (1) of cases and controversies as provided by this Constitution, (2) to issue such remedial writs or orders as may be necessary to give it general supervision and control of courts of inferior jurisdiction, and (3) to answer questions of state law certified by a court of the United States.
>
> "(c) The supreme court shall have such appellate jurisdiction as may be provided by law."

Section 12-2-7, Ala. Code 1975, provides, in pertinent part:

> "The Supreme Court shall have authority:
>
> "....
>
> "(3) To issue writs of injunction, habeas corpus, and such other remedial and original writs as are necessary to give to it a general superintendence and control of courts of inferior jurisdiction."

(Emphasis added.) Section 6-6-500, Ala. Code 1975, provides:

> "Injunctions may be granted, returnable into any of the circuit courts in this state, by the judges

> of the supreme court, court of civil appeals, court of criminal appeals, and circuit courts."

In addressing the precursors to §§ 12-2-7 and 6-5-500, this Court has stated:

> "The petitioner also cites §§ 17 and 18, Title 13, Code of 1940. Section 17 provides inter alia: 'The supreme court has authority: ... to issue writs of injunction, habeas corpus, and such other remedial and original writs as are necessary to give to it a general superintendence and control of inferior jurisdiction.' Section 18 provides that the justices of the supreme court 'have each of them authority to issue writs of certiorari, injunction and supersedeas, subject to the limitations prescribed by this Code, as judges of the circuit courts are authorized to grant the same.' It is clear from section 17 that the justices of the supreme court are limited in the issuance of these extraordinary writs as necessary to give general superintendence and control of inferior jurisdictions. That is, to supervise persons and bodies clothed with judicial power in the exercise thereof. Section 18 also grants limited power to the justices of the supreme court to grant injunctions, such as judges of the circuit court are authorized to grant."

State v. Albritton, 251 Ala. 422, 424, 37 So. 2d 640, 642 (1948).

Neither circuit court conducted a hearing on the merits of the State's motions for a preliminary injunction. Rather, the circuit courts specifically stated that they would hear and decide the defendants' motions to dismiss before

proceeding to the merits of the State's motions for a preliminary injunction.

In Blount Recycling, LLC v. City of Cullman, 884 So. 2d 850, 855 (Ala. 2003), this Court stated:

> "As the Court of Civil Appeals recognized in Bamberg v. Bamberg, 441 So. 2d 970, 971 (Ala. Civ. App. 1983), while Rule 65, Ala. R. Civ. P., 'does not explicitly require that oral testimony be presented at a preliminary injunction hearing, some type of evidence which substantiates the pleadings is implicitly required by subsection (a)(2) of the rule.' The Court of Civil Appeals in Bamberg continued, stating: 'In order to comply with procedural due process, notice and an opportunity to be heard are necessary under Rule 65(a).' Id.
>
> "In this case it appears that the circuit court did not conduct a hearing on the Commission's petition for a preliminary injunction; therefore, the Commission did not present any evidence and Blount Recycling was not given an opportunity to be heard. The injunction must be dissolved for failure to comply with Rule 65(a), Ala. R. Civ. P., and the cause remanded."

Although the State did attach some documents and affidavits in support of its motions for a preliminary injunction, the defendants have not had an opportunity to be heard as to the merits of those motions. Therefore, we will not address the merits of the State's motions for a preliminary injunction at this time.

Conclusion

Based on the foregoing, the Lowndes Circuit Court erroneously granted the motions to dismiss filed by the Lowndes County defendants and the Macon Circuit Court erroneously granted the motions to dismiss filed by the Macon County defendants. Accordingly, we reverse the judgments entered by those courts and remand these cases for proceedings consistent with this opinion.

1180675 -- REVERSED AND REMANDED.

1180794 -- REVERSED AND REMANDED.

Bolin, Mendheim, Stewart, and Mitchell, JJ., concur specially.

Parker, C.J., concurs in part and concurs in the result.

Shaw and Sellers, JJ., concur in the result.

MENDHEIM, Justice (concurring specially).

I fully concur with the main opinion. I write separately to elaborate on my view of Part II, which concerns whether the operators of the Wind Creek casinos in Montgomery and Wetumpka (collectively "the Wind Creek casinos") are indispensable parties under Rule 19, Ala. R. Civ. P., to the underlying actions against the Lowndes County defendants and the Macon County defendants.

The circuit courts ruled in part that the State's nuisance actions must be dismissed because the operators of the Wind Creek casinos are indispensable parties. The Lowndes Circuit Court reasoned that because gaming activities at the Wind Creek casinos are virtually identical to the gaming activities that occur in Lowndes County and Macon County, "[t]he State of Alabama cannot establish proximate causation for its alleged injury unless the State also seeks to enjoin all persons whose acts create or contribute to the alleged harm to the public." The Macon Circuit Court expressly noted that the gaming activities at the Wind Creek casinos occur approximately 20 miles and 35 miles away from the gaming establishment in Macon County, and so it concluded that

"without [the operators of the Wind Creek casinos] injunctive relief will not provide full and complete relief or protect the public health, safety, or welfare."

The main opinion correctly observes that the operators of the Wind Creek casinos must first meet the criteria for being necessary parties under Rule 19(a) before any determination can be made as to whether they are also indispensable parties under Rule 19(b). Rule 19(a) begins by stating: "A person who is subject to jurisdiction of the court shall be joined as a party in the action if ...." Thus, Rule 19(a) assumes that in order for a party to be deemed necessary to an action, the party must be "subject to the jurisdiction of the court." As the State observes in its reply brief, the State previously brought a public-nuisance action against the operators of the Wind Creek casinos, but the United States Court of Appeals for the Eleventh Circuit concluded that the State lacked jurisdiction over those parties because the conduct at the Wind Creek casinos is governed by federal authorities under federal law. See Alabama v. PCI Gaming Auth., 801 F.3d 1278 (11th Cir. 2015). Thus, the operators of the Wind Creek casinos cannot meet the threshold requirement to be considered

necessary or indispensable parties to the underlying actions because the circuit courts of this State lack jurisdiction over those parties.

Simply stated, the Eleventh Circuit Court of Appeals, applying federal law, has specifically held that the State cannot bring a public-nuisance action against the operators of the Wind Creek casinos. "We conclude that PCI is entitled to tribal sovereign immunity on all claims against it, and the Individual Defendants are entitled to tribal sovereign immunity on Alabama's state law claim [of public nuisance]...." PCI Gaming Authority, 801 F.3d at 1287. This Court, as well as the Lowndes Circuit Court and the Macon Circuit Court, is bound by this ruling pursuant to the Supremacy Clause of the United States Constitution.[3] Accordingly, the operators of the Wind Creek casinos cannot be necessary or indispensable parties to the State's public-nuisance claims against the Lowndes County defendants and the

[3]"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const., Art. VI, clause 2 (emphasis added).

Macon County defendants. The lack of jurisdiction is simple, direct, and unavoidable. Clearly, the circuit courts erred in ruling otherwise.

Bolin, Stewart, and Mitchell, JJ., concur.

PARKER, Chief Justice (concurring in part and concurring in the result).

I concur in the result as to Part II of the main opinion; I concur fully in the remainder of the opinion.