

NEWS RELEASE

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FOR IMMEDIATE RELEASE

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ATTORNEY GENERAL STRANGE, DISTRICT ATTORNEY BRANDON FALLS, AND SHERIFF MIKE HALE ANNOUNCE DECISIVE COURT VICTORY IN FIVE ELECTRONIC BINGO CASES

(MONTGOMERY)— Attorney General Luther Strange is pleased to announce that Jefferson County Presiding Circuit Judge Scott Vowell has issued a decisive ruling in five separate cases involving so-called “electronic bingo.” The final ruling today was the culmination of a joint law enforcement effort by Sheriff Mike Hale, District Attorney Brandon Falls and Attorney General Luther Strange. Sheriff Hale’s Office seized nearly one hundred illegal gambling machines from five separate locations throughout Jefferson County last year. The Judge’s ruling today came after hearing testimony from law enforcement, gaming experts, machine owners, and bingo workers after prosecutors from Attorney General Strange’s Office and District Attorney Brandon Falls’ Office tried the cases in mid-December 2011.

“The decision from Judge Vowell in Jefferson County Circuit Court marks a good day for the rule of law,” said Attorney General Strange. “The court in a detailed analysis held that machines masquerading as electronic bingo are in fact illegal slot machines. Bingo operators have tried to create confusion in the law but this ruling ends the nonsense. Only the traditional game commonly known as bingo is authorized by the Jefferson County bingo amendment, and slot machines cannot be used to play bingo.”

In the ruling, the Court specifically found that the machines being used to play so-called “electronic bingo” were nothing more than illegal slot machines playing an illegal game that lasted only a matter of seconds. The Court found the game being played did not meet the six mandatory characteristics of bingo set forth by the Alabama Supreme Court in the 2010 Cornerstone case, which plainly requires that the human elements of the traditional



game of bingo must be fully preserved in order for a game to potentially qualify as legal bingo. Judge Vowell explained that “the point of *Cornerstone*, and the preceding Supreme Court decisions on which it is based ... is that any variation from the material human steps, elements and skill of the traditional game of bingo takes the game outside the protection of Alabama’s local bingo amendments.” Here, the Court found, virtually all of elements of human skill, attention and recognition critical to the traditional game were eliminated, and therefore the machines did not play legal bingo.

Attorney General Strange also notes that “the fundamental legal principles which underlie today’s ruling apply not only to Jefferson County, but in all counties subject to local bingo amendments. I hope this opinion will serve as a warning for those currently engaged in illegal gambling activities or contemplating operating slot machines in Jefferson County and throughout the State.”



AlaFile E-Notice

01-CV-2011-001575.00

Judge: J. SCOTT VOWELL

To: RIGDON FRANK BRADY
rigdonb@jccal.org

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

STATE OF ALABAMA VS HP COMPAQ MONITOR ET AL
01-CV-2011-001575.00

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ANNE-MARIE ADAMS
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CV-2011-001575.00
CIRCUIT COURT OF
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**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
CIVIL DIVISION**

STATE OF ALABAMA,)	
v.	)	CIVIL ACTION NO.:
	)	CV 2011-1073
\$1,044.00 U.S. CURRENCY, etc.,)	
STATE OF ALABAMA,)	
v.	)	CIVIL ACTION NO.;
	)	CV 2011-1575
HP COMPAQ MONITOR, etc.,)	
STATE OF ALABAMA,)	
v.	)	CIVIL ACTION NO.:
	)	CV 2011-1576
HP L2105 MONITOR, etc.)	
STATE OF ALABAMA,)	
v.	)	CIVIL ACTION NO.:
	)	CV 2011-1577
\$2,734.76 IN U.S. CURRENCY,)	
STATE OF ALABAMA,)	
v.	)	CIVIL ACTION NO.:
	)	CV 2011-1578
\$4,260.26 UNITED STATES CURRENCY,))	

FINAL JUDGMENT

These five consolidated civil forfeiture cases were heard at a bench trial which began on December 12, 2011, and the Court accepted post-trial submissions and proposed orders on January 19, 2012. The cases were initiated by the State of Alabama under the provisions of Ala. Code (1975)

§13A-12-30(a), the Alabama Civil Forfeiture Statute. The State claims in these *in rem* actions that the devices at issue are illegal gambling devices and that possession of them is illegal under Ala. Code (1975) § 13A-12-27. The State also seized certain U. S. Currency which it claims was used as bets or stakes in illegal gambling activity. The claimants deny that the machines in question are illegal or that the currency was the product of illegal activity. The legality of the claimants' activity is squarely before the Court.

The claimants filed Motions to Quash evidence which was seized as the result of the issuance of the various search warrants. At the beginning of the trial, the parties agreed with the Court that the rulings on those Motions to Quash would be dependent on the ruling on the merits of the case.

The issue is the same issue which has occupied much of our governmental attention for several years. The courts are asked to decide whether certain machines are illegal gambling devices or slot machines or whether they are legal devices for playing the game of electronic bingo. The evidence presented at the trial of this case shows that very large sums of money are generated from small operations like those before the Court. So long as such profits are to be made, the modifications and variations of the devices will continue and the cases will keep coming to the Courts.

Alabama's three branches of government, the executive, the legislative and the judiciary, have all devoted their limited valuable resources trying to define and eradicate the game of bingo. Perhaps if as much effort had been devoted to solving our economic woes, we would not be facing such impending severe cutbacks in needed governmental services.

Alabama's public policy against gambling is well-established: "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 County Racing Ass'n, Inc.*, 960 So. 2d 599, 614 (Ala. 2006) "In this State, . . . the public policy is emphatically declared against lotteries, or any scheme in the nature of a lottery, both by Constitution and by statutes." *Ex parte Ted's Game Enters.*, 893 So. 2d 376, 380 (Ala. 2004).

Article IV, Section 65 of the Alabama Constitution of 1901, prohibits gambling generally, and this prohibition extends to lotteries and bingo games. However, the Alabama Constitution authorizes Jefferson County, along with certain other counties and municipalities, to allow charity bingo under specific conditions. Constitutional Amendments 386 and 600, the bingo amendments, were approved by the voters and authorize bingo in Jefferson County.

Alabama's appellate courts have held that the bingo amendments are a narrow exception to Alabama's general prohibition against gambling. *City of Piedmont v. Evans*, 642 So. 2d 435, 437 (Ala. 1994). A bingo amendment "allows only a narrow exception to the state's clear public policy against lotteries and the Alabama constitution's prohibition of lotteries." *Barrett v. State*, 705 So. 2d 529, 531 (Ala. Crim. App. 1996).

In the cases before the Court, the State of Alabama contends that the machines in question are not within the narrow exception created by Amendments 386 and 600. It contends that the devices are illegal gambling devices and slot machines and are due to be forfeited. The claimants (also referred to herein as "defendants") contend that the machines are legal electronic bingo games.

The parties agreed to the consolidation of the five cases because the facts are essentially the same in each of them. There are only two types of machines at issue: those issued by Impact

Innovations, Inc., and those issued by JLM Games, Inc. While there are some minor differences in the two machines, there are more similarities than differences, and the differences do not affect the outcome of the case.

While the operation of the machines is difficult to articulate, the many witnesses explained the operations to the Court. The Court has considered photographs and videos of the devices taken by undercover police officers at the various locations. The Court has also considered and weighed the opinions and conclusions of the respected and nationally recognized expert witnesses. Finally, the Court has carefully considered the arguments and submissions of excellent trial counsel who have professionally represented the interests of the State and the claimants.

With both the JLM and the Impact machines, when a customer enters a bingo hall, he/she goes to a cashier and gives the cashier the money he/she wants to play. In exchange, the cashier gives the player a PIN number or a code. The player then goes to a machine and enters the PIN which activates the machine. The player then sees an electronic representation of one or more bingo grids. The player decides how much he/she wants to bet, the player places the bet on the machine and presses an electronic representation of a “play button.” The player then sees a video representation of a ball draw or drop which is completed in a very short time. While the speed of the visual effect can be adjusted, the visuals are so fast that a person cannot react to the numbers before the next ball is drawn.

The next step on the machines is different for the JLM and Impact devices. On a JLM game, once the ball draw is complete, the machine itself identifies and automatically highlights any winning pattern that exists on the player’s video bingo grid or grids. The player then must either touch the

screen or click a mouse on the highlighted pattern or on the word “daub”¹ appearing over the pattern. The player is not required to know what a winning pattern is in advance, nor is the player required to personally identify and individually daub a specific matching number on a card. The ball draw moves so rapidly, the player cannot daub after one number is called but before the next number is called. The player cannot mark one number at a time on his or her card while the ball drop is in process or otherwise. The player cannot choose what numbers to mark and what numbers not to mark, and cannot mistakenly mark numbers that have not been called. Instead, all the player has to do in order to win, and the only way he or she can daub the video depiction of a bingo card on a JLM machine, is to follow the machine’s instructions and click the mouse or touch the place on the screen highlighted by the machine. The machine automatically daubs all of the matching numbers pre-identified by the machine all at once.

On the Impact machines, the purported “daubing” step is even simpler: the player merely presses the representation of the “play button” a second time. The “button” then displays the word “daub” instead of “play.” Again, despite this different physical step for simultaneously daubing all matching numbers the machine has identified at once, the player is not required to know what a winning pattern is in advance, nor is the player required to personally identify a pattern on the video bingo grid. The player does not personally identify and daub numbers one at a time on his or her bingo grid. The player cannot mark one number at a time on his or her card, cannot decide what numbers to mark, and cannot mistakenly mark numbers that have not been called. Instead, all the player has to do in order to win, and the only way he or she can daub the video depiction of a bingo card on an Impact machine, is to press the “play button,” (which now reads “daub”) a second time.

¹The verb “daub” is defined by dictionaries as “to cover coat or smear”

Then the machine automatically daubs all matching numbers at once, and only those numbers, whether the player spotted any matches or not.

Finally, on all of the machines in all five cases, if after the daubing step the player has won, the machine reports that fact and prompts the player to claim the prize by pressing another “button.” The player then has several seconds to press the “button” to claim the prize or else it is forfeited. On Impact machines, a player can play and win a complete game in a matter of 2 or 3 seconds without looking at the machine by pressing the “play button” three times in rapid succession. The JLM machine requires the player to look at the screen momentarily during play, but only so that the player can click or touch the spot the machine tells him to touch or click. All other steps on the JLM machine can be performed without paying any attention to the screen.

The Court finds that in each case there was a network of player terminals networked to a cashier station and a central server. The players interact with the terminals, and the terminals interact with the server and the cashier station. Each establishment had an attendant who handled cash, credited a player’s account on the network, and paid out winnings reported by the network.

In each case:

- (1) a player obtained a PIN code by paying cash to an attendant;
- (2) the attendant entered the amount of cash as a credit associated with that PIN code into the network of computers, servers and player terminals;
- (3) the player activated a particular player terminal by entering his PIN code;
- (4) upon entry of the PIN code, the machine automatically displayed the amount of credit corresponding to the cash the player provided to the attendant;
- (5) the player decided how much to bet and then engaged in a game of chance on the

machine;

(6) if the player won, cash value credits were awarded to the PIN, and those credits could be used to play another game on that machine or on other machines in the facility;

(7) if the player had credit remaining when he or she completed playing all of the games he or she wishes to play, the player returned to the attendant and provided the assigned PIN code, whereupon the attendant entered the code into a terminal attached to the network and thereby determined the amount of credit attached to that PIN code. If there were any remaining credit, the cashier pays the remaining credit to the player in cash.

These are the facts to which the Court must apply to the law in order to determine whether the machines and the games played on them are legal. There have been a number of appellate decisions guiding the trial courts in determining whether such operations are legal bingo games or are illegal gambling devices or slot machines.

This Court is very familiar with the decision in *Barber v. Cornerstone Community Outreach, Inc.*, 42 So.3d 65 (Ala. 2009). In that case, the Alabama Supreme Court listed the factors for the trial courts to consider when determining whether an operation is the “game commonly or traditionally known as ‘bingo.’” The parties disagree over whether the *Cornerstone* Test is binding on this Court.

Subsequent to the *Cornerstone* decision, the Supreme Court decided it would “return to the rule” that a trial court lacks subject matter jurisdiction to interfere with the enforcement of criminal laws through a civil action. *Tyson v. Macon County Greyhound Park, Inc.*, 34 So.3d 587 (Ala. 2010). The *Tyson* decision discussed the *Cornerstone* decision holding: “Our absence of attention

to the issue of subject-matter jurisdiction in those cases cannot justify action by the judiciary in this case in contravention of our duty to observe the proper boundaries between judicial and executive functions mandated by Section 43 of the Alabama Constitution of 1901 and, thereby permit, *sub silentio*, the overturning of the settled principles of constitutional law applicable to this proceeding.”

This poses an interesting question as to the viability of the bingo test in the *Cornerstone* decision. While the opinion in *Tyson* says that the trial court did not have subject matter jurisdiction in the *Cornerstone* case, that opinion was not withdrawn. The Supreme Court had jurisdiction. This Court believes that all decisions of the Alabama Supreme Court are binding on the circuit courts unless that Court specifically says otherwise. The statements made in the *Tyson* case about *Cornerstone* do not intimate that the bingo factors listed in *Cornerstone* were invalid and this Court has no reason to believe that those carefully defined criteria would be withdrawn by the Supreme Court. Therefore, the *Cornerstone* factors will be used by this Court, along with other standards, in deciding this case.

In *Cornerstone*, the game “bingo” was interpreted to mean only “the game commonly or traditionally known as bingo.” The Court has heard from experts the history of the game “commonly or traditionally known as bingo.” The game is characterized by at least six factors:

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.

The Court will apply the facts as heretofore found by the court to each of the Cornerstone factors:

1. Cards. There are no paper or printed bingo cards involved in the playing of any of the machines at claimants’ establishments. They contend that the electronic representations of bingo cards suffice to satisfy the “card” requirement, but no Alabama case has accepted this argument. Alabama’s appellate courts have stressed that the bingo amendments must be narrowly construed. “The bingo amendments are exceptions to the lottery prohibition, and the exception should be narrowly construed.” *Evans*, 642 So. 2d at 436-37; *Barrett*, 705 So. 2d at 531 (“Amendment No. 508 allows only a narrow exception to the state’s clear public policy against lotteries and the Alabama constitution’s prohibition of lotteries.”). The Court concludes that the bingo card requirement has not been strictly satisfied.

2. Random Numbers Drawn and Announced One-By-One.

There is no actual announcer at any of the operations before the Court. The individual balls depicted as being simultaneously drawn by the machine are displayed on a video screen as a result of the instantaneous simulated ball drop, but they are not announced. The balls on all of the machines are capable of being drawn at near-instantaneous speeds. Expert testimony is that the machines displayed 25 balls over the course of 3 seconds, which is faster than any person could possibly recognize. There was no evidence that any of the machines were configured any other way.

Construing the bingo amendments narrowly as *Cornerstone* and the prior cases and looking to the substance and not the form of things as *Barber* instructs, this element is not satisfied on any of the machines.

3. Daubing

The machines do not satisfy *Cornerstone*'s daubing requirement. Because the numbers are drawn faster than any human can track, it is impossible for a player to "pay attention to the values announced." Moreover, even if a player could track the near-instantaneous ball draw, none of these machines permit the player to mark his card between the ball draws. The expert testimony was that daubing did not occur until "all the numbers were *matched*." (Trans. at 387). Therefore, even if the balls were drawn one per minute, it would make no difference because the machines have no functionality by which the player can mark numbers on his or her card one at a time as each ball is drawn.

The JLM machines' requirement of post-game clicking does not satisfy this requirement. The clicking or touching the squares does not occur until after the game is over and all the balls are announced. *Cornerstone* requires that the player daub after each number is announced: the requirement states that "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." *Cornerstone*, 42 So. 3d at 86. Second, the JLM machine only allows a player to mark numbers that actually contribute to the game-ending pattern. Instead of having to mark each value as announced, the player waits until the game is over (and any game-ending patterns have been automatically found and highlighted by the machine) to mark only those squares that are required to match the final pattern. Instead of starting

from nothing and filling up a card as the game progresses, the player does not even start “daubing” the JLM matrix until the game is over and then the player can mark the ending-pattern in any order.

4. Paying Attention and Marking Properly.

It is impossible to mark a bingo card improperly on any of the machines in any of these five cases. On the Impact machines, the machines do all of the marking and all the player does is tell the machine that it is time to mark. On the JLM machines, the player merely has to mark the indicated, highlighted pattern. The appropriate places on the card are already highlighted and no other spaces can be highlighted. Likewise, paying attention to numbers drawn and which of them match a bingo card is not a part of playing a game on any of the machines. The computer does all of the work because “the machine is playing the game, not the human.” When a ball is electronically depicted as being drawn, the computer recognizes its value. The computer then compares that value with the player’s video depiction of a bingo card. The computer, not the player, identifies the matches. The computer, not the player, identifies the game ending pattern. The computer tells the player if the game ending pattern has been obtained. What few actions the player must perform require no skill or attention. On the Impact machines, the player can press three buttons in sequence and win without even looking at the screen.

On the JLM machines, the player presses a button to make the game play itself. Once the machine draws the balls, recognizes them, matches them to the game-ending pattern, and highlights the game-ending pattern that the player’s card matches, the player has to touch or click on the spaces already identified by the machine as constituting the winning pattern and then press claim when prompted. (Trans. at 502-03). The player does not have to pay attention to the game during the “ball draw” or even know the winning pattern in advance. The computer lights up a pattern, and the

player clicks on it, then is prompted to press “claim” to receive the prize. Pressing a button three times is not playing bingo, and neither is pressing a button and then clicking five spaces highlighted by the computer. Even the JLM machines require nothing from the player until ball draw is over. As Defendants’ expert Farley testified, a player can “wait until all the balls were dropped before you had to pay attention.” Thus, unlike normal bingo, in which a player must pay attention to each value as it is called, the JLM player waits until the play stops to make the first mark.

5. Recognizing the Pattern and Announcing First.

A player need not concern himself with knowing and remembering what a winning pattern is and then recognizing a game ending pattern because the machines do all of that for the player. Like every other step in defendants’ games, the player pushes a button to claim his or her prize. Nobody says “bingo.” The evidence does not establish that there is any race to claim the prize first, much less a race in which the players are racing as opposed to the machines. None of the witnesses who testified recounted any time when the game-ending pattern was matched but announced by another player first. The games vary somewhat in how the player must respond to the game-ending pattern identified by the machine, but these differences have no effect on the ultimate issue.

On the Impact machines, the player merely pushes a button and need not even look at the bingo grid or the winning pattern identified by the machine to either daub or claim. These games do not comply with the requirement that the player recognize the pattern. There is somewhat more pretense with respect to the JLM machines, but those machines still fail to satisfy this element. On those machines, the machine highlights the game-ending pattern or patterns, and the player is required to touch or click the portion of the screen that the machine has already highlighted as the winning pattern in response to a “daub” prompt, and then press “claim” when prompted do so in

order to receive the prize for the winning pattern that has already been achieved and identified by the machine. The need to touch the part of the bingo card highlighted by the machine as prompted and then press “claim” as and when prompted by the machine is too little to satisfy the mandatory requirement that the player must be the one who is actually “recognizing” the bingo pattern. Instead, it shows that the machine is eliminating the critical element of required human identification and recognition of winning patterns, just as it is eliminating the requirement of human attention to each individual number that is drawn. Touching an already highlighted winning pattern in response to a prompt and pressing claim in response to a prompt is far simpler than personally paying attention during the ball draw and then identifying and recognizing that a sequence of announced values corresponds with the player’s card in a manner that satisfies a pre-determined pattern. The profoundly simple prompted tasks required by the JLM machines are not a feature of the game traditionally and commonly known as the game of bingo, and certainly do not satisfy Cornerstone’s requirement that “a player must recognize that his or her card has a “bingo.”

6. Playing as a Group.

No evidence establishes that players compete against one another. Instead, the testimony and evidence show an individual experience where a player interacts with a specific machine. The claimants have shown that the machines are networked together, but at least some of the machines can be set to single player mode. However, even if two machines must be turned on in order for play to occur, this is not sufficient to satisfy this requirement. *Cornerstone*. 42 So. 3d at 87 (“The mere fact that the machines may be ‘linked’ in this manner, however, does not demonstrate that players are playing against one another; at most, it leaves open the possibility that it is technologically possible for them to do so.”). The evidence suggests without contradiction that the players are

playing against the clock and the house, not each other. Defendants' expert Rose testified that the games were, at least in part, house banked (Trans. at 420-21) and the evidence further showed that the "daubing" and claiming requirements on the JLM games are based on time limits, not the participation of other players (*Id.* at 502). Regardless of whether multiple machines had to be engaged in order to play a game, players do not know who they are playing against and do not know who wins if they do not, and any interaction between players is decidedly different from the traditional game of bingo.

None of the requirements of *Cornerstone* have been met. While the Supreme Court in *Cornerstone* listed six factors that were necessary for a game to potentially qualify as bingo, the Court did not purport to say those factors were sufficient. *Cornerstone*, 42 So. 3d at 86 ("The characteristics of that game [*i.e.*, bingo] include the following:) (emphasis added). What the Court did say was that the only game authorized by any of Alabama's bingo amendments is the game "traditionally known as bingo." The point of *Cornerstone*, and the preceding Supreme Court decisions on which it is based like *City of Piedmont v. Evans* and *Barrett v. State*, is that *any* variation from the normal human steps and elements of the traditional game of bingo takes the game outside the protection of Alabama's local bingo amendments. Judged by that standard, the games played by all of the machines at issue in each of these cases are quite different from the game "traditionally known as bingo," not just in terms of the six factors listed above, but in other respects as well. The games on these machines do not begin and end at the same time for all players. Indeed, the beginning and ending of the game does not appear to the player to be dependent in any way on what other players do or do not do. Players of these machines have no way of even knowing which if any other players they are playing against. Players of these machines do not have the ability to

verify another player's bingo. The games played by these machines are house banked, not player banked. Players can bet different amounts on a single card. Virtually all elements of human skill, recognition and interaction have been eliminated as compared to the traditional game.

Additionally, on all of the machines at issue, the determination of whether the game produced a winning pattern is made within the computer before the customer is given the chance to claim or even daub. In the traditional game of bingo, the matching and daubing occurs along the way, before any winning pattern can be determined, and the cumulative actions and skill of the player in knowing the winning pattern, paying attention to, identifying and recognizing, and then daubing matching numbers as they are called or drawn, and then spotting a winning pattern on the card before anyone else does is what creates the opportunity to win. *See, e.g., Cornerstone*, 42 So. 3d at 85 (favorably citing *State ex rel. Stephan v. Parrish*, 256 Kan. 746, 887 P.2d 127 (1994), a case that held that bingo games take several minutes of active playing). (*See also* Trans. at 167-70) (State's expert contrasting Defendants' games with the ordinary game of bingo).

The operations before the Court are not the game commonly or traditionally known as bingo," as the Supreme Court has defined that game. In these operations, there are no bingo cards or beans or bottle caps which may be used to mark them. There are no bingo callers. The players are not required to even say "bingo" in order to win and end a game. There is no recall to check the winning numbers. These games are not bingo. If the operations are not bingo, then they do not come under the exception to Alabama's anti-gambling amendments 386 and 600.

The Court finds that the devices before the Court are slot machines or gambling devices proscribed by Ala. Code (1975) § 13A-20(4), (5) and (10). A game is gambling because a player "stakes or risks something of value upon the outcome of a contest of chance. . . upon an agreement

or understanding that [the player] will receive something of value in the event of a certain outcome.”
13A-20-20(4).

A gambling device is “any device, machine, paraphernalia or equipment that is normally used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine.” 13A-12-20(5). The statute defines a slot machine as “a gambling device that, as a result of the insertion of a coin or other object, operated, either completely automatically or with the aid of some physical act by the player, in such a manner that, depending upon elements of chance, it may eject something of value.”
13A-12-20(10).

The claimants argue that with the machines before the Court the player does not insert a coin or other object into the machine because all the player actually puts into the machine is a PIN code by means of a keypad. The substance of the transaction is that the player pays cash to obtain credits on a networked system of terminals and servers. In *Barber*, the Alabama Supreme Court has already held that a court must look at the function of the network as a whole to determine the legality of the gambling devices. *Barber*, 960 So. 2d at 609 (“a device is no less a slot machine because it operates within a network, that is, because it shares computer-processing equipment with a number of similar devices.”). The court found it to be “immaterial” that various slot-machine functions were distributed in a network, and held that the network of computers in that case operated in the same manner as a stand-alone slot machine. *Id.* at 610. *Barber* controls. Just as it made no difference there that the elements of chance and consideration were distributed across a network of computers, it makes no difference here that the function of inserting money into the machines takes place

elsewhere on a network of computers. The evidence is undisputed that cash is inserted into the network, and that is sufficient to end the inquiry.

There is no dispute that the outcomes of the games played are determined by elements of chance.

Just as the insertion of money is dispersed to different parts of the network, so is the ejection of something of value. The terminal with which the player interacts keeps track of the player's credits as the player wins or loses games, transfers winnings to the PIN account, and electronically reports any winnings to other parts of the system and to the cashier terminal. The credits awarded in games won can be used to play another game on the same machine. That alone is "something of value" under the slot machine statute. ALA. CODE §13A-12-20(11). When the player finishes playing on a machine, the results and winnings are automatically recognized and usable on other machines simply by entering the PIN code on them. Those same results and winnings are available to the cashier, who enters the PIN code into her terminal to determine the balance in the PIN account, and then provides the cash balance to the player. The system thus electronically transfers cash value credit, including winnings, to other devices. Under *Barber*, the machines thus electronically "eject" something of value.

While the Court does not accept the State's argument that there is no such thing as "electronic bingo," the Court finds that the machines before the Court are gambling devices or slot machines and therefore are illegal under present Alabama law.

The State raised the issue of whether the manner in which the games at issue were being operated violated Amendments 386 and 600. They argue that because the games were not operated exclusively by volunteers of a charity. The proceeds of the games did not go exclusively to charity.

These arguments may be valid, but the Court will not address them in this case, having found that the devices are not legal bingo games.

While this case has been pending, the press reports that other “bingo” operations have opened in Jefferson County and elsewhere and there have been further raids and confiscation of the machines. The Court expects other condemnation actions such as the ones before this Court. It is hoped that this Order resolves some of those pending disputes.

Upon consideration, it is **Ordered and Adjudged** that Final Judgment is entered in favor of the plaintiff, the State of Alabama, and against the claimants, the defendants. Therefore, the seized machines and systems are declared to be slot machines, and they do not play “bingo” under Amendments 386 and 600 to the Alabama Constitution. The Court further finds that the United States Currency which was seized was used as bets in these illegal gambling activities.

Ala. Code (1975)§ 13A-12-30(a) provides that gambling devices “shall by court order be destroyed or otherwise disposed of as the court directs.” The statute further provides at (c) that any money which is forfeited “by court order shall be transmitted to the general fund of the state.” The Court sees no benefits to anyone in ordering the destruction of these computers which can easily be made to serve a legal purpose. Therefore the machines which are described on the attachment to this Final Judgment are declared to be forfeited to the State of Alabama, for delivery to the Alabama Department of Public Safety. The currency is also declared to be forfeited and is hereby awarded to the General Fund of the State of Alabama.

Because the Court has determined on the merits of the case that the machines in question are illegal slot machines and gambling devices, the Motions to Quash are overruled and denied.

Costs are taxed to the defendants.

Done and ordered, this the 10th day of February, 2012.



J. SCOTT VOWELL, PRESIDING JUDGE