WHERE DOES THE AUTHORITY LIE?:
CONSTITUTIONAL CONSTRUCTION OF
ALABAMA’S NEWEST BINGO
AMENDMENTS

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INTRODUCTION

Can the Alabama Governor’s general constitutional authority to ensure the
laws are “faithfully executed” supersede an express grant of quasi-legislative
authority to another constitutional officer within the very same document? This
was the question left unanswered by the Supreme Court of Alabama in Tyson v.
Jones.1 The court sidestepped the power vested in the Sheriff of Macon County
to promulgate rules and regulations for the operation of bingo and, instead,
deferred to the general constitutional authority of the Governor.2 Yet, this is
only one of the Supreme Court of Alabama’s decisions in a string of ambiguous
opinions on the elusive topic of electronic bingo.3

As a result of the confusion generated by these opinions, a war erupted
between former Alabama Attorney General Troy King, former Governor Bob
Riley, and the owners of Alabama’s electronic bingo halls.4 It seemed as if the
“Bingo War” was over in 2011, when Governor Robert Bentley and Attorney
General Luther Strange took office.5 Despite the hopes of voters, results of the
election did not end the Bingo War; it simply shifted the positions of the play-
ers.6 Attorney General Strange, via authority granted by the Governor, contin-

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1 60 So. 3d 831 (Ala. 2010).
2 Id. at 849.
3 See, e.g., Surles v. City of Ashville, 68 So. 3d 89 (Ala. 2011); Chorba-Lee Scholarship
Fund Inc. v. Hale, 60 So. 3d 279 (Ala. 2010); Barber v. Cornerstone Cmty. Outreach Inc., 42
So. 3d 65 (Ala. 2009); Macon Cnty. Greyhound Park v. Knowles, 39 So. 3d 100 (Ala. 2009).
4 Charles J Dean, In 2010 Bingo Wars Rage Across Alabama, AL.COM, (last updated Sept.
hl.html; see also Josh Moon, Gambling in Alabama: A High-Stakes Game of Political Intrigue,
5 See John Shryock, Task Force on Illegal Gambling Set to Change Hands, KPLC (last
6 Id.; see also Mike Hollis, Editorial, Bingo, Give Alabama Voters Their Say, AL.COM (last
ues to fight the “Bingo War” against the Sheriffs of Macon and Greene Counties and the owners of the electronic bingo halls.\(^7\)

The major contention in this war has also shifted. In the beginning, the war revolved around the interpretation of “the game commonly known as bingo,” which the Supreme Court of Alabama later defined in Barber v. Cornerstone Community Outreach Inc.\(^8\) However, new battle lines have been drawn since the Cornerstone decision: Attorney General Strange asserts that he has the right to interpret the court’s ruling in Cornerstone as an extension of the Governor’s “supreme executive power”\(^9\) to enforce the laws of Alabama.\(^10\) This article argues, however, that Attorney General Strange is mistaken. In this instance, the authority to regulate is the authority to define,\(^11\) and the quasi-legislative authority to define “bingo” beyond the Cornerstone decision has been expressly vested within the Sheriffs of Greene and Macon Counties.\(^12\)

This article analyzes constitutional Amendment Nos. 743 and 744, which grant the Sheriffs of Greene and Macon Counties the authority to “promulgate rules and regulations” for the operation of bingo games within their respective jurisdictions. Specifically, this article uses principles of constitutional construction to analyze the division of authority between the Governor and the Sheriffs to determine who has the authority to define bingo within those counties. Part I of this article discusses the legality of bingo in general and the Supreme Court of Alabama’s definition of the “game commonly or traditionally known as bingo.”\(^13\) Part II discusses the Governor’s power pursuant to his duty to “ensure the laws are faithfully executed” and the current stance of Alabama on electronic bingo. Part III uses constitutional construction principles to determine whether the Governor or the local Sheriff has the authority to define what qualifies as bingo pursuant to the Cornerstone case.

I. THE SUPREME COURT OF ALABAMA’S ELECTRONIC BINGO ANALYSIS

A. Is Bingo a Lottery?

The Alabama Constitution expressly prohibits lotteries within the state.\(^14\) The Supreme Court of Alabama has defined a lottery as having three elements,


\(^8\) 42 So. 3d at 86.

\(^9\) ALA. CONST. art V, § 113 (“The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled ‘The Governor of the State of Alabama.’”).

\(^10\) See Shryock, supra note 5.


\(^12\) ALA. CONST. amends. 743, 744.

\(^13\) See Cornerstone, 42 So. 3d at 86.

\(^14\) ALA. CONST. art. IV, § 65.
“a prize, awarded by chance, and for consideration.”¹⁵ Although the Alabama Constitution does not mention the word “gambling,” the Supreme Court of Alabama has recognized that bingo is gambling and that the words “gambling” and “lottery” have the same meaning.¹⁶

Still, the Alabama Constitution allows individual counties, subject to legislative approval and/or statewide election, to pursue amendments that apply only to that county.¹⁷ Through this process, seventeen jurisdictions have ratified amendments allowing for “charitable bingo,” which are bingo games operated by nonprofit organizations, thereby exempting them from the prohibition against lotteries.¹⁸ Many of these jurisdictions have attempted to move beyond the traditional form of bingo into the more lucrative electronic bingo.¹⁹ For most, the language of the amendment did not delegate the express authority to define the type of bingo to be played, and, as a result, the ratified amendment would not likely allow electronic bingo.²⁰

Unlike other Amendments permitting charitable bingo, Amendment 744 and 743 expressly state, “[t]he sheriff shall promulgate rules and regulations for the licensing and operation of bingo games within the county.”²¹ Amendment 743, by its express language, defines bingo as “that specific kind of game commonly known as bingo, in which prizes are awarded on the basis of designated numbers of symbols on a card or electronic marking machine conforming to numbers or symbols selected at random.”²² The Amendment then goes on to define the type of equipment to be used as also including “electronic card marking machines.”²³ Therefore, at least in Greene County—the subject county of Amendment 743—electronic bingo is expressly allowed. It would also seem, based on the plain language of the Amendments, that in both Amendment 744 and 743, the Sheriffs of Macon and Greene Counties have vested constitutional authority to regulate bingo within the county and, therefore, define the type of bingo allowed within the confines of existing law.

¹⁶ See Houston County Econ. Dev. Auth. v. State, 2014 Ala. LEXIS 183, at *37 (Ala. Nov. 21, 2014) (“[A] lottery prohibited under section 65 of the Constitution [is], consequently, punishable under Alabama’s generally applicable antigambling laws.”)
¹⁷ Ala. Const. amend. 425.
²⁰ Compare Ala. Const. amend. 744 (where the word “electronic” is not present), with Ala. Const. amend. 743 (defining bingo as game “in which prizes are awarded on the basis of designated numbers and symbols on a card or electronic marking machine”) (emphasis added).
²¹ Compare Ala. Const. amend. 550 (stating that rules and regulations for bingo games are promulgated by the “governing body”), with Ala. Const. amends. 743, 744.
²² Ala. Const. amend. 743 (emphasis added).
²³ Id.
B. The Supreme Court of Alabama’s Definition of the “Game Commonly Known as Bingo”

Opponents of electronic bingo claim that electronic bingo machines are illegal because they are illegal slot machines.24 The first Supreme Court of Alabama decision on this issue came in Barber v. Jefferson County Racing Ass’n, in which the Sheriff of Jefferson County seized all machines playing the game “Quincy’s MegaSweeps” as “illegal slot machines.”25 The Supreme Court of Alabama held that the machines were in fact illegal slot machines, even though the owners had ensured the statutory elements of a “gambling device” were “missing.”26 Still, the court reasoned that the machines were “readily adaptable or convertible to such use,” because they could be “retooled” to work as slot machines.27 The court concluded by stating, “Innovative created a system composed of what were formerly slot machines, which look like, sound like, and attract the same class of customers as conventional slot machines . . . . Having ‘taken the risk that’ their venture ‘may cross the line,’ it is not ‘unfair to require’ that the owners bear the consequences.”28 The court’s holding in Jefferson County Racing Ass’n effectively shifted the focus from that of illegal gambling to the machines used to gamble, so that a person is effectively gambling whenever the machines look like slot machines.29

The Supreme Court of Alabama then took the next step in Barber v. Cornerstone Community Outreach, Inc., when it defined “the game commonly known as bingo.”30 In Cornerstone, Governor Riley’s Task Force on Illegal Gambling raided the Cornerstone Community Outreach bingo hall in the Town of White Hall and seized “approximately 105 electronic gaming machines.”31 The Task Force argued that Amendment 674, which allowed bingo in the Town of White Hall, should be “narrowly construed” because it is an exception to Alabama’s general prohibition against lotteries.32 On the other hand, Cornerstone argued that the “plain meaning” of Amendment 674 did not create an exception to the prohibition against lotteries.33

To resolve the question, the Supreme Court of Alabama created a six-part test.34 The court crafted this six-part test by looking to section 45–8–150(1) of

25 960 So. 2d 599, 601–02 (Ala. 2006).
26 Id. at 614.
27 Id. at 610 (“[T]he statutory definition of a slot machine includes any device that is ‘constructed or readily adaptable or convertible to such use’ . . . . [The MegaSweeps machines] could be retooled to operate as [slot machines].”).
28 Id. at 616.
29 Id.
30 42 So. 3d 65, 86 ( Ala. 2009) (setting forth a list of six characteristics that define the “game commonly or traditionally known as bingo”).
31 Id. at 68.
32 Id. at 78.
33 Id.
34 Id. at 86. (“The characteristics of [bingo] include the following: 1. Each Player uses one or more cards with spaces arranged in five columns and 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
the 1975 Alabama Code, wherein the legislature had defined “bingo” for purposes of Amendment 508, “which legalized ‘bingo games’ in Calhoun County.”35 After articulating the test, the court then applied it to Amendment 674 and held that the bingo machines at issue were illegal because they “operate almost exactly like slot machines.”36 The court pointed to the following factors in coming to its conclusion: the game was over in six seconds without any “player interaction” or “numbered cards,” the losing players were not informed of who won the “bingo game,” and no evidence was proffered that a server linking the machines together meant players were actually playing against one another.37

The court, however, did not explicitly state that all electronic bingo machines were illegal. In fact, the court made clear that its holding was limited to Amendment 674 as written, contrasting Amendment 743, which allows bingo in Greene County.38 The court differentiated the Greene County amendment, because it expressly defines the form of bingo and equipment to include an “electronic marking machine in lieu of a paper card.”39 Seemingly, the court would allow electronic bingo, so long as the amendment expressly allows for electronic machines, and uses equipment that “contemplates a game in all material respects similar to the game of bingo described in [section] 45-8-150(1),” as defined by the six-part test in Cornerstone.40

Finally, in Macon County Greyhound Park v. Knowles, the Supreme Court of Alabama interpreted a contract between VictoryLand, a bingo hall in Macon County, and one of its patrons.41 In Knowles, the court was asked to determine which contract governed: the Sheriff’s regulations or the “rules of the wager.”42 After holding that the rules of the wager governed the transaction between VictoryLand and the player, the court expressly declined to rule on the legality of electronic bingo.43 In order to rule on the legality of the gambling contract in question, however, the court had to implicitly find the electronic bingo machines in question legal; otherwise, the contract at issue would have been

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.”). 35 Id. at 79. 36 Id. at 86–87. 37 Id. 38 Id. at 79–80. 39 Id. at 80. 40 Id. at 80, 86. 41 39 So. 3d 100, 106 (Ala. 2009). 42 Id. at 106–07. 43 Id. at 107 n.1 (“We express no opinion as to whether Amendment No. 744, actually does authorize the type of activity here involved. That issue is not presented in this case.”).
based upon an illegal gambling contract. The case would have been dismissed for a lack of subject matter jurisdiction, an objection that the court will bring *sua sponte* when the parties fail to do so. Yet, the Macon County amendment, unlike the Greene County amendment, does not expressly allow electronic bingo. Consequently, the court had to uphold the legality of the amendment on other grounds. This author believes that these grounds could have been upheld as the Sheriff’s constitutional authority to define bingo through “rules and regulations,” including the type of bingo to be played.

There is no definitive answer on the legality of electronic bingo in Alabama. The Supreme Court of Alabama has remained silent on this point, instead finding no justiciable issue to be resolved or resolving the bingo-related cases on other grounds. However, despite the confusion, it seems the Supreme Court of Alabama may allow electronic bingo in certain counties so long as the machines meet the six-part test in *Cornerstone* and the county amendment vests the local official with the authority to define the type of bingo to be played.

II. THE GOVERNOR’S WAR ON ELECTRONIC BINGO IN ALABAMA

A. The Governor’s Stance on Bingo

In the beginning of the Bingo Wars, former Alabama Governor Bob Riley stood as the biggest obstacle to electronic bingo in Alabama. In his view, paper bingo is the only type of bingo allowed in the state. Former Attorney General Troy King took the opposite approach following an extensive review of all bingo halls in the state. As a result, a major political battle developed between Governor Riley and Attorney General King. Attorney General King believed that electronic bingo machines could be legal so long as they met his proposed definition of bingo—a definition remarkably similar to the one announced later in *Cornerstone*. In response to these findings, Governor

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44 Id. at 107 (stating that the validity of the enforceability of the contract was stipulated to by the parties, and therefore, not considered by the court).
45 See *Surles v. City of Ashville*, 68 So. 3d 89, 92 (Ala. 2011) (“This Court must *sua sponte* recognize and address the lack of subject-matter jurisdiction owing to the lack of justiciability.”).
46 Compare * Ala. Const.* amend. 744 (Macon County), with * Ala. Const.* amend. 743 (Greene County).
47 See *Surles*, 68 So. 3d at 89; *Tyson v. Macon Cnty. Greyhound Park*, 43 So. 3d 587, 591–92 (Ala. 2010); see also *Tyson v. Jones*, 60 So. 3d 831 (Ala. 2010) (deciding the case on separation of powers grounds).
48 See supra note 34 and accompanying text.
49 See Phillip Rawls, *Alabama Gov. Bob Riley is Cracking Down on Bingo Parlor*
50 Id.
51 J. Mark White et al., *Bingo in Alabama: More than Just a Game*, 41 CUMB. L. REV. 509, 512 (2011) (“In December 2004, then-Attorney General Troy King announced the results of his ‘unprecedented, hands-on evaluation and review of gambling occurring in Alabama’ . . . . The first shot of what would become the Bingo Wars had been fired.”).
52 Moon, *supra* note 4.
53 See White et al., *supra* note 51, at 512.
Riley created the Governor’s Task Force on Illegal Gambling through Executive Order 44. Governor Riley explained that the Task Force was a necessary step in light of Attorney General King’s failure to enforce the gaming laws of the state.

Under the Alabama Constitution, any lottery or scheme in the form of a lottery is prohibited. The Supreme Court of Alabama in City of Piedmont v. Evans determined that the game of bingo was an illegal lottery under Alabama law, except where allowed through constitutional amendment. In later cases, Alabama courts explained that the Piedmont decision stood for the proposition that bingo amendments are “narrow exceptions” to Alabama’s prohibition against lotteries and, therefore, can only include “the ordinary game of bingo.”

Moreover, gambling and the possession of slot machines is a crime under Alabama law. The court previously stated in dicta that any machines “which look like” and “serve essentially the same function as . . . slot machines” could be considered an illegal slot machine. Governor Riley further argued that although the constitutional amendments give local sheriffs the authority to promulgate rules and regulations, these amendments only permit regulation of the hours of use and licensure, and do not vest the sheriffs with the authority to change the definition of bingo. Therefore, Governor Riley concluded that the “ordinary game of bingo” means only paper bingo and, therefore, any electronic bingo machine in the State of Alabama is an illegal slot machine.

Even following the Cornerstone decision, Governor Riley maintained that electronic bingo had been outlawed because it could not fit within “the game commonly known as bingo.” However, Governor Riley overlooked several important facts. First, the court in Cornerstone never expressly stated that electronic bingo could not fit within its ruling; in fact, the court went to great lengths to make no determination on that issue. Second, the case Governor Riley relied on interprets a bingo amendment with substantially different language from the Greene and Macon County Amendments. Finally, under the

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54 Id. at 515
56 Ala. Const. art. IV, § 65.
61 Lester, supra note 11, at 500.
63 See Barber v. Cornerstone Cnty. Outreach, 42 So. 3d 65, 80 (Ala. 2009).
64 Id. (“[T]he Riley defendants do not contend that a ‘bingo game’ must be played only on paper cards, and we, therefore, do not address that issue.”).
plain language of Amendments 744 and 743, the Sheriff’s ability to regulate extends much farther than the hours of operation. In the wake of the political chaos created by the Bingo War, the succeeding Alabama Governor, Robert Bentley, dissolved the Governor’s Task Force on Illegal Gambling. Governor Bentley believed that the gambling Task Force was no longer necessary because current Attorney General Strange would effectively enforce the gambling laws of the state. After taking over the work of the Task Force, Attorney General Strange released a statement reiterating that “electronic bingo” was illegal under state law. He has since enforced his policy by raiding any electronic bingo hall in Alabama, including Macon County’s VictoryLand and the Porch Creek Indians Wind Creek Casino.

B. The Governor’s “Authority” After Tyson v. Jones

Pursuant to his authority as head of Governor Riley’s task force, John M. Tyson Jr. attempted to raid every non-Indian electronic bingo hall in Alabama in early 2010, effectively moving the Bingo War once again back into the courtroom. Following one of these raids, the Macon County Sheriff, District Attorney, and County Commission brought an action against Tyson as head of the Governor’s Task Force enjoining him from raiding the casino. The “Macon County Plaintiffs” claimed that the Task Force had “usurp[ed] the authority” of the Macon County District Attorney as well as the Macon County Sheriff by raiding VictoryLand. On behalf of Governor Riley, Tyson argued that the Governor’s constitutional authority to “take care that the laws be faithfully executed” gave him the authority to investigate illegal gambling in the state. Pursuant to this authority, the Governor could direct law enforcement officers to investigate perceived illegal gambling based upon Governor Riley’s determination that the gambling laws were not being enforced in Macon County. The Supreme Court of Alabama held that the Constitution “plainly vest[s] the governor with an authority to act on behalf of the state and to ensure

66 See infra Part III.C.
68 Id. (“[T]he new Attorney General, Luther Strange, has stated that he intends to enforce the laws of Alabama with respect to anti-gambling, lottery schemes and illegal gambling.”).
71 60 So. 3d 831 (Ala. 2010).
73 Tyson, 60 So. 3d at 837.
74 Id.
75 Id. at 845.
76 Id.
that all laws are faithfully executed,'" and this grant of authority trumps the local Sheriff's authority when he is acting as an executive branch official.77

In order to resolve the question in Tyson, the Supreme Court of Alabama analyzed the Governor's constitutional authority as "the head of the executive department of the state."78 Under the Alabama Constitution, the executive department consists of the "governor, lieutenant governor, attorney general . . . and a sheriff for each county."79 However, the "supreme executive power of this state" is vested in the Governor,80 who "shall take care that the laws are faithfully executed."81 Furthermore, the court stated that the Governor's duty is to 'supreme' to the 'duties' given the other executive-branch officials."82 Consequently, the court determined that Tyson's actions on behalf of Governor Riley's Task Force were within the Governor's constitutional authority to ensure the "laws are faithfully executed."83 The court reasoned that the final decision to enforce or not enforce a law is vested in the Governor as the head of the executive department of the state.84 According to the court, this authority is superior to the authority granted to other executive officers, such as the Sheriff and District Attorney of Macon County.85 Therefore, the court found that the Governor's determination that Alabama criminal laws "had gone unenforced" in Macon County was superior to the executive authority of local officials.86

Accordingly, after Tyson v. Jones, the Governor had the power to determine that any form of electronic bingo is illegal gambling, and, therefore, the local Sheriff's inaction in stopping it constitutes grounds for the Governor to dispatch the Task Force to ensure the laws are enforced.87 This, in turn, effectively gives the Governor the authority to act as interpreter of the Cornerstone decision and determine the type of bingo allowed under each of the constitutional amendments. The court in Tyson only looked at the executive powers of the Sheriff and District Attorney.88 In doing so, the court looked only at the statutes defining the Sheriff's general executive authority and ignored Alabama Constitutional Amendment 744, which granting the Macon County Sheriff the authority to "promulgate rules and regulations" for the licensing and operation

77 Id. at 846 (citing Riley v. Cornerstone Cnty. Outreach, Inc., 57 So. 3d 704, 719 (Ala. 2010) (emphasis omitted)).
78 Id. (citing ALA. CONST. art. V, § 113).
79 ALA. CONST. art. V, § 112.
80 ALA. CONST. art. V, § 113.
81 ALA. CONST. art. V, § 120.
82 Tyson, 60 So. 3d at 846 (analyzing ALA. CONST. art. V, § 113—terming the Governor as "a chief magistrate"—by citing the definition of "magistrate" from BLACK'S LAW DICTIONARY 970 (8th ed. 2004)).
83 Id. at 849–51.
84 Id. at 847 ("[T]he power to enforce the laws is not left as a matter of finality to the discretion of the local authorities or the local inhabitants; but power was placed in the head of the executive department . . . for the whole state.").
85 Id. at 849–51; see also Riley v. Cornerstone Cnty. Outreach, Inc., 57 So. 3d 704, 722 (Ala. 2010) ("[W]hen the governor determines that, whether due to inaction or inadequate action by the other official, it is necessary for him to act lest the law go unenforced, he may act.").
86 Tyson, 60 So. 3d at 849.
87 Id. at 845.
88 See generally id.
of bingo. As a result, the Supreme Court of Alabama did not squarely answer the real question posed in *Tyson*: is the Governor’s general executive authority to “take care the laws are faithfully executed” superior to the Macon County Sheriff’s specific, express, quasi-legislative authority to regulate bingo within Macon County? This author would answer “no.” The Macon County Sheriff has been vested with quasi-legislative authority to define bingo within Macon County, and this specific grant of authority preempts the Governor from making the crucial interpretation in *Tyson*—that the bingo being played in Macon County was in fact illegal.

III. THE ROAD NOT TRAVELED: CONSTITUTIONAL CONSTRUCTION OF ALABAMA’S LATEST BINGO AMENDMENTS

In the wake of each new Supreme Court of Alabama bingo decision, the law surrounding electronic bingo in Alabama becomes cloudier. In part, this is due to the political debate that has raged in the background of every decision surrounding electronic bingo. The majority of this confusion, though, stems from the Supreme Court of Alabama’s refusal to explicitly rule on the legality of electronic bingo—a choice likely based on the political fallout that would follow such a decision. If the court were to rule on the legality of electronic bingo, the issue will likely revolve around one same question that was at the heart of *Tyson*. Under Alabama’s rules of constitutional construction, the scope of exclusive authority granted to the Sheriffs by the constitutional amendments legalizing bingo within county limits includes the ability to define and interpret the type of bingo to be played. Therefore, the power to define what is “bingo” is stripped from the Governor by the same document granting the Sheriff this authority. Furthermore, the Supreme Court of Alabama has given some indication that at least two counties could allow electronic bingo because of their amendments’ express language.

A. The Greene and Macon County Amendments Could Allow Electronic Bingo

Of the seventeen jurisdictions in Alabama where charitable bingo is currently allowed, Greene and Macon County are likely the only two that could allow electronic bingo. The amendments in these two counties stand apart from the other fifteen because of several key differences in the amendments’ language. Both Amendment Nos. 743 and 744 vest the Sheriff—rather than the “governing body”—with the power to regulate bingo within the county.

Amendment No. 744, legalizing bingo in Macon County, states that “the operation of bingo games . . . shall be legal.” It further states that “[t]he sheriff shall promulgate rules and regulations for the licensing and operation of bingo games within the county [and] shall insure compliance pursuant to any

89 ALA. CONST. amend. 744.
90 See ALA. CONST. amends. 743, 744.
91 See supra notes 18–20 and accompanying text.
92 Id.
93 See supra note 21 and accompanying text.
94 ALA. CONST. amend. 744.
rule or regulation.”\textsuperscript{95} Similarly, the language in Amendment No. 743, allowing bingo in Greene County, states that: “[b]ingo games for prizes or money may be operated . . . in Greene County. The sheriff shall promulgate rules and regulations for the licensing, permitting, and operation of bingo games within the county. The sheriff shall insure compliance with such rules and regulations.”\textsuperscript{96}

In contrast, every other constitutional amendment legalizing bingo games gives the power to create rules and regulations to the governing body or local legislature.\textsuperscript{97} Furthermore, these amendments also contain language limiting the local authorities grant of power by including “as provided by law regulating such operation.”\textsuperscript{98} Therefore, unlike the other fifteen jurisdictions, the express language of the Macon and Greene County amendments plainly vests the power to create and enforce rules and regulations relating to bingo solely in the Sheriff of the county.\textsuperscript{99}

B. The Quasi-Legislative Authority to Regulate Bingo Has Been Delegated to the Sheriff

Despite the express constitutional authority that these amendments have vested in the Sheriff, both former Governor Riley and current Attorney General Luther Strange believe the power to “regulate” bingo does not include the authority to interpret and define bingo beyond Cornerstone; rather, they believe the power to regulate only includes determining the hours of operation and who obtains licenses.\textsuperscript{100} This interpretation is flawed. Although the Governor has constitutional authority to enforce the laws under the Alabama Constitution,\textsuperscript{101} the Supreme Court of Alabama has stated, “sovereignty itself remains with the people, by whom and for whom all government exists and acts.”\textsuperscript{102} The people of certain jurisdictions in Alabama, furthermore, chose to vest the quasi-legislative authority to define bingo solely in the County Sheriff within specific geographic boundaries.\textsuperscript{103}

Moreover, the Legislature may delegate quasi-legislative power to local officials to make “rules and regulations” within definite limits written into an amendment.\textsuperscript{104} Through this delegation, the local official to whom the power

\textsuperscript{95} Id. (emphasis added).
\textsuperscript{96} ALA. CONST. amend. 743.
\textsuperscript{97} E.g., ALA. CONST. amends. 386, 387.
\textsuperscript{98} E.g., ALA. CONST. amend. 440.
\textsuperscript{99} ALA. CONST. amends. 743, 744; see also Chorba-Lee Scholarship Fund Inc. v. Hale, 60 So. 3d 279, 287 n.4 (Ala. 2010) (stating that Amendment 386 expressly grants the authority to regulate to the governing body, and highlighting that, in contrast, amendments 743 and 744 grant that express authority to the sheriff).
\textsuperscript{100} See supra Part II.A.
\textsuperscript{101} Riley v. Cornerstone Cnty. Outreach, Inc., 57 So. 3d 704, 733 (Ala. 2010).
\textsuperscript{102} Black v. Pike Cnty. Comm’n, 360 So. 2d 303, 305 (Ala. 1978).
\textsuperscript{103} Compare, e.g., ALA. CONST. amends. 743, 744, with, e.g., ALA. CONST. amend. 440 (legalizing bingo in Mobile County subject to “law regulating such operation”).
\textsuperscript{104} See Cagle v. Qualified Electors of Winston Cnty., 470 So. 2d 1208, 1210–11 (Ala. 1985) (finding the delegation of legislative power to the officials of Winston County through Amendment 225 was not violative of article IV, section 44 of the Alabama Constitution); Nelson v. Donaldson, 50 So. 2d 244, 248 (Ala. 1951) (stating a “legislative body may delegate to a subordinate body the power to execute and administer its laws” within reasonable limits declared by the enactment); Compton v. Ala. Power Co., 114 So. 46, 49 (Ala. 1927)
was delegated can then say what can and cannot be done within the sphere of authority expressly granted.105 For example, in Fraternal Order of Police Lodge No. 64 v. Personnel Board of Jefferson County,106 the legislature created personnel boards within certain counties and vested within these boards the authority to “control by rules and regulations and practices . . . all employees and appointees” holding civil service positions within the county.107 The Supreme Court of Alabama upheld the grant of quasi-legislative authority and gave deference to the Personnel Board’s ability “to govern and control the employees in the civil-service system through rules and regulations it promulgates.”108 In comparison, the power delegated to the Sheriffs by Amendments 743 and 744, grants the Sheriffs the authority to determine the type of bingo allowed in their county, as long as it falls within the confines of existing law.109

Furthermore, when an amendment vests power in one person, that power cannot be exercised by anyone else.110 For example, in Chorba-Lee Scholarship Fund Inc. v. Hale, a charitable bingo hall in Jefferson County brought an action seeking to have the Sheriff’s bingo regulations invalidated.111 The Supreme Court of Alabama struck down the regulations and declared the portion of the statute granting the Sheriff his authority was unconstitutional.112 According to the court, the regulations were invalid because Amendment 386 granted the “governing body of Jefferson County” the exclusive power to regulate bingo, and did not give this authority to the Sheriff of Jefferson County.113 The “Bingo Act” granting the Sheriff his regulatory authority was declared unconstitutional due to the express and conflicting language in Amendment 386.114 Moreover, in a footnote, the court distinguished Amendment 386 from Amendments 743 and 744, which expressly grant the local Sheriff the authority to regulate bingo.115 As a result, the court’s holding in Chorba-Lee—that the Jefferson County governing body has the “exclusive” authority to regulate bingo in Jefferson County—implies that the Sheriffs of Greene and Macon Counties have the exclusive authority to regulate bingo in their respective counties.

Even other Alabama constitutional officers have recognized that the Sheriff has this authority. For example, former Attorney General Troy King took this position following a review of electronic gaming machines in Alabama.116

(citing State v. A.C.L.R. Co., 47 So. 969, 976 (Fla. 1908); Schultes v. Eberly, 2 So. 345, 346 (Ala. 1887) (finding the legislature has implied constitutional authority to delegate legislative power to local “municipal corporations” for the operation of the law within a locality).

105 Compton, 114 So. at 48–49.
106 103 So. 3d 17 (Ala. 2012).
107 Id. at 30.
108 Id.
109 Ala. Const. amends. 743, 744.
110 See generally Chorba-Lee Scholarship Fund, Inc. v. Hale, 60 So. 3d 279 (Ala. 2010).
111 Id. at 280.
112 Id. at 288.
113 Id. at 287 (“This attempt by the legislature to extend regulatory authority over bingo to the sheriff in Jefferson County is in direct conflict with Amendment No. 386, which clearly vests only the governing body of Jefferson County . . . with [that] exclusive authority.”).
114 Id.
115 Id. at 287 n.4.
116 See White et al., supra note 51, at 511–12.
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Attorney General King found that, under current Alabama law, electronic gaming machines are legal so long as they retain the essential features of the game of bingo.117 King’s interpretation, even though it preceded the Supreme Court of Alabama’s ruling in \textit{Cornerstone}, was substantially similar to that court’s definition of “the game commonly known as bingo.”118 Furthermore, Judge Thomas Young of Macon County refused to sign a search warrant for Victory-Land based on a lack of probable cause to believe the machines were, in fact, illegal slot machines.119 Judge Young recognized that the machines were legal under the amendments as long as they comply with the six characteristics of the \textit{Cornerstone} ruling.120

The people of Greene and Macon Counties vested the Sheriffs of their counties with the exclusive quasi-legislative authority to regulate bingo within their county.121 They did so through the clear and express language of a constitutional amendment to the Alabama Constitution—the “supreme law” of the land.122 As a result, no other constitutional officer can assert the authority granted to the Sheriffs to make interpretations through rules and regulations.123

C. Canons of Alabama Constitutional Construction

Although in Greene and Macon Counties the exclusive authority to regulate bingo has been vested in the Sheriff, the Supreme Court of Alabama’s rules of constitutional construction provide further support of the scope of the Sheriff’s quasi-legislative authority to regulate. In Alabama, the judicial philosophy of constitutional interpretation is that of judicial restraint, whereby it is the authors of an amendment “who should judge when a social change is a good change,” and adopt that change through the enactment of amendments to the constitution.124 The Supreme Court of Alabama in \textit{Cornerstone} stated the most applicable rules of construction with regard to the bingo amendments.125 First, “bingo amendments are exceptions to the lottery prohibition, and the exception

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117 Id. at 512.
118 Compare id. (“(1) a grid of five horizontal and five vertical squares; (2) numbers randomly selected; (3) a preordained winning pattern; (4) spinning wheels and other video graphics must not affect game play; (5) players on the machines must compete against one another.”), with Barber v. Cornerstone Cmty. Outreach, Inc., 42 So. 3d 65, 86 (Ala. 2009) (setting forth the six identifying qualities of a bingo game).
120 See id. (providing links to the unsealed documents as well as a picture of Judge Young’s handwritten note at the end of the search warrant, in which he reiterates that he does not believe probable cause to execute a search exists).
121 See \textit{Ala. Const.} amends. 743, 744.
122 Johnson v. Craft, 87 So. 375, 380 (Ala. 1921) (“The Constitution of Alabama . . . is the supreme law within the realm and sphere of its authority. Subject only to the restraints . . . from the Constitution of the United States, the Constitution of Alabama is the highest form and expression of law that exists in the state.”).
123 See supra note 104 and accompanying text.
should be narrowly construed,” or limited to the express language of the amendment.126 Next, the court will look at the “plain and commonly understood meaning of the terms used” in the amendment to determine its scope of authority.127 Furthermore, the main goal in constitutional construction is to “ascertain and effectuate the intention of the people in the adoption of the constitution.”128 To determine this intention, the court will look at the words used and read those words in the context of the amendments history.129

(1) The Sheriff’s Authority is Mandatory Under the Plain Meaning Standard

It is a long-settled, fundamental principle of constitutional construction to refer to the plain meaning of the text.130 In doing so, the court may neither broaden nor restrict the plain meaning of the words.131 In applying this standard to Amendment 674132 in Cornerstone, the Supreme Court of Alabama stated that “we look to the plain and commonly understood meaning of the terms used” at the time the constitutional provision was written.133 Therefore, the “plain and ordinary meaning” of the words used in the Macon and Greene County amendments must be used to analyze the scope of the Sheriff’s authority under the court’s rules of constitutional construction.

Amendments 744 and 743 both expressly state that, “[t]he sheriff shall promulgate rules and regulations” for the “licensing” and “operation of bingo games within the county.”134 In determining the scope of this grant of authority, the material words are “shall” and “rules and regulations.” Black’s Law Dictionary defines “shall” as “ha[ving] a duty to; more broadly, is required to,” in the “mandatory sense that drafters typically intend and that courts typically uphold.”135 The Oxford English Dictionary also defines shall as it is used in “statutes, regulations, etc.” as “must according to a command or instruction.”136 The Supreme Court of Alabama has also held the word “shall” to mean “mandatory.”137 As a result, the express words, “the sheriff shall promulgate rules and regulations,” without any other express limitations, seem to

126 Id.; see also Griggs v. Bennett, 710 So. 2d 411, 413–14 (Ala. 1998) (holding that a proviso allowing an extra six months for Henry County judges to serve during a vacancy was an exception to a general constitutional provision, and therefore needed to be strictly construed, and therefore could not be extended to the entire Twentieth Judicial Circuit because the express language of the proviso limited its reach to Henry County).
127 Cornerstone, 42 So. 3d at 79.
128 Id.
129 Id.
130 Id.; see also Jefferson Cnty. v. Weissman, 69 So. 3d 827, 834 (Ala. 2011).
131 Weissman, 69 So. 3d at 834.
132 Ala. Const. amend. 674 (legalizing bingo in The Town of White Hall).
133 Cornerstone, 42 So. 3d at 79.
134 Ala. Const. amends. 743, 744 (emphasis added).
135 Black’s Law Dictionary 1499 (9th ed. 2009).
137 Padgett v. Conecuh Cnty. Comm’n, 901 So. 2d 678, 686 (Ala. 2004) (referring to shall as “the mandatory word”); Prince v. Hunter, 388 So. 2d 546, 548 (Ala. 1980) (“[T]he word ‘shall’ must be construed as mandatory.”).
make it mandatory for the Sheriff to make interpretations concerning bingo in the county.

In Chorba-Lee, the Supreme Court of Alabama interpreted Amendment 386 in this way.\textsuperscript{138} The Court held that the express language of the Amendment 386\textsuperscript{139} made it mandatory for the governing body of Jefferson County to promulgate the rules and regulations.\textsuperscript{140} However, Amendment 386 in Chorba-Lee does not grant the same level of authority as do Amendment 743 and 744. In Chorba-Lee, the words “shall have the authority to promulgate” only grant the possibility that the governing body of Jefferson County could create rules and regulations.\textsuperscript{141} On the other hand, the express language “the sheriff shall promulgate rules and regulations” grants the sole authority contemplated in the amendment to the Sheriff and requires that the Sheriff use it.\textsuperscript{142}

The term “rule” ordinarily means an authoritative formal standard used to guide conduct in a certain situation.\textsuperscript{143} The term “regulation” similarly means an authoritative direction or standing order prescribing or “controlling some matter.”\textsuperscript{144} Even though the Supreme Court of Alabama has never explicitly defined “rules and regulations,” the court has given some general guidelines. The Legislature is allowed to expressly give local officials, within valid limitations, the ability to promulgate rules and regulations “for the complete operation and enforcement of the law within its expressed general purpose.”\textsuperscript{145} The Supreme Court of Alabama has stated, “the act of rate-making and regulation is a function of, and may be delegated by, the Legislature.”\textsuperscript{146} For example, in Shell v. Jefferson County, the court read the plain language of Amendment 73 of the Alabama Constitution to allow “[t]he governing body of Jefferson county . . . to manage, operate, control and administer the sewers and plants herein provided for and, to that end, may make any reasonable and nondiscriminatory rules and regulations fixing rates and charges.”\textsuperscript{147} The court held that Amendment 73, through its general grant of authority to promulgate rules and regulations, allowed Jefferson County to set sewer service rates in the

\begin{footnotesize}
\begin{enumerate}
\item Chorba-Lee Scholarship Fund, Inc. v. Hale, 60 So. 3d 279, 280 (Ala. 2010).
\item ALA. CONST. amend. 386 (“The said governing bodies shall have the authority to promulgate rules and regulation.”).
\item Chorba-Lee, 60 So. 3d at 287–88.
\item See id. at 287; see also ALA. CONST. amend. 386.
\item ALA. CONST. amends. 743, 744.
\item For more expansive definitions of the word “rule,” see BLACK’S, supra note 135, at 1446 (“A[n] established and authoritative standard or principle; a general norm mandating or guiding conduct or action in a given type of situation.”); OXFORD, supra note 136, at 2530 (defining the word regulation as “[a] rule prescribed for controlling some matter, or for the regulating of conduct; an authoritative direction”); see also BLACK’S, supra note 135, at 1398 (“[R]egulation [is a noun meaning] the act or process of controlling by rule or restriction.”).
\item COMPTON v. Ala. Power Co., 114 So. 46, 49 (Ala. 1927); see also NELSON v. Donaldson, 50 So. 2d 244, 248 (Ala. 1951) (stating that a “legislative body may delegate to a subordinate body the power to execute and administer its laws” within reasonable limits declared by the enactment).
\item Jefferson Cnty. v. City of Leeds, 675 So. 2d 353, 355 (Ala. 1995).
\item 454 So. 2d 1331, 1334–35 (Ala. 1984).
\end{enumerate}
\end{footnotesize}
The court also held that Jefferson County’s authority could not be superseded by another branch, in this case the legislative branch, without an amendment to the constitution.\footnote{Id. at 1337 (“Amendment 73 clearly authorizes the County to set rates for sewer service.”).}

Similarly, the general purpose of each of the Greene and Macon County amendments is the operation of bingo within their jurisdictions.\footnote{Id.} Moreover, the amendments limit the authority of the Sheriff to promulgate rules and regulations only for the “licensing, permitting, and operation of bingo games within the county.”\footnote{ALA. CONST. amends. 743, 744.} The Sheriff must also abide by specific parameters stated within the amendment.\footnote{ALA. CONST. amend. 743; see also ALA. CONST. amend. 744 (the only textual difference between the relevant sentences in Amendment 743 and 744 is that Amendment 744 omits the word “permitting.”).} Therefore, by expressly stating the “the sheriff shall promulgate rules and regulations,” the amendments give the Sheriff the \textit{mandatory} power to regulate the complete operation of bingo facilities within his jurisdiction, within the specific limitations stated within the amendment.\footnote{ALA. CONST. amends. 743, 744 (requiring that, in addition to any rules or regulations that the Sheriff may promulgate, all bingo games must adhere to certain rules, including: (1) excluding persons under 19 years of age; (2) being operated by nonprofit organizations; (3) placing caps on how much prize money, or monetary equivalent, can be won at each session).} As a result, the Sheriff would have the authority to determine the types of bingo allowed in the county, as long as his interpretations comply with existing law.

\textbf{(2) The Original Intent Was to Give the Sheriff the Authority}

The leading purpose of constitutional construction is to give effect to the original “intent and object originally intended to be accomplished.”\footnote{Alexander v. State \textit{ex rel.} Carver, 150 So. 2d 204, 208 (Ala. 1963); see also Barber v. Cornerstone Cmty. Outreach, Inc., 42 So. 3d 65, 79 (Ala. 2009) (stating that interpreting a constitutional provision’s original meaning means looking to the original intent, history, existing order of things, and the state of the law at the time (citing Houston Cnty. v. Martin, 169 So. 13, 16 (Ala. 1936))).} To determine this intention, the Court will look at the words used, and read those words in the context of the amendment’s history.\footnote{Cornerstone, 42 So. 3d at 79 (quoting State \textit{v.} Sayre, 24 So. 89, 92 (Ala. 1897)).} The Alabama House of Representatives amended the first version of Amendment 743, passed by the citizens of Greene County and sent to the Alabama House of Representatives for confirmation, to exclude “electronic marking machines” from the equipment clause.\footnote{H.R. SB9, 2nd Spec. Sess., at 1 (Ala. 2003).} The Alabama House, however, later added back the phrase “electronic card marking machines” to the equipment clause in its proposed substitute of the amendment with language directing the Sheriff to determine by regulation the hours and days of operation.\footnote{Id.} As a result, the legislative intent of Amendment 743 indicates that the Alabama House of Representatives
contemplated the issue of electronic bingo and intentionally allowed it. The inclusion of language expressly mandating the Sheriff to determine hours and days of operation indicates that, contrary to the interpretation proposed by Governor Riley, the regulatory authority granted to the Sheriff could not be limited to these subjects. The Alabama Senate’s lack of objection to the amendment indicates that they also intended to allow the Sheriff to have an expansive authority. Amendment 744, legalizing bingo in Macon County, has similar legislative history. The intent of the citizens of Greene and Macon Counties, in passing the constitutional amendments, was to give the Sheriff the power not only to regulate, but also to define and interpret.

(3) General Tools of Constitutional Construction

In addition to the most relevant cannons of constitutional construction set forth by the Supreme Court of Alabama in Cornerstone, other general rules of constitutional interpretation can be used to interpret the Sheriff’s authority. First, the Greene and Macon County amendments should be read in pari materia with the Governor’s authority to ensure the laws are faithfully executed so as to uphold the Sheriff’s quasi-legislative grant of authority. Next, general provisions give way to specific provisions in other parts of the constitution on the same topic. The Sheriff’s specific and express constitutional authority to promulgate rules and regulations, therefore, should supersede the general authority of the Governor to enforce the laws in this one area. Finally, even though the court will be careful to interpret provisions of the constitution in light of strict separation of powers principles, Amendments 743 and 744 are express delegations of authority and, therefore, are exempt from the non-delegation doctrine.

Therefore, the Greene and Macon County amendments, under both the most applicable and general tools of Alabama constitutional construction, should be upheld as express grants of quasi-legislative authority to the respective Sheriffs of Greene and Macon Counties. These express delegations of power should supersede the Governor’s general executive power to ensure the “laws of faithfully executed.” Consequently, the interpretation of the types of
bingo allowed should fall to the Sheriff until the Supreme Court of Alabama or the legislature more specifically defines bingo in Alabama.

CONCLUSION

Even after the Supreme Court of Alabama’s most recent bingo decisions, a lot of uncertainty remains surrounding the legality of electronic bingo. This seems to stem from the court’s vague definition of the “game commonly known as bingo” and its constant reluctance to squarely decide the legality of electronic bingo. As a result, these decisions seem to signal that if the court were to decide the question, it would have to decide it on other grounds; the most obvious of which is the language of the amendments themselves, which expressly grant the Sheriff the quasi-legislative authority to determine by rules and regulations the type of bingo to be played within the county.

Amendments 743 and 744 both by their express language give the Sheriff the mandatory authority to promulgate rules and regulations for the complete operation of bingo within the county. This authority has been vested exclusively within “the Sheriff” of the county under Alabama case law. Therefore, even the Governor’s and Attorney General’s authority to “insure the laws are faithfully executed,” does not include the power to define the types of bingo to be played in Macon and Greene Counties. The people of Macon and Greene Counties stripped the Governor and Attorney General of this general constitutional authority—in this single area—when they decided to place the power to regulate bingo in the Sheriff of the county through constitutional amendment. Therefore, through vested quasi-legislative power, the Sheriff has the authority to determine through rules and regulations the types of bingo allowed within the county.