

In *Vandenberg v. Aramark Educational Services, Inc.*, 2011 WL 4507358 (Ala. 11/30/2011), the Alabama Supreme Court recently addressed the applicability of the state-action-immunity doctrine as a defense to claims that allege violations of state antitrust laws, as well as the clearly-articulated-state-policy requirement as it relates to private parties acting in conjunction with the state.

At contention in *Vandenberg* was the administration of the “dining-dollars” programs implemented by three public universities—the University of Alabama, Auburn University, and the University of Alabama at Birmingham. These programs mandate that all undergraduates pay a dining fee each semester, which is then credited back in the form of dining dollars that can be spent only at on-campus dining outlets controlled by the universities’ food-service vendors. These food-service vendors contracted with the schools to obtain exclusive control of campus dining facilities and food services, in exchange providing the schools with a commission on food sales. Students and former students from each of these schools filed three separate class actions suits alleging that the dining-dollars programs were illegal, with the universities’ boards of trustees, administrators, and food-service vendors named as defendants. The Jefferson County Circuit Court dismissed the three actions, and the Alabama Supreme Court consolidated the appeals to write one opinion and affirmed.

The students’ specifically alleged that (1) the universities’ exclusive contracts with their respective food-service vendors violated Alabama state antitrust law by creating “an unlawful trust, combine, or monopoly”; (2) the contracts violated the Alabama Constitution, which prohibited the state from being “interested in any private or corporate enterprise”; (3) the fees associated with the student ID cards, which were effectively acting as university-issued debit cards, were exceeding the statutory limit of five percent; and (4) the universities and vendors unlawfully converted the students’ funds by transforming them from lawful currency into dining dollars.

Before considering these claims, the court applied Alabama state immunity to affirm the dismissal of the boards of trustees. It then assessed whether the university administrators and food-service vendors were afforded the protection of the state-action-immunity doctrine, a tenet of antitrust law that holds states and their instrumentalities immune from antitrust violations if their alleged anticompetitive behavior was in accordance with a clearly articulated and affirmatively expressed policy of the state.

With regard to the state antitrust claim, the court held that the state-action-immunity doctrine was applicable, rejecting the students’ arguments that the doctrine was based solely on principles of federalism and should not apply to these actions, because state antitrust laws, rather than federal, were alleged to have been violated. Referencing the first articulation of the doctrine by the U.S. Supreme Court in *Parker v. Brown* in 1943, the Alabama Supreme Court determined that nothing in the text of the Alabama antitrust law would indicate that the Alabama legislature intended to restrain state actors. Rather, the language of the statute allows recovery only from a “person, firm, or corporation”—not from the state. This determination runs analogous to that of the U.S. Supreme Court with regard to the Sherman Act, which makes no mention of the state and did not intend to restrain state action. Given this analysis, the Alabama Supreme Court expressly held that state-action-immunity doctrine may be raised as a defense to claims that state antitrust laws have been violated.

While university administrators were accordingly entitled to state-action immunity from the state antitrust claims, the court proceeded to analyze whether the private food-service vendors could invoke the same state-action-immunity protection. The court noted U.S. Supreme Court precedent in the 1980 *Midcal* decision which held that a private party acting in conjunction with the state might be entitled to state-action-immunity protection if the private party is acting pursuant to a clearly articulated and affirmatively expressed state policy, and was actively supervised by the state. The court determined that the clearly-articulated-state-policy requirement was met because Alabama law provides broad power to the board of trustees to oversee and manage university operations, and it was foreseeable that such a meal program would be implemented involving the food-service vendors. Thus, as pointed out by the U.S. Supreme Court in *Town of Hallie v. City of Eau Claire* in 1985, clear articulation does not require that the alleged anticompetitive conduct be specifically “blessed by the legislature” for state-action immunity to apply; instead, clear articulation merely requires that the anticompetitive conduct is a foreseeable result of the legislation.

The next claim asserted that, in violation of the Alabama Constitution, the universities were interested in “private or corporate enterprise” by virtue of their contracts with the food-service vendors that gave universities a percentage of each dining-dollar transaction. The court determined that this prohibition does not apply to the universities as public corporations. The court also noted that the boards of trustees may be considered the state for purposes of Alabama state immunity, while nevertheless maintaining a distinct status as a public corporation for purposes of the inapplicability of the Alabama Constitutional prohibition on being interested in private enterprise.

With regard to the final claims, the court found that the statutory fee limit on university-issued debit cards was inapplicable because it was not enacted for the direct benefit of students, but instead for the benefit of merchants, and thus did not create a basis for the students’ cause of action. The court also found that the students’ conversion claims held no merit.

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