

Alabama Supreme Court Upholds Dismissal of Student Dining Dollars Complaint

Through the years it has not been unusual for college students at many campuses to complain about the food service, typically provided by an external vendor. Their complaints have been directed not only at the food - the quality, variety of menu items, etc., but also at the requirement that students, or some segment of the student body, participate in a meal plan. Recently, students at several campuses in Alabama took their discontent a step further by filing suit against their institution as well as the food service vendor, claiming that the mandatory nature of the campus meal plan is illegal.

The students in this litigation attended the University of Alabama (UA), the University of Alabama at Birmingham (UAB), and Auburn University. They challenged what has been referred to as the "dining dollars" programs at those three universities. Under these programs (though there are some differences), all undergraduate students are required to pay a mandatory dining fee each semester, which is then credited back to the students in the form of "dining dollars." The dining dollars could only be spent at on-campus dining outlets controlled exclusively by the food-service vendors for the particular campus. The dining dollars program at UA was eventually modified to allow students to spend their dining dollars at approximately four off-campus dining establishments. UAHuntsville has a variant of the dining dollars program for students living on campus, though it was not included in the lawsuit.

The students named as defendants the board of trustees governing the universities (UAH and UAB, of course, share a common board) and certain university administrators, in their official capacities. The food-service vendors were also sued. The students made four separate allegations:

1. The universities' exclusive contracts with their respective food-service vendors created "an unlawful trust, combine, or monopoly," violating *Alabama Code*, §6-5-60 (1975).
2. The contracts were unconstitutional in that they violated Alabama Constitution's prohibition against the State's "being interested in any private or corporate enterprise." See Ala. Const. Article IV, § 93.
3. The universities and food-service vendors had unlawfully converted the student's funds and transformed them from lawful currency into dining dollars.
4. The student activity cards were effectively transformed into debit cards and the fees charged were impermissibly high. This fourth allegation was only made against UA and Auburn, but not against UAB.

The students sought class certification for their claims, a judgment declaring the universities' contracts with the food-service vendors to be illegal, and injunctive relief against all defendants. The students also sought money damages from the food service vendors.

The trial court dismissed all claims, and the plaintiff students appealed the dismissal to the Alabama Supreme Court. The Supreme Court upheld the dismissal of all claims. *Vandenberg v. Aramark Educational Services, Inc.*, No. 1100557 (Ala. Sept. 30, 2011). The Court began its analysis by reciting familiar sovereign immunity law based on Article I, § 14 of the Alabama Constitution, according to which the state and related public entities may not be sued. Public universities are considered “state entities” under Alabama’s sovereign immunity doctrine, and therefore both the Auburn and Alabama boards of trustees were properly dismissed from the lawsuit. Any claims for money damages against any of the university administrators in their official capacities were also due to be dismissed, since suits claiming monetary relief against public officials acting in their official capacities are also barred by sovereign immunity. The Court further agreed with the trial court it was appropriate to dismiss the case at the very earliest stage of the lawsuit (before going through discovery and a trial), since the purpose of the immunity defense is not only to protect state defendants from ultimate liability but to spare such defendants the time and expense of having to participate in lengthy litigation. The only claims to survive the sovereign immunity analysis were those seeking declaratory or injunctive relief against the university administrators in their official capacities. These claims were addressed by the Court on the substantive grounds discussed below.

The Court then turned to the state antitrust claims. Those against the university defendants were held properly dismissed on the basis of the well-known antitrust doctrine of state-action immunity. Under this doctrine, the state and its instrumentalities are immune from a charge of violating anti-trust laws if the alleged anti-competitive behavior was undertaken pursuant to a “clearly articulated and affirmatively expressed” state policy. The Court further held that dismissal of the state antitrust claims against the food service companies was proper. It relied on a 1980 U.S. Supreme Court case holding that a private party acting in conjunction with the state might also be entitled to state-action immunity protection if its actions were similarly serving a clearly expressed state policy. Here, the “clear state policy” element was held to have been satisfied in the constitutional and statutory grant of authority to the defendant university boards of trustees to operate and manage all aspects of campus life at their institutions. The Court then observed that it was certainly foreseeable that a university would require some form of a mandated meal plan for its students and that an exclusive management contract would govern the provision of meal services on campus. The state-action immunity therefore was, the Court concluded, applicable to both the university and the vendor defendants.

Next, the Alabama Supreme Court addressed the students claim that the dining dollars programs violated Article IV, § 93 of the Alabama Constitution, which prohibits the State from having an interest in a private business. The students claimed that the universities were, in effect, “business partners” of the food service vendors, contravening this constitutional prohibition. The Court referred to prior decisions holding, first, that § 93 applied only to the “State” itself, and not to entities properly classified as public corporations; and, secondly, that in the context of § 93 the university boards of trustees were “public corporations.” The Court acknowledged the apparent inconsistency involved in holding that the university defendants are sufficiently connected with the “State” to enjoy the benefit of sovereign immunity under § 14 of Alabama Constitution, while not being regarded as the “State” under the restrictions imposed by

§ 93 of that same Constitution. However, the Court reasoned that this result was dictated by its prior, unambiguous decisions on these issues.

Regarding the students' remaining two claims, the Alabama Supreme Court agreed with the lower court that they were without merit and were properly dismissed. The students argued that the mandatory nature of the meal plan constituted conversion or "theft" of their funds. There was, however, no indication of any wrongful taking. The students had consented to the dining dollars programs by enrolling at an institution where participation in that program was a condition of attendance. The students may not have liked the program or agreed with all its provisions, but this disagreement did not support a conversion claim. Finally, the Supreme Court considered the students' complaint that the commissions paid to the food service vendors resulted in their being charged, in effect, an "excessive transaction fee." An Alabama law authorized public universities to establish a debit card program for the purchase of on-campus and off-campus goods or services but limited the "per transaction fee" to five percent. The Court quickly disposed of this part of the students' lawsuit by finding that the statute in question had the primary objective of benefitting off-campus merchants, by expanding the market for university-issued debit cards to them, and that it was not intended to provide students with a private right to sue.

The case reinforces two important legal doctrines in Alabama regarding the applicability to a public university of the benefit of sovereign immunity and the non-applicability of the strictures of the "no private business interest" rule. It also re-emphasized the very substantial discretion in the governance and control of the state's two largest university systems vested in the boards of trustees of the University of Alabama and Auburn University.