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Fourth Circuit Affirms Local Government Antitrust Immunity for Atrium Health.

The Fourth Circuit ruled last month that the Charlotte-Mecklenburg Hospital Authority, which does business as Atrium Health, is immune from antitrust damages as a "special function governmental unit" under the Local Government Antitrust Act of 1984 (the "Act"). The decision in *Benitez v. Charlotte-Mecklenburg Hospital Authority* clarifies the scope of local government antitrust immunity and confirms that mere growth of an organization beyond local borders does not prevent it from continuing to enjoy antitrust immunity as a "local government."

Background of the Local Government Antitrust Act

Over 70 years ago, the Supreme Court in *Parker v. Brown* made clear that states, "as sovereign[s]," are immune from antitrust liability when they impose anticompetitive restraints on trade or commerce "as an act of government." However, the Court did not extend such state action immunity to local governments. We have previously discussed Parker and the scope of state action immunity here. In fact, a series of Supreme Court decisions after *Parker* opened the door to substantial municipal antitrust liability. In *City of Lafayette v. Louisiana Power & Light Company*, the Supreme Court held that local governments were not automatically exempt from antitrust liability under *Parker*. A plurality of the Court suggested that local governments were exempted only when they acted "pursuant to state policy" that was "clearly articulated and affirmatively expressed." Four years later, the Court further clarified in *Community Communications Company v. City of Boulder* that a state law, which merely offered a broad "guarantee of local autonomy," did not constitute a clearly articulated and affirmatively expressed policy for purposes of antitrust immunity. After these decisions, antitrust litigation against local governments surged.

Recognizing the potential for large judgments against local governments, which would be borne by taxpayers, Congress passed the Act in 1984, shielding local governments from antitrust damages. The purpose of the Act is to prevent taxpayers from bearing the financial burden of their local governments' anticompetitive activity and allow local governments to effectively govern without devoting significant time and resources to antitrust litigation.

The Act defines "local government" to include not only "general function governmental unit[s] established by State law," such as a city or a county, but also to include "a school district, sanitary district, or any other special function governmental unit established by State law in one or more States." This definition was the question at issue in *Benitez*.

Plaintiffs' Claims

Plaintiffs contended that Atrium Health did not qualify as a "local government" because (1) it lacked key government powers, and (2) it had expanded beyond North Carolina.

On the first point, plaintiffs alleged that Atrium Health lacked certain government powers or characteristics traditionally associated with other "special function governmental units," including the power of taxation, immunity from tort liability, and characterization as a political subdivision.

Second, plaintiffs argued alternatively that even if Atrium Health was at one time a "special function government unit," it had grown so large—with 70,000 employees operating thousands of locations in more than one state, and generating $11 billion in annual revenue—that it could no longer be considered a "local government."

The Fourth Circuit's Decision

The Fourth Circuit disagreed with both of plaintiffs' arguments. First, the Court evaluated the Act's actual text and noted that nowhere in the Act's definition of "local government" could the limitations advanced by plaintiffs be found. The court considered state law and found that Atrium Health had many powers that were typically characterized as governmental powers, such as the authority to acquire real property by eminent domain and the power to issue revenue bonds under the Local Government Revenue Bond Act. While confirming that "[t]here is no magic combination of powers that a governmental body must have to be classified as a 'special function governmental unit,'" the Court found the powers that Atrium Health has "readily qualif[ied]."

Turning to plaintiffs' second argument, the Court acknowledged it would be unusual for an organization of the geographic and financial scope of Atrium Health to qualify as a "local government." But despite what the Court recognized as "common-sense appeal" of this argument, the Court held "the language of the Act does not support" it. The Act's definition of "local government" explicitly includes entities "established by State law *in one or more States*," and imposes no limitation on size or geographic scope. The Court declined to "re-write the Act to impose a limitation it does not currently contain," noting that setting such limitations would "involve complex policy considerations" and should be "the work of lawmakers, not judges."

The Court recognized that this decision may, at first blush, be at odds with *Tarabishi v. McAlester Regional Hospital*, where the Tenth Circuit reached a different conclusion in finding an Oklahoma public trust hospital was not a "special function governmental unit." However, the Fourth Circuit distinguished the holding in *Tarabishi*, citing the unique structure of a public trust hospital and differences in Oklahoma law.

While this case could be read to offer an expansive reading of local government immunity, it should be noted that the Fourth Circuit expressly limited its decision to the facts of this case. In doing so, the Court confirmed that circumstances may exist where a "special function government unit" does not enjoy the Act's immunity. For example, if plaintiffs had alleged that Atrium Health was operating outside the purview of its statutory authority under North Carolina law or that it had committed anticompetitive acts outside of the local area where it was created, the Court "might reach a different conclusion"—leaving open the possibility that the Act's reach could be limited under different circumstances.

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