IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

INDIA LYNCH, by her parent, SHAWN KING LYNCH; WENDELL PRIDE, JR., by his parent, WENDELL PRIDE; IVY ROSE BALL, by her parent, MIRANDA BALL; SLADE BERRYMAN and CANNON BERRYMAN, by their parent, TYLER BERRYMAN; ROCHESTER ANDERSON and CEZANNE ANDERSON, by their parent, STELLA ANDERSON; SHARNAY BROOKS, by her parent, MICHAEL BROOKS; ZEKEIAH ORMOND, by his parent, BARBARA L. ORMOND; ADRIAN WIDEMON, by his parent, ADA WIDEMON JONES, individually and on behalf of others similarly situated,	*	
Plaintiffs,	*	
v.	*	Civil Action No. _____
THE STATE OF ALABAMA; BOB RILEY, in his official capacity as Governor of Alabama; and TIM RUSSELL, in his official capacity as Commissioner of Revenue,	*	
Defendants.	*	

COMPLAINT

INTRODUCTION

1. This Court held in the Alabama higher education desegregation case, *Knight and Sims v. Alabama*, 458 F.Supp.2d 1273 (N.D. Ala. 2004), *aff'd*, 476

F.3d 1219 (11th Cir.), *cert. denied*, 127 S.Ct. 3014 (2007), that "the current ad valorem tax structure is a vestige of discrimination inasmuch as the [state] constitutional provisions governing the taxation of property are traceable to, rooted in, and have their antecedents in an original segregative, discriminatory policy." 458 F.Supp.2d at 1311.

> Those provisions are:
>
> (1) Ala. Const. § 214, as amended, which limits the rate of ad valorem taxation the Alabama Legislature may place on taxable property;
>
> (2) Ala Const. § 215, as amended, which limits the rate of ad valorem taxation counties may place on taxable property;
>
> (3) Ala. Const. § 216, as amended, which limits the rate of ad valorem taxation municipalities may place on taxable property;
>
> (4) Ala. Const. § 269, as amended, which limits the rate of ad valorem taxation counties may place on taxable property for the benefit of public education, and which further requires approval of those property taxes by the voters in a referendum election;
>
> (5) Ala. Const. Amendment 325, as amended, which establishes separate classes of property for purposes of ad valorem taxation, lowers assessment ratios, requires voter approval of all property tax increases, and establishes a cap or "lid" on total ad valorem taxes; and
>
> (6) Ala. Const. Amendment 373, which amends the property classes subject to taxation, lowers further the assessment ratios, establishes the current use method of property assessment, and establishes lower "lids" on total ad valorem taxes.

458 F.Supp.2d at 1278-79.

2. However, this Court denied the relief requested by the Knight-Sims plaintiffs, concluding that the causal connection between the racially motivated

state constitutional provisions and continuing segregative effects in higher education is too attenuated. *Id*. at 1312.

3. On motion for rehearing, this Court "decline[d the] request" to strike down the racially discriminatory provisions under the Fourteenth Amendment principles of *Hunter v. Underwood*, 471 U.S. 222 (1985):

> Moreover, the Court believes that the relief that the Knight-Sims Plaintiffs request is beyond the scope of this litigation – indeed, as Defendants observe in their Response Brief, this case involves desegregation in higher education; this is not a taxpayer action. The relationship between the challenged constitutional provisions and higher education is simply too attenuated to permit the Court to grant the relief that the Knight-Sims Plaintiffs request. Accordingly, the Court finds Hunter v. Underwood inapplicable under the circumstances of this case.

CV-83-M-1676 Doc. 3320 at 5.

4. The Court of Appeals did not disturb this Court's findings of fact and conclusions of law regarding the racially discriminatory purpose of the challenged property tax restrictions in the Alabama Constitution, but it affirmed the conclusion that the relief requested was beyond the scope of the higher education desegregation action:

> Plaintiffs allege that Alabama's tax policies seriously limit the ability of both the State and its counties to raise revenue from property taxes and, therefore, fund its K-12 schools. No one disputes that this is so. Plaintiffs also allege that these constitutionally enshrined tax policies were adopted for segregative purposes and with discriminatory intent. The district court has so held. The trouble is

> that neither of these contentions advance the plaintiffs' claim-asserted in its motion for additional relief-that these tax policies may be challenged under *Fordice* as policies that perpetuate segregation in Alabama's system of higher education. They may not.

476 F.3d at 1226.

5. Specifically, the Court of Appeals affirmed this Court's refusal to address the Knight-Sims plaintiffs' claim that the challenged property tax restrictions should be enjoined under *Hunter v. Underwood*, because it was "beyond this 'case or controversy.'" *Id*. at 1229 n.19.

6. This new civil action seeks to provide an appropriate judicial forum for the claims this Court held were beyond the scope of issues properly considered in *Knight v. Alabama*. The sole purposes of the instant action are to obtain a declaratory judgment that the property tax restrictions in the Alabama Constitution this Court has already found to be purposefully discriminatory violate Title VI of the Civil Rights Act, 42 U.S.C. § 2000d et seq., and the Constitution of the United States and to seek a prohibitory injunction against their future enforcement. Plaintiffs do not ask this Court to oversee reform of Alabama's property tax system, its system for raising revenue for public education, or the adequacy of its funding of the system of public education. As stated by the Alabama Supreme Court and the U.S. Court of Appeals, tax reform and the provision of adequate education funding are the responsibility of the legislative branch of government. If

this Court grants the relief requested herein, the Governor and Legislature of Alabama will be able to carry out these vital legislative functions free of the purposefully racially discriminatory barriers placed in the state constitution.

PARTIES

7. Plaintiffs India Lynch and Wendell Pride, Jr., are minor African-American citizens of Alabama and students in the Lawrence County, Alabama, public schools. They appear through their parents and next friends, Shawn King Lynch and Wendell Pride, who are residents and taxpayers of Lawrence County over the age of eighteen years. Plaintiffs are injured by the racially discriminatory property tax restrictions in the Alabama Constitution, which impede their ability and the ability of their elected representatives to raise state and local revenues adequately to fund the public services they need, including public education.

8. Plaintiffs Ivy Rose Ball, Slade Berryman, and Cannon Berryman, are minor white citizens of Alabama and students in the Lawrence County, Alabama, public schools. They appear through their parents and next friends, Miranda Ball and Tyler Berryman, who are residents and taxpayers of Lawrence County over the age of eighteen years. Plaintiffs are injured by the racially discriminatory property tax restrictions in the Alabama Constitution, which impede their ability and the ability of their elected representatives to raise state and local revenues adequately

to fund the public services they need, including public education.

9. Plaintiffs Rochester Anderson, Cezanne Anderson, Sharnay Brooks, Zekeiah Ormond, and Adrian Widemon are minor African-American citizens of Alabama and students in the Sumter County, Alabama, public schools. They appear through their parents and next friends, Stella Anderson, Michael Brooks, Barbara L. Ormond, and Ada Widemon Jones, who are residents and taxpayers of Sumter County over the age of eighteen years. Plaintiffs are injured by the racially discriminatory property tax restrictions in the Alabama Constitution, which impede their ability and the ability of their elected representatives to raise state and local revenues adequately to fund the public services they need, including public education.

10. Defendant State of Alabama has departments, agencies and political subdivisions which are programs or activities receiving federal financial assistance within the meaning Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d and 2000d-4a. Congress has abrogated the Eleventh Amendment immunity of the State of Alabama with respect to plaintiffs' claims in this action. 42 U.S.C. § 2000d-7.

11. Defendant Bob Riley, in his official capacity as Governor of Alabama, exercises the supreme executive power of the State of Alabama. Ala. Const., Art.

V, § 13. Among his executive duties, Governor Riley must appoint the Alabama Commissioner of Revenue, who holds office at the pleasure of the Governor. Ala. Code § 40-2-41. As Governor, defendant Riley must also approve legislation governing the revenue policies of state and local governments in Alabama.

12. Defendant Tim Russell, in his official capacity as Commissioner of Revenue, is the chief executive officer of the Alabama Department of Revenue and exercises all the powers, authority, and duties vested in the Department of Revenue. Ala. Code § 42-2-40. The Department of Revenue enforces the provisions of the Alabama Constitution complained of herein and their enabling statutes and promulgates rules and regulations governing the valuation of property subject to ad valorem taxes pursuant to its enforcement authority.

CLASS ALLEGATIONS

13. Plaintiffs allege that they satisfy the requirements of Rule 23(a) and Rule 23(b)(2), Fed.R.Civ.P. They ask the Court to certify them as representatives of the plaintiff class of all public school students and citizens of Alabama who are injured by the racially discriminatory property tax provisions in the Alabama Constitution complained of herein.

14. Plaintiffs India Lynch, Wendell Pride, Jr., Rochester Anderson, Cezanne Anderson, Zekeiah Ormond, Adrian Widemon and their parents further request that

they be certified to represent a subclass of all African-American public school students and citizens of Alabama who are injured by the racially discriminatory property tax provisions in the Alabama Constitution complained of herein.

15. Plaintiffs Ivy Rose Ball, Slade Berryman, Cannon Berryman and their parents further request that they be certified to represent a subclass of all white public school students and citizens of Alabama who are injured by the racially discriminatory property tax provisions in the Alabama Constitution complained of herein.

ALLEGATIONS OF FACT

16. Plaintiffs allege and adopt as if set out fully herein the findings of fact made by this Court in *Knight and Sims v. Alabama*, 458 F.Supp.2d 1273 (N.D. Ala. 2004), *aff'd*, 476 F.3d 1219 (11th Cir.), *cert. denied*, 127 S.Ct. 3014 (2007), some, but not all, of which are summarized in the following paragraphs.

The Racially Discriminatory Purpose of the Challenged Provisions.

The Alabama Constitution during the regime of slavery.

17. Land and the revenue obtained from land have historically funded all levels of public education in Alabama. When Alabama was admitted to the Union in 1819, Congress reserved the sixteenth section in every township to fund common schools and two full townships to support a state university. Income from

the lease and sale of these dedicated lands was the main source of public financing for local schools and the fledgling University of Alabama during the antebellum period.

18. The 1819 Alabama Constitution directed only the legislative encouragement of education, and school revenues were raised entirely at the local level. The state legislature created local boards of school commissioners to manage school finances and required income from the school lands to be deposited in the state bank for redistribution according to student populations. But the state bank made the trust fund available to speculators desperate for the capital needed to purchase more land and slaves, the two primary sources of wealth in Alabama's economy. "In 1843, the state bank failed, and $1.3 million derived form the sales of sixteenth section lands and over $300,000 from the sale of the university lands were lost." 458 F.Supp.2d at 1280.

19. The first statewide public school system was established by the legislature in 1854. The statute authorized counties to levy a one mill ad valorem tax, without any voter referendum requirement, to be paid directly to county treasuries for the use of schools. 458 F.Supp.2d at 1281.

20. Before the Civil War, ad valorem taxes on land and slaves were the primary sources of revenue for the counties' non-educational expenditures.

Revenues from the slave tax outstripped land taxes until just before the war started, so wealthy plantation owners in the Black Belt bore the brunt of taxes, freeing the many non-slave-holding white farmers from substantial levies on their property. 458 F.Supp.2d at 1281.

21. There were no public schools for free blacks, and in 1832 the Alabama Legislature "enacted a statute making it a crime to instruct any black person, free or slave, in the arts of reading and writing." *Knight v. Alabama*, 787 F.Supp. 1030, 1067 (N.D. Ala. 1991), *aff'd in part and rev'd in part*, 14 F.3d 1534 (11th Cir. 1994) (*citing* 1832 Ala.Acts, sec. 10, p. 16).

The Alabama Constitution during the Civil War and Reconstruction.

22. Neither the 1861 nor the 1865 Alabama Constitution contained new provisions regarding education, leaving intact the state legislature's plenary authority over the funding and operation of public schools. 458 F.Supp.2d at 1281. But the 1868 Radical Reconstruction Constitutional Convention, dominated by white Republicans and their newly freed black constituents, made education for all students, black and white, a priority for state government. It created a State Board of Education and gave it legislative powers, which the Board exercised aggressively to increase school revenues through head taxes and ad valorem taxes levied on property accurately and uniformly assessed at its fair market value.

These funds were centralized and redistributed to the counties on a per capita basis, without regard to race. 458 F.Supp.2d at 1281-82; 787 F.Supp. at 1070.

23. After the Civil War there was no more slave tax, so property taxes not only had to support all non-education government services but now had to pay for a vastly expanded, racially dual (not racially integrated) public school system. This produced a vigorous white backlash:

> During the Radical Reconstruction, white small farmers found themselves paying substantially higher taxes on their property, yet receiving fewer public benefits because the State was distributing those funds equally among white and black schools. Whites resented having to pay for the education of blacks, who paid relatively few taxes, and that resentment fueled accusations of mismanagement and abuse of public funds – *i.e*. that their increased taxes were simply lining the pockets of white carpetbaggers and radical officials. As a result, poorer white landowners became motivated to cooperate with wealthier whites to form a "sort of all white alliance of the Democratic party," united for reducing taxes and establishing supremacy for whites. On the other side of the political line were the Republicans, who were essentially blacks and a handful of their white allies, carpetbaggers, and scalawags.

458 F.Supp.2d at 1282 (citations omitted).

The Redeemer Constitution of 1875.

24. The Democratic Party "redeemed" Alabama from "black rule" and restored white supremacy by capturing the office of Governor and control of both houses of the Legislature in the 1874 state elections. 787 F.Supp. at 1070-71. Back in power, the Democrats convened to adopt the 1875 Redeemer Constitution,

which abolished the State Board of Education, prohibited racially mixed schools, *id*. at 1070-72, and created constitutional barriers to additional property taxes.

> In 1875, whites from the Black Belt, concerned that a black majority might regain political power and raise taxes, placed in the constitution millage caps for both state and local property taxes. The 1875 Constitution thus became the first Alabama constitution to place strict constitutional limits on the ability of both the State and local governments to tax property.
>
> Specifically, the 1875 Constitution established a maximum tax rate of seven and one half mills, which was the same legislatively established rate that had been assessed under the 1868 Constitution, and a maximum tax rate of five mills for counties and municipalities. Racial motives permeated the establishment of constitutional caps on millage rates. . . .

458 F.Supp.2d at 1283 (citations omitted).

25. Of equal importance with the constitutional millage caps was Democratic control of tax assessments, which was used "to reduce property assessments in the Black Belt far below market value, [and] which disadvantaged other white counties." 458 F.Supp.2d at 1283 (citation omitted).

26. The share of the common school fund available for the education of blacks was drastically reduced by the 1891 Apportionment Act, which gave local school authorities discretion to divert funds intended for blacks to white schools. 458 F.Supp.2d at 1283-84. In the Black Belt, "this had an enormous and devastating effect on black education." *Id*. (citation omitted).

> The 1891 Apportionment Act also had an impact on the politics

> of property taxes. By diverting funds from black schools to white schools, there was less of a need for additional property taxes in Black Belt counties because white schools were being funded adequately. Consequently, the Black Belt whites, due to total population apportionment, were able to thwart attempts by reformers in urban areas and in white counties to raise taxes to increase funding for public schools.

458 F.Supp.2d at 1284.

The Alabama Constitution of 1901.

27. The 1901 Constitution of Alabama is currently in force.

"Disfranchising blacks and maintaining white supremacy were the central purposes of the 1901 Constitution." 458 F.Supp.2d at 1284. These racially discriminatory motives are well established. *Hunter v. Underwood*, 471 U.S. 222 (1985).

28. There is a direct linkage between black disfranchisement and the avoidance of property taxes.

> Black Belt whites were willing to support legal disfranchisement of blacks in the 1901 Constitution, and thus relinquish their control over state politics through control of the large black voting populations, out of fear that events at the national level would eventually lead to the re-enfranchisement of blacks, thus placing whites' property in danger of being taxed to support education for blacks. The ensuing compromise between the whites in the 1901 constitutional convention was that the white counties would effectively control the executive offices of the State, while the Black Belt counties would control the Legislature. This arrangement assured that the Black Belt could thwart attempts to increase property taxes.

458 F.Supp.2d at 1284 (citations omitted).

29. The same millage caps placed in the 1875 Constitution were retained in the 1901 Constitution, except that the 7.5 mill cap on state property taxes was reduced to 6.5 mills, with the other 1 mill allocated to counties and dedicated to public schools. 458 F.Supp.2d at 1284.

> The 1.0 mill optional county tax for schools contained for the first time in Alabama history a voter referendum requirement, which was crafted to ensure, with disfranchisement, that only whites could give their consent to higher local property taxes. This general hostility to home rule in the 1901 Constitution, as well as the 1875 Constitution, was motivated at least in part by race: white control of the state government . . . is an important fall-back provision for guaranteeing the maintenance of white supremacy in majority black counties.

458 F.Supp.2d at 1284-85 (citation and inner quotes omitted).

30. With blacks finally removed from the electoral process, white Alabamians during the Progressive Era renewed their efforts to increase revenues for public schools and other government services. But the combination of the voter approval requirement for any millage increases, either by constitutional amendments for particular counties and municipalities or by exercise of the local constitutional option, and the pattern of unequal and unfair property assessments carried over from the nineteenth century stymied the efforts of white school reformers. Neither creation of a state board of equalization, nor the enactment in 1911 and 1935 of a statutory assessment ratio of only 60% of fair market value, nor a statewide constitutional amendment authorizing slightly higher millage rates

proved effective. 458 F.Supp.2d at 1285.

31. By the late 1920s, Alabama's public school system was in such desperate financial straits that state government turned from property taxes to other revenue sources to increase school funds. First, in 1927, the Legislature created the Special Education Trust Fund (SETF) (now called simply the Education Trust Fund), then in 1933 it got voters to ratify a constitutional amendment authorizing a state income tax, and then in 1935 it enacted the first state sales tax. Proceeds from the income tax and sales tax, after paying off the floating debt, went mainly to the SETF. 458 F.Supp.2d at 1285-86.

32. In 1947, the state income tax was constitutionally earmarked for K-12 teacher salaries. 458 F.Supp.2d at 1286.

The Civil Rights Era and the Lid Bill Amendments.

33. Alabama's constitutional development since Reconstruction had been driven by its policy of shielding property from taxation that whites in the Black Belt feared could be imposed for the benefit of black public school students by democratically elected state and local governments potentially influenced by a re-enfranchised black electorate. The two main mechanisms of this policy were constitutionally entrenched millage caps and artificially low property assessments. This century-old scheme came under attack on several fronts after *Brown v. Board*

of Education, 347 U.S. 483 (1954).

34. The opening salvo in Alabama's campaign of massive resistance was the adoption in 1956 of Amendment 111, which struck from the 1901 Constitution the requirement of state support of public education, empowered state government to lease or sell public school resources to private schools, and gave parents the right to send their children to "schools provided for their own race." Ala. Const., Amend. 111. Amendment 111 was adopted for racially discriminatory purposes. 787 F.Supp. at 1104; 458 F.Supp.2d at 1287.

35. Federal intervention in Alabama's racially segregated society came at a time of unprecedented economic growth during the 1950's and 1960's that placed great demands on the state for expansion and improvement of its system of elementary, secondary and higher public education. 787 F.Supp. 1119-33. But the efforts of public school advocates to raise additional education revenues were stymied by public opposition to desegregation encouraged by the Legislature and Governors Patterson and Wallace. 458 F.Supp.2d at 1287-91; 787 F.Supp. at 1103-05.

36. Attempts to raise constitutional limits on millage rates were defeated, so education forces refocused their efforts on aspects of the property tax system not restricted by the 1901 Constitution, primarily the low and unfair property

assessments that varied in crazy quilt fashion from county to county. But state initiatives aimed at enforcing uniform assessments of all property even at a low 30% of fair market value were defeated by wealthy landowners in the Black Belt and by urban industrialists. 458 F.Supp.2d at 1287-92.

37. Finally, a three-judge federal district court in Montgomery struck down the irrational property assessment system on non-racial equal protection grounds. *Weissinger v. Boswell*, 330 F. Supp. 615 (M.D. Ala. 1971) (3-judge court). The *Weissinger* court gave the State one year to create a uniform property assessment system and threatened to impose the 60% assessment ratio provided by the 1935 statute if equalization was not achieved. The 1972 deadline later was extended to 1979 because of difficulties in conducting a statewide property reassessment. 458 F.Supp.2d at 1292.

38. The State's immediate response to the *Weissinger* decision was to adopt in 1971 the first "Lid Bill," Amendment 325 to the 1901 Constitution, which was ratified by the voters in June 1972. Until now there had been a state constitutional requirement that all property be assessed uniformly for tax purposes. Ala. Const., § 217. Amendment 325 adopted the first property classification system in Alabama history: a 30% of fair market value assessment ratio to be applied to utilities property, 25% to all other business property, and 15% to residential, farm

and forest lands. And it imposed an absolute "lid" on all ad valorem taxes of 1.5% of fair market value. Ala. Const., Amend. 325.

39. The result of Amendment 325 "was to legalize the de facto classifications in effect when *Weissinger* was filed in 1969." 458 F.Supp.2d at 1294. Governor Wallace linked it expressly to opposition to federally ordered school desegregation. 458 F.Supp.2d at 1293. Legislative supporters of landed interests, especially in the Black Belt, also linked the Lid Bill to increasing black voter registration following passage of the Voting Rights Act of 1965, 42 U.S.C. § 1973 et seq., and to federal court-ordered reapportionment of the Legislature to comply with the one-person, one-vote requirement of *Reynolds v. Sims*, 377 U.S. 533 (1964). Rising African-American political empowerment rekindled historical fears of tax increases in the Black Belt. 458 F.Supp.2d at 1288-89.

40. Indeed, Amendment 325 was the product of many historical forces coming to a head:

> The convergence in one year, 1971, of four federal mandates requiring re-enfranchisement of African-Americans, reapportionment of the Alabama Legislature, fair reassessment of all property subject to taxes, and school desegregation, had thus created a "perfect storm" that threatened the historical constitutional scheme whites had designed to shield their property from taxation by officials elected by black voters for the benefit of black students.

458 F.Supp.2d at 1294 (citations omitted).

41. In 1978, before the *Weissinger* deadline expired, agricultural and business interests, with the support of Governor Wallace, got the Legislature further to amend the Lid Bill. Over the opposition of the recently integrated Alabama Education Association, which "was viewed as a liberal, pro-black lobby," Amendment 373 to the 1901 Constitution was enacted and ratified by the voters. 458 F.Supp.2d at 1295. Amendment 373, among other things, lowered the assessment ratio for residential, agricultural and forest land to 10% and made that low ratio applicable not to fair market value of the property but to its "current use" value. Ala. Const., Amend. 373, § (j).

42. There is an historical pattern of the racial motives behind the property tax provisions in the Alabama Constitution:

> There is a direct line of continuity between the property tax provisions of the 1875 Constitution, the 1901 Constitution, and the amendments up to 1978. . . . The historical fears of white property owners, particularly those residing in the Black Belt, that black majorities in their counties would eventually become fully enfranchised and raise their property taxes motivated the property tax provisions in the 1901 Constitution and the amendments to it in 1971 and 1978.
>
> . . . Indeed, Black Belt and urban industrial interests successfully used the argument that it is unfair for white property owners to pay for the education of blacks to produce all the state constitutional barriers to property taxes from 1875 to the present, including the 1971 and 1978 Lid Bill amendments.

458 F.Supp.2d at 1296-97 (citations omitted).

Continuing racially discriminatory impact.

43. The racially motivated property tax restrictions in the Alabama Constitution continue to have their intended discriminatory effects, namely, inadequate revenues currently collected from local property taxes, the resulting underfunding of the state's K-12 public school system, particularly rural and majority-black schools, the over-dependence of K-12 on the Education Trust Fund and the consequent underfunding of Alabama's entire system of public education, including higher education.

> [O]ne of the most important changes needed in Alabama is a substantial increase in property taxes because in Alabama, the property tax revenue is so low the state has to pick up the bulk of the cost of the public schools from regressive sales and income taxes; moreover, inasmuch as higher education is funded from the same source as K-12, the monies available to higher education are substantially reduced.

458 F.Supp.2d at 1304 (citations omitted).

44. At $250 per person, Alabama's state and local property taxes are the lowest of all fifty states, six times lower than the three top ranked states, three times lower than the national average, and two times lower than the next lowest states. 458 F.Supp.2d at 1297.

45. Property taxes account for only five percent of Alabama's revenue sources, more than half of which are collected from sales taxes as high as eleven

percent and from a regressive income tax. 458 F.Supp.2d at 1298.

46. This tax system disadvantages low-income citizens and poor, rural counties. It is neither just nor practical to seek more education revenues through sales and income taxes; "a greater reliance on sales taxes cannot compensate for disproportionately low property taxes." 458 F.Supp.2d at 1298.

47. Seventy percent of Alabama's land mass is forest land, but due to the 10% assessment ratio and current use provisions of the 1971 and 1978 Lid Bill Amendments, forest land contributes only 2% of all property tax revenue. 458 F.Supp.2d at 1298.

48. Merely raising millage rates won't produce substantially higher property tax revenues when they are applied to an average of only 8.33% of the fair market value of all residential, forest and agricultural lands. 458 F.Supp.2d at 1298.

49. "The effect of low property tax revenues has had a crippling effect on poor, majority black school districts." 458 F.Supp.2d at 1299 (citation omitted). These majority-black school districts are primarily in the rural Black Belt.

> In rural areas of the state, most local school districts simply do not have a critical mass of valuable commercial property and residential homes–the two types of property shouldering eighty-five percent of the property taxes–to raise adequate funds for public education. Moreover, in areas where the significant source of wealth is timber, the property tax structure bars taxation above ten percent of the current use value of such areas; consequently, that property does not provide much property tax revenue.

Id. (citations omitted). The named plaintiffs, all of whom reside and/or attend public schools in Lawrence County and Sumter County, are particularly injured by these discriminatory effects.

50. Because of the anemic property taxes available to most local school systems, low-income students throughout Alabama, who are disproportionately black, suffer from underfunding. "In 2003, Alabama spent $5,908 per K-12 student, compared with a national average of $7,376 per student." 458 F.Supp.2d at 1302.

51. The racially motivated property tax barriers in the Alabama Constitution disadvantage low- and middle-income students, especially African Americans, at all levels of public education.

52. Disproportionately more black students fail to get their high school diplomas, thus missing the first step to higher education. Even when black students graduate from high school, there are

> two aspects in which the underfunding of K-12 public schools in Alabama has a negative impact on access to higher education: (1) the lack of financial resources results in lower academic achievement in K-12 and less likelihood of success in higher education; and (2) the lack of financial resources prevents poor school systems from offering college preparatory curriculums.

458 F.Supp.2d at 1301.

53. As a result, "more than a third of Alabama's college freshmen are not

prepared for college level classes, and the number is rising, even though high school graduation exam scores and some elementary scores are improving." 458 F.Supp.2d at 1302.

54. African Americans suffer most from this lack of preparation. There is "a strong correlation among black students, poverty, and low achievement scores." 458 F.Supp.2d at 1300.

55. The underfunding of public higher education creates additional financial barriers to access for low-income students, who in Alabama are predominately black. "Blacks in Alabama have a great deal of financial need in order to be able to attend college, in comparison to white Alabamians and also in comparison to blacks residing in other states." 458 F.Supp.2d at 1307.

56. The missing property tax revenues reduce the share of ETF funds available for colleges and universities, causing increases in tuition and fees at an average rate of 8% to 12% per year. 458 F.Supp.2d at 1307-08.

57. "Lack of state funding has also adversely impacted funding for financial aid, which disproportionately burdens poor, black families." 458 F.Supp.2d at 1300.

> [T]he underfunding of public education in Alabama, the resulting rising tuition and fees at its public universities, and the declining or disappearing availability of need-based state and institutional financial aid seriously impact black Alabamians in particular, as well as other

> low and middle income students, making it increasingly more difficult for those students to have access to enrollment in and completion of higher education.

458 F.Supp.2d at 1307.

ALLEGATIONS OF LAW

58. The racially motivated state constitutional property tax provisions challenged herein violate plaintiffs' federal statutory rights guaranteed by Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq.

59. The racially motivated state constitutional property tax provisions challenged herein violate plaintiffs' constitutional rights guaranteed by the Equal Protection Clause of the Fourteenth Amendment. *Hunter v. Underwood*, 471 U.S. 222 (1985).

60. The current ad valorem tax structure is a vestige of discrimination inasmuch as the constitutional provisions governing the taxation of property are traceable to, rooted in, and have their antecedents in an original segregative, discriminatory policy. 458 F.Supp.2d at 1311.

61. It is clear that the current tax structure in Alabama cripples the effectiveness of state and local governments in Alabama to raise funds adequate to support public education. 458 F.Supp.2d at 1311.

62. The Lid Bill and the low assessment ratios impede and restrict the

ability of the State and local governments to raise revenue from taxation of property. 458 F.Supp.2d at 1311-12.

63. Plaintiffs are without an adequate remedy at law and will continue to suffer irreparable damage absent the relief requested hereafter.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray that this Court will grant them the following relief:

A. A declaratory judgment that §§ 214, 215, 216, and 269, as amended, and Amendments 325 and 373 to § 217 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, and the statutes and regulations that implement their restrictions, violate the rights of plaintiffs and the class they seek to represent guaranteed by Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., and the Equal Protection Clause of the Fourteenth Amendment.

B. An injunction prohibiting defendants, their political subdivisions, departments, officers, agents, attorneys, employees and those acting in concert with them or at their direction from enforcing §§ 214, 215, 216, and 269, as amended, and Amendments 325 and 373 to § 217 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, and the statutes and regulations that

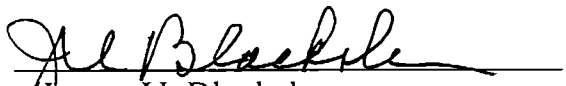
implement these restrictions in the Alabama Constitution.

C. An award of their costs incurred in prosecuting this action, including an award of attorneys' fees and expenses, pursuant to 42 U.S.C. § 1988.

D. Such other and further equitable relief as the Court may deem just and equitable.

Plaintiffs further pray that this Court will stay issuance of the prohibitory injunction requested in paragraph B. *supra* for a period of one year to give the Governor and Legislature an opportunity to adopt appropriate relief. See *Weissinger v. Boswell*, 330 F. Supp. 615, 625 (M.D. Ala. 1971) (3-judge court).

Respectfully submitted this 13th day of March, 2008,



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