

# ALABAMA’S ORIGINAL SIN: PROPERTY TAXES, RACISM, AND CONSTITUTIONAL REFORM IN ALABAMA

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## INTRODUCTION

*“Suspensions amongst thoughts are like bats amongst birds,—they ever fly by twilight: certainly they are to be repressed, or at the least well guarded; for they cloud the mind, they lose friends, and they check with business, whereby business cannot go on currently and constantly . . . .”*

—Francis Bacon<sup>1</sup>

On November 6, 2012, Alabama citizens voted down Amendment 4, which proposed to remove racist language from the state constitution calling for poll taxes and segregated schools for people of different races.<sup>2</sup>

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1. BENJAMIN G. LOVEJOY, FRANCIS BACON (LORD VERALUM): A CRITICAL REVIEW OF HIS LIFE AND CHARACTER WITH SELECTIONS FROM HIS WRITINGS 244 (London, T. Fisher Unwin 1888).

2. See S.B. 112, 2011 Leg., Reg. Sess. (Ala. 2011) (Amendment 4 proposed to remove the following language from Section 256 of the Alabama constitution: “Separate schools shall be provided for white and colored children, and no child of either race shall be permitted to attend a school of the other race” and “[t]o avoid confusion and disorder and to promote effective and economical planning for education, the legislature may authorize the parents or guardians of minors, who desire that such

Although the provisions in question have been judicially defunct for years, proponents of Amendment 4 claimed that it was a symbolic way to show “that Alabama’s past is not our future.”<sup>3</sup> However, opponents of the bill called it a “hoax . . . a wolf with sheep’s clothes” meant to aid the legislature in slashing education funding in an effort to cure budget shortfalls.<sup>4</sup> The defeat of Amendment 4 is just the latest illustration of the veil of suspicion that has clouded constitutional reform in Alabama for decades.

Amended over 800 times, the Alabama Constitution of 1901 is infamous as the largest constitution in the world.<sup>5</sup> It is also infamous as the document which set the framework for segregation and disenfranchisement in Alabama throughout much of the Twentieth Century.<sup>6</sup> Given this backdrop, reforming or replacing the 1901 constitution has proven to be a complicated and controversial process. Any attempt at reform is invariably seen by opponents as a pretext for something much more sinister, such as increased taxes or the reinstatement of *de jure* segregation. Frustrated with the lack of progress in the public arena, some advocates of constitutional reform have turned to the federal courts to try to eliminate some of the 1901 constitution’s provisions relating to property taxes and education.<sup>7</sup> Most recently, in *Lynch v. Alabama*,<sup>8</sup> a group of students alleged that the limits on state, county, and local property taxes enshrined in the 1901 constitution violate the Equal Protection Clause of the Fourteenth Amendment by restricting revenue for K–12 schools and thus discriminating against African-American students. According to the plaintiffs in *Lynch*, racism was the “original sin” of Alabama’s Constitution, tainting each and every one of its provisions.<sup>9</sup> However, such

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minors shall attend schools provided for their own race, to make election to that end, such election to be effective for such period and to such extent as the legislature may provide.”).

3. Debbie Elliott, *Ala. Racist Language Measure Draws Unexpected Foes*, NPR (Nov. 1, 2012, 12:38 P.M.), <http://www.npr.org/2012/11/02/164107184/ala-racist-language-measure-draws-unexpected-foes>.

4. *Id.* Primarily, opponents were upset that the proposed amendment contained no language guaranteeing a right to public education. However, the current version of the 1901 constitution contains no such guarantee in the first place. See ALA. CONST. art. XIV, § 256 (“[N]othing in this Constitution shall be construed as creating or recognizing any right to education or training at public expense . . .”).

5. Christopher W. Hammons, *State Constitutional Reform: Is it Necessary?*, 64 ALB. L. REV. 1327, 1328 (2001); Mark Sabel, *The Role of Stare Decisis in Construing the Alabama Constitution of 1901*, 53 ALA. L. REV. 273, 276 (2001).

6. See generally Latasha L. McCrary, *Suffering from Past Evils: How Alabama’s 1901 Constitution Played a Hand in the 2008 Presidential Election*, 12 BERKELEY J. AFR.-AM. L. & POL’Y 4 (2010).

7. ALA. CONST. art. XI, § 11 (providing that property taxes shall be used for the maintenance of public schools); see also KNIGHT & SIMS VS. ALABAMA (last updated Mar. 26, 2012, 6:22 A.M.), <http://knightsims.com>.

8. No. 08-S-450-NE, 2011 U.S. Dist. LEXIS 155012 (N.D. Ala. Oct. 21, 2011).

9. *Id.* at \*6–7.

attempts at judicial constitutional reform have been just as unfruitful as legislative attempts.

In seeking to add to the ongoing debate over constitutional reform in Alabama, this Note analyzes the underlying historical issues of property taxes in Alabama and provides a descriptive analysis of Judge Lynwood Smith's decision in *Lynch*. The focus of this Note is not on the soundness of Alabama's property tax structure as a matter of policy, nor on the shortcomings of the 1901 constitution as a whole.

Instead, this Note argues that Alabama's limits on property taxes were not born out of racism, as was most of the 1901 constitution, but were created for several legitimate, nondiscriminatory purposes. Part I summarizes Alabama's property tax structure and illustrates the problems that it can create for public school funding. Part II analyzes the proceedings of the 1901 Alabama Constitutional Convention and deciphers the various motivations behind the property tax provisions. Part III summarizes *Knight v. Alabama*, a seven-part desegregation case which was also the first attempt to strike down Alabama's property tax provisions as violations of the Equal Protection clause. Part IV examines the factual findings and conclusions of law in the most recent case of *Lynch v. Alabama*. In conclusion, Part V sets forth a framework under which Alabamians should pursue constitutional reform—free of the veil of suspicion that has clouded the state since the 1901 Convention.

## I. PLAYING LIMBO: ALABAMA'S PROPERTY TAX STRUCTURE

It has been repeatedly noted that Alabama's *ad valorem* property tax structure enforces the lowest property tax in the nation in both rate and revenue.<sup>10</sup> This structure, as set forth in the Alabama Constitution of 1901, entrenches several layers of limitations on the rate of *ad valorem* taxation that can be levied on real and personal property. First, property taxes levied by the state government are limited to 6.5 mills.<sup>11</sup> One "mill" is equal to one-thousandth of a dollar or one-tenth of a penny.<sup>12</sup> Second, property

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10. See generally Laura D. Chaney, *Alabama's Constitution—A Royal Pain in the Tax: The State's Constitutionally Defective Tax System*, 32 CUMB. L. REV. 233 (2001); Bruce P. Ely & Howard P. Walthall, Sr., *State Constitutional Limitations on Taxing and Spending: A Comparison of the Alabama Constitution of 1901 to its Counterparts*, 33 CUMB. L. REV. 463 (2003); Susan Pace Hamill, *An Argument for Tax Reform Based on Judeo-Christian Ethics*, 54 ALA. L. REV. 1 (2002); Susan Pace Hamill, *Constitutional Reform in Alabama: A Necessary Step Towards Achieving a Fair and Efficient Tax Structure*, 33 CUMB. L. REV. 437 (2003) [hereinafter Hamill, *Constitutional Reform in Alabama*].

11. ALA. CONST. art. XI, § 214 ("The legislature shall not have the power to levy in any one year a greater rate of taxation than sixty-five one-hundredths of one per centum on the value of the taxable property within this State.") (emphasis added).

12. For a helpful guide to Alabama's property taxes, see LEGISLATIVE FISCAL OFFICE, A LEGISLATOR'S GUIDE TO ALABAMA'S TAXES 5–6 (2013) ("6.5 mills equal \$.0065.").

taxes levied by county governments are limited to 5 mills, but counties may also levy an additional 1 mill special tax for education funding.<sup>13</sup> Third, municipal property taxes are also limited to 5 mills.<sup>14</sup> For example, if the state, as well as the county and municipality in which one lived, were to set their property taxes at the highest permissible rate, property would only be taxed at an effective rate of 1.75%.<sup>15</sup> Nonetheless—as is often the case with Alabama’s constitution—things are not quite that simple.

While the millage rate limit on *state* property taxes has remained untouched, over 100 local amendments have been added to allow certain municipalities and school districts to raise millage rates above the 5 mill limit in Section 217.<sup>16</sup> But any proposed increase in local property taxes must be approved through a local referendum, then win at least three-fifths of the vote in the Alabama House and Senate, then be approved by the Local Constitutional Amendment Commission, and finally win a majority of votes by the people in the affected area.<sup>17</sup> Consequently, many counties and municipalities have not raised their property taxes to the newer, higher limits due to the cumbersome process and Alabamians’ general opposition to higher taxes.<sup>18</sup>

Furthermore, Alabama’s property taxes are also limited by the assessment rates set by the infamous “Lid Bill,” which established four classes of taxable property, each with a different assessment ratio, and imposed a cap of 1.5%, or 15 mills, on the *aggregate* amount of taxes that can be levied by *all* taxing authorities each year.<sup>19</sup> The Lid Bill was enacted

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13. ALA. CONST. art. XI, § 215 (“No *county* in this state shall be authorized to levy a greater rate of taxation in any one year on the value of the taxable property therein than one-half of one per centum [0.005] . . .”) (emphasis added). *Id.* art. XIV, § 269 (“The several counties in this state shall have power to levy and collect a special tax not exceeding ten cents on each one hundred dollars of taxable property in such counties . . . provided, that the rate of such tax . . . shall have been first submitted to a vote of the qualified electors of the county, and voted for by three-fifths of those voting at such election; but the rate of such special tax shall not increase the rate of taxation, state and county combined, in any one year, to more than one dollar and twenty-five cents on each one hundred dollars of taxable property . . .”)

14. *Id.* § 216 (“No *city, town, village, or other municipal corporation, other than as provided in this article, shall levy or collect a higher rate of taxation in any one year on the property situated therein than one-half of one per centum [0.005] of the value of such property as assessed for state taxation during the preceding year . . .*”) (emphasis added).

15. This example assumes that the Lid Bill does not cap all aggregate property taxes at 15 mills. See *infra* note 19 and accompanying text.

16. Howard P. Walthall, Sr., *A Doubtful Mind: Understanding Alabama’s State Constitution*, 35 CUMB. L. REV. 7, 97–98 (2004).

17. ALA. CONST. art. XIV, § 269; see also Hamill, *Constitutional Reform in Alabama, supra* note 10, at 444.

18. See Ely & Walthall, *supra* note 10, at 465.

19. ALA. CONST. art. XI, § 217; *Weissinger v. White (Weissinger II)*, 733 F.2d 802, 804 (11th Cir. 1984). In other words, under the cap or “lid” of the Lid Bill, the State, a county, any municipalities within the county, and all school districts within the county *combined* cannot tax property at more than 1.5% of the fair market value. See *Lynch v. Alabama*, No. 08-S-450-NE, 2011 U.S. Dist. LEXIS 155012, at \*36–37 (N.D. Ala. Oct. 21, 2011).

in response to a 1971 case, *Weissinger v. Boswell*,<sup>20</sup> in which a three-judge federal district court found that the assessment ratios were being applied unequally across county lines, in violation of the Equal Protection clause of the Fourteenth Amendment.<sup>21</sup> Of the four classes of taxable property created by the Lid Bill, Class III is the most common—encompassing all agricultural, forest, residential, and historical property in the state.<sup>22</sup> Class III property is assessed at 10% of the “current use value” of the property, which measures a property’s value by its production value as it is used in a given year.<sup>23</sup> As a result, the most valuable taxable property within most school districts is often assessed and taxed at much lower rates than it is worth. For example, agricultural and forest land may have high fair market value due to its potential for commercial development. But under current use valuation, that property is only valued by its production in crops or timber rather than its fair market value.

Consequently, the low assessment ratios, as well as the current use valuation of Class III property, significantly diminish the assessed value of Alabama’s tax base and the resulting revenue.<sup>24</sup> In contrast to the rest of the state, the cities of Mountain Brook, Vestavia Hills, and Huntsville are all exempt from the limits of the Lid Bill, and incidentally are among the top-ranked school districts in student performance.<sup>25</sup> In other words, Alabama school districts which are exempt from the constitution’s limits on property taxes typically outperform other state schools.<sup>26</sup> Although these exemptions make the Lid Bill arguably discriminatory, it withstood constitutional scrutiny in *Weissinger v. White* because “[e]ven an intentionally discriminatory [tax] classification will pass muster if it ‘is founded upon a reasonable distinction, or difference in state policy’ or ‘any state of facts reasonably can be conceived that would sustain it.’”<sup>27</sup> The reasonable policy rationale that upheld the Lid Bill was the state’s desire to preserve timber and farm land as it is currently used—a rationale that has remained unchallenged since *White*.<sup>28</sup>

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20. *Weissinger v. Boswell* (*Weissinger I*), 330 F. Supp. 615 (M.D. Ala. 1971).

21. *Id.* at 624.

22. See LEGISLATIVE FISCAL OFFICE, *supra* note 12, at 4–5.

23. *Id.*

24. See Chaney, *supra* note 10, at 247.

25. LEGISLATIVE FISCAL OFFICE, *supra* note 12, at 5; see also Chaney, *supra* note 10, at 247–48.

26. Chaney, *supra* note 10, at 247–48.

27. *Weissinger II*, 733 F.2d 802, 806 (11th Cir. 1984) (citations omitted) (quoting *Allied Stores v. Bowers*, 358 U.S. 522, 528 (1959)).

28. *Id.* at 806–07 (“The state is free to enact measures that attempt to perpetuate certain desirable uses of its land in the face of economic pressures to convert the property to other more lucrative pursuits. Institution of a favorable tax system is one rationally related means by which to effect that end. A formula for the evaluation of farm and timber property that routinely holds assessment values below the normal selling price will certainly encourage the continued use of land for its present purpose.”).

## II. THE HISTORY OF THE 1901 CONSTITUTION &amp; THE LID BILL

A. *The Alabama Constitutional Convention of 1901*

Without a doubt, the primary purpose of the Alabama Constitutional Convention of 1901 was to disenfranchise African-Americans in the state.<sup>29</sup> As historian J. Mills Thornton put it, “There [was] nobody at the convention who [was] not a white supremacist.”<sup>30</sup> The prevailing conclusion is that the delegates’ desire for white supremacy permeated and infected every provision of the 1901 constitution, including the property tax provisions.<sup>31</sup> In the words of historian William Stewart, any person “who is at all familiar with the [1901] Constitution knows that it is impossible to separate Alabama constitutionalism from issues of race relations.”<sup>32</sup>

However, painting the 1901 convention with such a broad brush does not reflect the complex tapestry of motivations and intentions that went into each individual section of the Alabama Constitution. Although it is impossible to separate race from constitutional development in Alabama, it does not necessarily follow that every provision of the constitution was imbued with racist intent. The many motivations behind limiting property tax rates throughout the state were arguably misguided in some instances, but were hardly as nefarious as some commentators would like to believe. As it has been repeatedly noted, deciphering legislative intent from legislative history is neither precise nor straightforward.<sup>33</sup> Legislators may vote for a proposal for multiple and mutually exclusive reasons. They may also mask their true motivations behind a more appealing pretense.<sup>34</sup> However, the fierce debate surrounding the taxation provisions of the Alabama constitution was uncharacteristic of a convention that was largely unified in its mission to disenfranchise and segregate African-Americans.

First of all, limiting taxes by constitutional provision was a wise move in terms of political self-preservation, given that most of the delegates, including President John B. Knox, had promised to “keep faithfully [their]

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29. MALCOLM COOK MCMILLAN, *CONSTITUTIONAL DEVELOPMENT IN ALABAMA, 1798–1901: A STUDY IN POLITICS, THE NEGRO, AND SECTIONALISM*, at vi (The Reprint Company, 1978) (1955).

30. *Knight v. Alabama* (*Knight VI*), 458 F. Supp. 2d 1273, 1285 (N.D. Ala. 2004).

31. *Id.* at 1311; *see also* *Lynch v. Alabama*, No. 08-S-450-NE, 2011 U.S. Dist. LEXIS 155012, at \*912–13 (N.D. Ala. Oct. 21, 2011); Bryan K. Fair, *Equality for All: The Case for a New Declaration of Rights Article of the Alabama Constitution*, 33 CUMB. L. REV. 339, 341 (2003).

32. WILLIAM H. STEWART, *THE ALABAMA STATE CONSTITUTION* 5 (1994).

33. *United States v. O’Brien*, 391 U.S. 367, 383 (1968) (“Inquiries into congressional motives or purposes are a hazardous matter.”); *see also* *Hunter v. Underwood*, 471 U.S. 222, 228 (1985); John Hart Ely, *Legislative and Administrative Motivation in Constitutional Law*, 79 YALE L.J. 1205, 1213 (1970).

34. *O’Brien*, 391 U.S. at 384 (“What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it . . .”).

pledges . . . not to increase taxation.”<sup>35</sup> More importantly, the delegates were concerned with reducing the public debt and preventing rash financial decisions by the state.<sup>36</sup> By 1876, the state was \$29,000,000 in debt, mostly as a result of railroad bonds guaranteed under the “carpetbagger” Alabama Constitution of 1868.<sup>37</sup> Limiting property tax rates, and thus reducing revenue, was seen as a necessary step towards preventing the legislature and county governments from falling into even deeper indebtedness.<sup>38</sup> In theory, the rationale behind this backwards thinking is somewhat plausible. As a rule of basic finance, a person on a limited income knows he or she must cut expenses. It follows that the legislature and county governments, given less tax revenue, would have to cut expenses and stay out of debt. Nevertheless, one cannot cut out the bare necessities of life, such as food and shelter, without suffering or raising revenue, just as governments cannot cut out public necessities, such as basic infrastructure, without the public suffering or raising tax revenues.<sup>39</sup> A few opponents of tax limits in 1901 saw through the majority’s rationale. Future Alabama governor Emmet O’Neal maintained that the limits were “unwise, unsafe and injurious to the credit of the state,”<sup>40</sup> while decrying them as a populist move to catch votes for ratification.

Indeed, the proponents of the tax limits fervently hoped that such provisions would boost the campaign for ratification by reducing the tax burden on poor white farmers.<sup>41</sup> The primary proponents of the 6.5 mill limit also argued that low tax rates would incentivize manufacturing development and immigration in the state.<sup>42</sup> Furthermore, delegate John Sanford described the property tax limits as a wise restriction of government power, reasoning that “[t]he more you limit power, the more you expand liberty . . . and therefore, I am for limiting the Legislature in its power of taxation to the utmost point that can safely be done.”<sup>43</sup> This anti-

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35. JOURNAL OF THE PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF ALABAMA, HELD IN THE CITY OF MONTGOMERY, COMMENCING MAY 21ST, 1901 20 (1901), available at <http://archive.org/details/journalofproceed00alabrigh> [hereinafter PROCEEDINGS].

36. MCMILLAN, *supra* note 29, at 180.

37. *Id.*; see also Walthall, *supra* note 16, at 40–47.

38. See Chaney, *supra* note 10, at 248–51.

39. *Id.* at 250.

40. MCMILLAN, *supra* note 29, at 320.

41. In reality, the tax limits were more beneficial to the delegates themselves as some of the biggest industrialists and landowners in the state. See *id.* at 319.

42. *Id.* (“I do not desire this reduction of taxation for the benefit of the poor farmer alone, of whom we have heard so much on the floor of this convention. I desire it mainly in the interest of the welfare and industrial development of the state of Alabama . . . Industries and capital will not come to Alabama and locate where you have a fixed lien on their property of 75 cents upon the \$100, when they can go to States which have equal advantages, and where the lien is much less.” (quoting Cecil Browne, Chairman, Taxation Comm.)).

43. *Id.*

legislature sentiment was prevalent across the South in the post-Carpetbag era, especially in Alabama, where “a session of the legislature [was] looked upon as something in the nature of an unavoidable public calamity.”<sup>44</sup> Undoubtedly, these sentiments were fueled largely by economic self-interest.<sup>45</sup> The delegates feared that the Republicans might again gain power and levy higher taxes as they had done in 1868.<sup>46</sup>

Yet economic self-interest in this case was not synonymous with an affirmative desire to impoverish black school districts. Unwillingness to pay for government services that do not directly benefit oneself is not unique to racists. In other words, the delegates were playing economic defense—not race-motivated offense—when it came to property taxes. This is made evident by comparing the convention’s debate over the property tax provisions to the debate over the suffrage provisions, which effectively abolished African-Americans’ right to vote in Alabama.<sup>47</sup> While the delegates had no shame in declaring overtly racist statements and intentions during the suffrage debates, such declarations were notably absent throughout the taxation debates.<sup>48</sup>

Indeed, the more racially hostile delegates at the convention were already assured that black schools would be kept underfunded through the system established by the Apportionment Act of 1891. Under the Apportionment Act, the state superintendent of education was required to apportion funds to all counties on a per capita basis, but the township trustees in each county were empowered to distribute those funds “as they may deem just and equitable.”<sup>49</sup> The convention incorporated the Apportionment Act into the 1901 constitution, replacing the words “just and equitable” with the more malleable words “as nearly as practicable.”<sup>50</sup> Under this system, the division of funds between white and black schools

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44. *Id.* at 334–35.

45. *Knight VI*, 458 F. Supp. 2d 1273, 1284–85 (N.D. Ala. 2004).

46. *Id.* at 1281–83.

47. President Knox’s opening address to the convention provides a broad overview of the different motivations surrounding each of the issues addressed by the convention. *See* PROCEEDINGS, *supra* note 35, at 8–21.

48. *See generally id. Compare* Lynch v. Alabama, No. 08-S-450-NE, 2011 U.S. Dist. LEXIS 155012, at \*903–04 (N.D. Ala. Oct. 21, 2011) (“[T]he striking from [the negro] of the title slave, and placing in his hand the ballot was the most diabolical piece of tyranny ever visited upon a proud though broken people . . . I would just as soon give a toddling child a razor in his hand, expecting him not to hurt himself, as to expect the negro to use the ballot and not use it to his injury and to ours.” (quoting Thomas Heflin, Delegate)), *with* MCMILLAN, *supra* note 29, at 319 (“I do not desire this reduction of taxation for the benefit of the poor farmer alone, whom we have heard so much on the floor of this convention. I desire it mainly in the interest of the welfare and industrial development of the state of Alabama.” (quoting Cecil Browne, Delegate)).

49. ACTS OF THE GENERAL ASSEMBLY OF ALABAMA, 1890–1891 554–55 (Montgomery, Ala., Smith, Allred & Co. 1891), *available at* [http://books.google.com/books?id=N5Q3AAAAIAAJ&printsec=frontcover&authuser=0&source=gbs\\_ge\\_summary\\_r&cad=0#v=onepage&q&f=false](http://books.google.com/books?id=N5Q3AAAAIAAJ&printsec=frontcover&authuser=0&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false).

50. ALA. CONST. art. XIV, § 256; *see also* Lynch, 2011 U.S. Dist. LEXIS 155012, at \*930–32.



was ultimately not done on a per capita basis by the township trustees.<sup>51</sup> Black teachers were paid less than white teachers, and less money was apportioned to black schools for equipment and buildings.<sup>52</sup> Given this state of affairs, the delegates had no need to reduce the rate of state property taxes in order to put black schools at a disadvantage when the funds could be distributed on a discretionary and inconspicuous basis at the local level by white township trustees.

Moreover, the delegates even voted down a proposal to distribute funds to black and white schools proportional to the amount each race paid in taxes, largely out of fear that such a facially discriminatory system would jeopardize the suffrage provisions of the 1901 constitution by arousing northern antipathy and drawing the scrutiny of the U.S. Supreme Court.<sup>53</sup> However, several delegates opposed race-based appropriations on more humanitarian grounds. While everyone at the convention was likely a white supremacist, not everyone believed that white supremacy was an immovable law of nature.<sup>54</sup> Instead, some delegates believed that white supremacy was a temporary situation that could be altered through educating black people.<sup>55</sup> In the paternalistic words of former governor Thomas Goode Jones, "If we do not lift them up [through education], they will drag us down."<sup>56</sup>

### B. *The Lid Bill*

Unlike the 1901 Convention, the debates leading up to the adoption of the Lid Bill were virtually devoid of any consideration of race. The primary event that spurred the adoption of the Lid Bill was the *Weissinger I*<sup>57</sup> decision, in which a federal district court prohibited the state from applying different property assessment ratios by county. As a result of this decision, the statewide assessment rate was set to revert to the maximum sixty percent of the appraised, fair-market-value ratio set by Alabama law at that time.<sup>58</sup> However, while *Weissinger I* required uniform assessment rates statewide, it found that applying different assessment rates to reasonable

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51. MCMILLAN, *supra* note 29, at 317–18.

52. *Id.*

53. *Id.* at 322–24.

54. *Knight VI*, 458 F. Supp. 2d 1273, 1285 (N.D. Ala. 2004).

55. MCMILLAN, *supra* note 29, at 323–24.

56. Compare *id.* at 324, with *Lynch v. Alabama*, No. 08-S-450-NE, 2011 U.S. Dist. LEXIS 155012, at \*904 (N.D. Ala. Oct. 21, 2011) ("God Almighty has made them different from the white man. You had just as well try to legislate a donkey into an Arabian courser, as to legislate a negro into a white man. You cannot do it. It is impossible to do it." (quoting Thomas Heflin, Delegate)).

57. *Weissinger I*, 330 F. Supp. 615, 622–24 (M.D. Ala. 1971).

58. *Lynch*, 2011 U.S. Dist. LEXIS 155012, at \*394.

classifications of property was not unconstitutional under the Due Process Clause.<sup>59</sup>

Given the loophole in *Weissinger I*, the Alabama legislature, spurred on by the Alabama Farm Bureau and forestry interests, began a concerted push for a property classification system, which culminated in the adoption of Amendment 325 in 1972, which was the first segment of the Lid Bill.<sup>60</sup> Like the delegates to the 1901 Constitutional Convention, the Farm Bureau and forestry interests backing Amendment 325 were motivated by economic self-interest in avoiding higher taxes and prevailed upon Alabama voters' dislike of higher taxes.<sup>61</sup>

Yet, Amendment 325 was not as foolproof to constitutional challenges as the Alabama legislature initially thought. In *McCarthy v. Jones*,<sup>62</sup> a federal district court struck down parts of Amendment 325 for violating equal protection by allowing counties to vary the assessment ratios for each class of property. After *McCarthy*, it was clear to Alabama leaders that the assessment value of property was going to be even higher than it was before *Weissinger I*, despite having Amendment 325's classification system in place.<sup>63</sup> Thus, Representative Rick Manley, known as the "Father of the Lid Bill," was the first state legislator to introduce bills establishing a "current use" system of valuation in assessing timber and farm land.<sup>64</sup>

While Manley's initial proposals failed to gain enough support, his ideas eventually attracted the attention of Governor George Wallace, who called a special legislative session for the passage of Amendment 373.<sup>65</sup> After the amendment passed the special session, the Farm Bureau launched a \$96,000 campaign to secure ratification of the proposed amendment.<sup>66</sup> This campaign was aided by a popular movement against property taxes that was sweeping throughout the country. This movement began in 1978 with California's adoption of Proposition 13, known as the "People's Initiative to Limit Property Taxation," and continued with states such as Arizona, Colorado, Massachusetts, Michigan, Nebraska, Oregon, and South Dakota.<sup>67</sup> In light of these circumstances, it is clear that the Lid Bill "was

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59. *Weissinger I*, 330 F. Supp. at 622 ("[T]he Federal Constitution does not prohibit a state from establishing *reasonable classes of property and taxing these classes at different rates.*") (emphasis added).

60. ALA. CONST. art. XI, § 217, *amended by* ALA. CONST. amend. 325; *Lynch*, 2011 U.S. Dist. LEXIS 155012, at \*1010–34.

61. *Lynch*, 2011 U.S. Dist. LEXIS 155012, at \*1032–35.

62. 449 F. Supp. 480 (S.D. Ala. 1978).

63. *Lynch*, 2011 U.S. Dist. LEXIS 155012, at \*1037–38.

64. *Id.* at \*1038–39.

65. *Id.* at \*1039–42.

66. *Id.* at \*1043.

67. *Id.* at \*1044 n.1630.

an extension of prior Alabama policy . . . and not a child of Alabama's race-driven past."<sup>68</sup>

### III. THE FIRST CRUSADE: *KNIGHT V. ALABAMA*

The first attempt to strike down Alabama's property tax limits as unconstitutional was in the seven-part case of *Knight v. Alabama*.<sup>69</sup> Spanning the course of over twenty years, the *Knight* case was initially a desegregation case targeting several state policies and practices as unconstitutional.<sup>70</sup> In 1995, the U.S. District Court for the Northern District of Alabama issued a remedial decree in favor of the plaintiffs and granted itself authority to oversee the desegregation efforts for the next ten years.<sup>71</sup> However, in 2003, the plaintiffs filed new pleadings alleging that the limits on property taxes provided inadequate funding for higher education and K–12 schools.<sup>72</sup> These pleadings led to a new round of litigation and eventually to the separate filing of the *Lynch* case. In light of the considerations that the plaintiffs' new legal theory prompted, the district court in *Knight VI* held a two-day evidentiary hearing to examine the historical context of Alabama's property structure and how it could be connected to the higher education system.<sup>73</sup> After hearing from historians and legal experts from throughout the state, the court issued two key factual findings that were mostly damning of Alabama's tax structure.<sup>74</sup>

#### A. *Findings of Fact*

First, the court found that the state's "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."<sup>75</sup> The court outlined Alabama's history from the adoption of the 1819 constitution through the modern era, relying extensively—and almost exclusively—on

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68. *Id.* at \*1044.

69. *See Knight v. Alabama (Knight I)*, 628 F. Supp. 1137 (N.D. Ala. 1985), *rev'd*, *Knight v. Alabama (Knight II)* 828 F.2d 1532 (11th Cir. 1987), *cert. denied*, 487 U.S. 1210 (1988), *on remand*, *Knight v. Alabama (Knight III)*, 787 F. Supp. 1030 (N.D. Ala. 1991), *aff'd in part, rev'd in part, vacated in part*, *Knight v. Alabama (Knight IV)*, 14 F.3d 1534 (11th Cir. 1994), *on remand*, *Knight v. Alabama (Knight V)*, 900 F. Supp. 272 (N.D. Ala. 1995); *see also Knight VI*, 458 F. Supp. 2d 1273 (N.D. Ala. 2004), *aff'd*, *Knight v. Alabama (Knight VII)*, 476 F.3d 1219 (11th Cir. 2007), *cert. denied*, 551 U.S. 1146 (2007).

70. *Knight VII*, 476 F.3d at 1220–21.

71. *Knight V*, 900 F. Supp. at 374.

72. *Knight VII*, 476 F.3d at 1223.

73. *Id.*

74. *Knight VI*, 458 F. Supp. 2d at 1279–1310.

75. *Id.* at 1311.

the testimony of historian J. Mills Thornton.<sup>76</sup> Second, the court found that Alabama's tax structure has "had a crippling effect on poor, majority black school districts."<sup>77</sup> Relying on the testimony of Professor Susan Hamill, the court found that Alabama's property tax rates and revenues are the lowest of all fifty states, collecting only \$250 per person.<sup>78</sup> In rural school districts without a "critical mass of valuable commercial property and residential homes,"<sup>79</sup> the Lid Bill's classification system makes raising funds especially difficult. The low assessment ratios for each class of property also means that even the districts with the most valuable commercial and residential property receive a minimal amount of funding from property taxes.<sup>80</sup>

### B. *Conclusions of Law*

Although the court essentially conceded every factual assertion made by the plaintiffs, it nevertheless concluded that Alabama's property tax limits are not unconstitutional.<sup>81</sup> Under the three-part standard established in *United States v. Fordice*,<sup>82</sup> the plaintiff must first show that the allegedly segregative policy is "traceable to the State's prior de jure segregation."<sup>83</sup> Second, once the plaintiff has discharged his or her initial burden, the burden shifts to the state to show that the policy has no continuing segregative effects.<sup>84</sup> If the state is unable to satisfy the second step, and thus avoid liability, it may alternatively show that there are no practicable policy alternatives that can be enacted "without eroding sound educational policies."<sup>85</sup>

The district court in *Knight VI* concluded that the plaintiffs had effectively satisfied their burden under step one of *Fordice*, but that the property tax limits do not have a "continuing segregative effect"<sup>86</sup> under step two. The court found that the connection between the funding of higher education and K-12 schools "is marginal insofar as ad valorem property tax is concerned," reasoning that there is no causal connection between Alabama's tax policies and student choice in higher education.<sup>87</sup>

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76. *Id.* at 1279-1310.

77. *Id.* at 1299.

78. *Id.* at 1297.

79. *Id.* at 1299.

80. *Id.*

81. *Id.* at 1310-14.

82. 505 U.S. 717 (1992).

83. *Id.* at 729.

84. *Id.* at 738-39.

85. *Id.* at 743.

86. *Knight VI*, 458 F. Supp. 2d at 1312.

87. *Id.*

On appeal, the Eleventh Circuit in *Knight VII*<sup>88</sup> affirmed the lower court's decision on the additional ground that Alabama's property tax limits are not policies governing higher education<sup>89</sup> and thus cannot be challenged under *Fordice*. Nevertheless, the Eleventh Circuit did not disturb the district court's factual findings regarding the historical origins of Alabama's property tax system or its effect on predominately black school districts, thus leaving room for a new challenge.

#### IV. THE SECOND CRUSADE: *LYNCH V. ALABAMA*

##### A. *Statement of the Case*

Encouraged by the court's factual findings in *Knight VI*, a new set of plaintiffs filed a new case in 2007 challenging the *rates* of *ad valorem* taxation in Alabama as racially discriminatory in K–12 schools and thus unconstitutional under the Equal Protection clause of the Fourteenth Amendment.<sup>90</sup> The plaintiffs consisted of two African-American and three white public school students from Lawrence County, as well as five African-American students from Sumter County.<sup>91</sup> The crux of their argument was that the “racially motivated property tax provisions have accomplished their two-pronged racially discriminatory purpose: whites are favored with lower taxes, and blacks are burdened with less funding for schools.”<sup>92</sup> In other words, the plaintiffs infused their arguments with the Christian doctrine of original sin—arguing that the original 1901 constitution, and every subsequent amendment, carries the stain of racism, just as mankind bears the taint of sin from the Fall of Adam and Eve. To remedy their alleged injuries, the plaintiffs requested an injunction against the future enforcement of the tax provisions with the disclaimer that the legislature should oversee tax reform rather than the court.<sup>93</sup> In response, Judge Lynwood Smith issued an eloquent yet exhaustive twelve-hundred-page opinion providing a meticulously detailed account of history and politics in Alabama, and how race played a central part in its development.<sup>94</sup>

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88. *Knight VII*, 476 F.3d 1219, 1226–29 (11th Cir. 2007).

89. *Id.*

90. *Lynch v. Alabama*, No. 08-S-450-NE, 2011 U.S. Dist. LEXIS 155012, at \*26–28 (N.D. Ala. Oct. 21, 2011). It is important to note that the plaintiffs were challenging the *rate* of taxation and not the *distribution* of funds.

91. *Id.* at \*27.

92. *Id.* at \*60.

93. *Id.* at \*65–66.

94. *Id.* at \*693–1050.

*B. Findings of Historical Fact*

Judge Smith's review of Alabama's history was even more thorough than the court's in *Knight VI*, beginning with the adoption of Alabama's first constitution in 1819 and continuing through 1982.<sup>95</sup> Judge Smith saw this comprehensive historical review as necessary, emphasizing that "[t]he State Constitutional provisions challenged in this action cannot simply be carved out and viewed in isolation. The past foreshadows the present, and old problems are presented in new guises."<sup>96</sup> Judge Smith highlighted three themes that developed throughout pre-Civil War Alabama.

First was the considerable wealth and political power of landowners in the Black Belt of Alabama.<sup>97</sup> The name "Black Belt" is primarily derived from the dark, rich layer of topsoil that runs across the width of roughly twelve counties in central Alabama, which made the region extremely fertile for cotton farming.<sup>98</sup> Although the Black Belt was largely unsettled in 1819, by 1849 the Black Belt was producing 85% of the cotton in Alabama.<sup>99</sup> Considering the fact that 50% of U.S. exports at that time was cotton, and that 23% of U.S. cotton was produced in Alabama, Black Belt counties were among the richest and most influential counties in the nation.<sup>100</sup> This power came to be used frequently and effectively throughout much of constitutional development in Alabama.

Second, prior to the Civil War, property taxes were at considerably low levels.<sup>101</sup> The primary source of tax revenue at that time was the slave tax, which was felt primarily by large plantation owners in the Black Belt.<sup>102</sup> The property tax system also fell primarily on Black Belt plantation owners, since its classification system levied higher rates on property that large plantations were more likely to have than smaller farms.<sup>103</sup> Dissatisfied with this state of affairs, Black Belt plantation owners were eventually able to gain control of the state legislature in 1847 and adopt an *ad valorem* system of taxation, as well as alter the slave tax from a flat "head" tax to a classification system based on the age of each slave.<sup>104</sup>

Third, public education in Alabama was largely a non-issue until 1854. Under the 1819 constitution, the state legislature had plenary power to

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95. *Id.*

96. *Id.* at \*701.

97. *Id.* at \*707–15.

98. *Id.* at \*69–77.

99. *Id.* at \*709.

100. *Id.*

101. *Id.* at \*715.

102. *Id.* at \*715–16.

103. *Id.* at \*717–18.

104. *Id.* at \*717–20.

“encourage” education throughout the state, but had no authority to actually mandate public education.<sup>105</sup> Accordingly, the establishment of public schools depended almost entirely on the initiative of individual counties. Given the wealth of Black Belt farmers, as well as the high value they placed on formal education, most of the pre-Civil War public schools in Alabama were located in the Black Belt.<sup>106</sup> The wealthiest Black Belt plantation owners also adopted the British system of education by “buying a library” and hiring a private tutor for their children.<sup>107</sup> As urban interests in Alabama began pushing back against the agrarian policies of the Black Belt planters, especially in education, they encountered staunch opposition.<sup>108</sup> However, supporters of public education eventually succeeded in passing the Public Schools Act of 1854, which established the first statewide public education system for whites, set up a funding system for per capita distribution, and allowed each county to levy up to one mill of property tax without approval through a popular referendum.<sup>109</sup>

The system established by the Public Schools Act remained largely unchanged, even after secession and the beginning of the Civil War. In order to cement the state's secession from the Union, Alabama adopted a new constitution in 1861.<sup>110</sup> Aside from seceding from the United States, most of the changes in the new constitution were merely “cosmetic.”<sup>111</sup> While the 1861 constitution did add new limits on the power of the state legislature, it left the legislature's power to direct the funding and administration of public schools virtually untouched.<sup>112</sup>

After taking the history of antebellum Alabama into account, Judge Smith analyzed the sudden changes that Reconstruction brought to constitutional development in Alabama.<sup>113</sup> Following the Civil War, a provisional government was established in Alabama tasked with setting up a legally functional constitution, abolishing slavery, repudiating the state's war debts, and recognizing certain legal rights of the newly freed slaves.<sup>114</sup> However, the 1865 constitution did not guarantee any particular civil or political rights to the Freedmen, which did not sit well with the Radical Republicans in Congress.<sup>115</sup>

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105. *Id.* at \*705–08.

106. *Id.* at \*727–28.

107. *Id.*

108. *Id.* at \*728–34.

109. *Id.* at \*732–33.

110. *Id.* at \*739–40.

111. *Id.* at \*739.

112. *Id.* at \*740.

113. *Id.* at \*741–99.

114. *Id.* at \*743–44.

115. *Id.* at \*744.

This was soon remedied by the “Radical Reconstruction” Constitution of 1868, which established the political and civil equality of freed slaves, but not social equality.<sup>116</sup> Furthermore, the 1868 constitution created a State Board of Education tasked with distributing school funds on a per capita basis with no regard for race.<sup>117</sup> In order to pay for the new public school system in Alabama, twenty percent of all state revenue was earmarked for education.<sup>118</sup> The *ad valorem* system was also extended to reach real *and* personal property, and the rate of taxation was nearly quadrupled from 2 mills to 7.5 mills.<sup>119</sup> The increase in the scope and rate of taxation meant that the total tax burden was approximately thirty-five times as high as it was in 1860.<sup>120</sup> However, the 1868 constitution also contained the state’s first limit on property taxes, capping municipal taxes at “two per centum of the assessed value of such property.”<sup>121</sup>

Judge Smith found that this massive increase in property taxes fell hard on both Black Belt planters and poor white yeomen farmers, thus increasing their opposition to taxation and the education of freed slaves.<sup>122</sup> According to Judge Smith, this opposition coalesced into a movement to “redeem” the state through “an unholy trinity: establish white supremacy; curb taxation; and abolish the Republican public education system.”<sup>123</sup> In 1874, the Democratic Party, as well as the Black Belt political faction, regained control of the state government and began pushing for a new state constitution.<sup>124</sup> Under the “Redeemer” constitution adopted in 1875, white and black schools were officially segregated, limitations were placed on legislative power, the State Board of Education was replaced with a “State School Fund,” and state, county and municipal taxes were capped at 7.5 mills and 5 mills, respectively.<sup>125</sup>

However, the system of white supremacy established by the 1875 constitution came under fire in the Populist Revolt of the 1890s.<sup>126</sup> Known as Jacksonian Democrats, these populists sought to upset the classist policies of Black Belt politicians by pushing for a more equitable property tax system, better public schools, and greater protections for the legal rights of poor white farmers and African Americans.<sup>127</sup> These proposals, as well

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116. *Id.* at \*765.

117. *Id.* at \*769–71.

118. *Id.* at \*771.

119. *Id.* at \*786.

120. *Id.* at \*787.

121. ALA. CONST. of 1868 art. VI, § 36.

122. *Lynch*, 2011 U.S. Dist. LEXIS 155012, at \*788–94.

123. *Id.* at \*795.

124. *Id.* at \*798–99.

125. *Id.* at \*804, \*815; *see also* ALA. CONST. of 1875 art. XI, §§ 5, 7.

126. *Lynch*, 2011 Dist. U.S. LEXIS 155012, at \*857–72.

127. *Id.* at \*861–62.



as the alliance between poor whites and blacks, threatened to upset segregation and the economic interests of Black Belt planters and urban industrialists.<sup>128</sup> Accordingly, the aristocratic leaders of Alabama recognized that the extra-legal system of disfranchisement relying on violence and intimidation against black voters was vulnerable, and began pushing for the legal disfranchisement of black voters through a new constitution.<sup>129</sup>

This push culminated in the 1901 Constitutional Convention, which Judge Smith found was “saturated in white supremacy and the plenary hatred of a dispirited and downtrodden race of people.”<sup>130</sup> Furthermore, he argued that the taxation and education provisions were no exception, and that “[w]hite supremacy and an enmity towards black education infected [their] every facet.”<sup>131</sup>

### C. *Conclusions of Law*

After his extensive review of Alabama history, Judge Smith turned to the legal issues presented by the plaintiffs’ claims.<sup>132</sup> Under the two-prong “ordinary equal protection standards,” the plaintiff must show that a facially neutral law was enacted with discriminatory intent, and must show a disparate impact along racial lines.<sup>133</sup> Once the plaintiff has discharged this burden, the burden shifts to the defendant to show that racial animus was not the “but-for” cause of the enactment.<sup>134</sup> If the plaintiff fails to establish either prong, or if the defendant disproves but-for causation, then the facially neutral law is subject to rational basis review rather than “the most exacting scrutiny.”<sup>135</sup>

In light of his factual findings, Judge Smith concluded that Sections 214, 215, 216 and 269 of the Alabama constitution “were enacted with a racially discriminatory intent.”<sup>136</sup> However, Judge Smith refused to buy into the plaintiff’s theory of “original sin,” and held that more recent amendments to the constitution, such as the Lid Bill, were not enacted with discriminatory intent.<sup>137</sup> Having determined a discriminatory purpose

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128. *Id.* at \*862–63.

129. *Id.* at \*882.

130. *Id.* at \*912.

131. *Id.* at \*920.

132. *Id.* at \*1139.

133. *Id.* at \*624–27; *see also* *United States v. Armstrong*, 517 U.S. 456, 465 (1996).

134. *Lynch*, 2011 U.S. Dist. LEXIS 155012, at \*627–28.

135. *Id.* at \*628 (quoting *Palmore v. Sidoti*, 466 U.S. 429, 432–33 (1984)).

136. *Id.* at \*1161.

137. *Id.* at \*1144 (citing *City of Mobile v. Bolden*, 446 U.S. 55, 74 (1980) (Stewart, J., plurality) (“[P]ast discrimination cannot, in the manner of original sin, condemn government action that is not itself unlawful.” (citing *City of Mobile v. Bolden*, 446 U.S. 55, 74 (1980))).

behind at least part of the constitution, Judge Smith then turned to the question of whether there was a disparate impact along racial lines. Because the effect of the challenged laws was statewide, the relevant geographic area for disparate impact analysis was the state as a whole, rather than the plaintiffs' counties or the Black Belt counties.<sup>138</sup> Looking at the state as a whole, Judge Smith concluded that "Alabama's black citizens and black public school students are not disparately impacted by the challenged provisions."<sup>139</sup> In fact, Judge Smith found that black students and majority-black schools actually fared better than white students in terms of yield per mill per-student and tax revenue per capita.<sup>140</sup> While the plaintiffs were able to show that rural counties were disparately impacted compared to urban counties, Judge Smith recognized that "residence in a rural area is not a constitutionally protected suspect class."<sup>141</sup>

Because the plaintiffs were unable to meet the second prong of "ordinary equal protection," Judge Smith applied rational basis review to the challenged provisions in lieu of strict scrutiny.<sup>142</sup> Given that Alabama's classification system and current-use valuation under the Lid Bill had already passed rational basis review in *Weissinger II*, Judge Smith merely adopted the Eleventh Circuit's analysis and concluded that the provisions were rationally related to a legitimate governmental interest in preserving "land for agriculture and forestry."<sup>143</sup> Furthermore, Judge Smith found that the millage rates limits in Sections 214, 215, and 216 are rationally related to a governmental interest in providing "stability and predictability for property owners."<sup>144</sup> Finally, Judge Smith held that Section 269, despite the racist origin of Amendment 111, "retains a relationship to the legitimate government interest of promoting education."<sup>145</sup> Accordingly, Judge Smith concluded that Alabama's property tax provisions are constitutional under the Equal Protection Clause of the Fourteenth Amendment.<sup>146</sup>

Nonetheless, Judge Smith did not reach this conclusion happily. Noting the "savagery of the language of intolerance and hatred that permeated"<sup>147</sup> the drafting of the 1901 constitution, Judge Smith lamented that, "[l]ike it or not, Supreme Court precedent compels a conclusion that the property tax

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138. *Id.* at \*1167.

139. *Id.* at \*1170.

140. *Id.* at \*1171–74.

141. *Id.* at \*1178–79.

142. *Id.* at \*1179–80.

143. *Id.* at \*1183–84 ("[The State] is free to enact measures that attempt to perpetuate certain desirable uses of its land in the face of economic pressures to convert the property to other more lucrative pursuits." (quoting *Weissinger II*, 733 F.2d 802, 806–07 (11th Cir. 1984))).

144. *Id.* at \*1184–85.

145. *Id.* at \*1185–86.

146. *Id.* at \*1187.

147. *Id.* at \*1190.

scheme embedded in Alabama's 1901 Constitution and subsequent amendments" pass constitutional muster.<sup>148</sup> Nevertheless, Judge Smith emphasized that Alabama is still "plagued by an inadequately-funded public school system—one that hinders the upward mobility of her citizens, black and white alike, especially in rural counties."<sup>149</sup> Judge Smith attributed this plague to two unfortunate truths: "mankind's self-serving nature"<sup>150</sup> and "Supreme Court jurisprudence that has allowed unequal and inadequate public school funding to evolve."<sup>151</sup> In conclusion, Judge Smith urged that all Americans must realize the "true meaning"<sup>152</sup> of *Brown v. Board of Education* by casting "aside arbitrary distinctions of birth, race, and place, and allow[ing] every American to harness the power provided by a quality education."<sup>153</sup>

#### V. CONCLUSION AND THE FUTURE OF CONSTITUTIONAL REFORM IN ALABAMA

Ultimately, *Lynch v. Alabama* is just one illustration of the shortcomings of using racial politics and suspicion in achieving meaningful reform. The drafters of the 1901 constitution convinced white voters to eschew much needed reform by playing on their suspicion of blacks and the state legislature. Regrettably, this veil of suspicion has continually clouded any subsequent discussions of reform. The plaintiffs' allegations in *Lynch* certainly did nothing to dispel this cloud by seeking to tie low taxes to Alabama's history of racism and segregation, and thus achieve reform through judicial injunction rather than consensus and reconciliation.

Even if a federal court finally declared the property tax limits unconstitutional, such a result would likely be immensely unpopular with the people of Alabama—who have an undeniable dislike of higher taxes and federal courts meddling in state affairs—and would be no guarantee that the state or county governments would actually raise taxes any higher than they are now.<sup>154</sup> Indeed, in 2003, Alabamians overwhelmingly rejected Governor Bob Riley's attempt to restructure Alabama's tax system, including state and local property taxes.<sup>155</sup> Furthermore, as of 2010, only 68 out of 131 Alabama public school systems have actually raised their

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148. *Id.* at \*1194.

149. *Id.*

150. *Id.* at \*1195.

151. *Id.* at \*1196.

152. *Id.* at \*1203.

153. *Id.*

154. *Knight VII*, 476 F.3d 1219, 1227 (11th Cir. 2007) ("It is not at all clear that the removal of Alabama's constitutional restrictions on property tax rates will necessarily result in either increased tax rates or increased tax revenues.").

155. *Id.*

property tax rates to the maximum millage rate.<sup>156</sup> Having a federal court strike down the property tax limits would only add insult to injury and further entrench opposition to increased tax rates.

Instead, advocates of constitutional reform should seek reform legislatively rather than judicially. Admittedly, such an approach will not be easy, and may prove just as unfruitful as past attempts at legislative reform. Whether advocates choose to seek this reform through amending the current constitution or adopting an entirely new one, the reforms should be packaged and framed as provisions seeking to reestablish Home Rule at the county and municipal level.<sup>157</sup> In other words, instead of seeking reform for the express purpose of benefiting education or increasing taxes, proposals should be geared towards increased county and municipality self-governance. Once counties and city governments are free of the shackles of constitutional restrictions and state-wide referendums, they will be free to raise or lower taxes according to their needs and the will of the people who actually reside in those localities. Hopefully, reestablishing Home Rule in Alabama would also steer political discourse out of the cloud of suspicion and towards other reforms that our state desperately needs.

*Zachary L. Guyse*

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156. *Lynch*, 2011 U.S. Dist. LEXIS 155012, at \*250.

157. For an analysis of the "Home Rule" limitations in the Alabama Constitution, see Will Parker, *Still Afraid of "Negro Domination?": Why County Home Rule Limitations in the Alabama Constitution of 1901 Are Unconstitutional*, 57 ALA. L. REV. 545 (2005).