

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

INDIA LYNCH, by her parent, SHAWN KING
LYNCH, et al., individually and on behalf of
others similarly situated,

Plaintiffs,

v.

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.

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Civil Action No.
CV-08-S-0450-NE

AFFIDAVIT OF SUSAN PACE HAMILL

I, Susan Pace Hamill, declare under penalty of perjury, pursuant to 28 U.S.C. §1746, as follows:

I am a white citizen of Alabama and the United States over the age of nineteen years. I reside in Tuscaloosa, Alabama, and one of my children attends public schools in the City of Tuscaloosa (the other child recently graduated after attending the Tuscaloosa City Schools since kindergarten). I am Professor of Law at the University of Alabama School of Law and have been on the law faculty since 1994. My 2004 curriculum vitae is plaintiffs' trial exhibit 50 in *Knight v. Alabama*, which has been filed in this action in Exhibit E supporting plaintiffs' motion for summary judgment. My 2008 curriculum vitae is attached to this affidavit.

For twenty-five years I have been engaged in the study, practice, teaching and research of tax law. I recently published a book, *AS CERTAIN AS DEATH: A FIFTY-STATE SURVEY OF STATE AND LOCAL TAX LAWS (2007)* [hereinafter *Fifty-State Survey*], which was the subject of a feature article in the *New York Times* in December, 2007. For the past seven years I have done extensive research on Alabama's state and local tax system, especially the property tax system, as well as the state and local tax systems of all fifty states. Two of my law review articles on this subject, *An Argument for Tax Reform Based on Judeo-Christian Ethics*, 54

ALA. L. REV. 1 (2002) [hereinafter Alabama Article], and *Constitutional Reform in Alabama: A Necessary Step Toward Achieving a Fair and Efficient Tax Structure*, 33 CUMB. L. REV. 437 (2003) [hereinafter Cumberland Article], are Knight trial exhibits 51 and 52, which also are in Exhibit E supporting plaintiffs' motion for summary judgment in this action. See also Addendum to *An Argument for Tax Reform Based on Judeo-Christian Ethics*, 59 ALA. L. REV. 243 (2007) [hereinafter Addendum].

One of the lawyers for the plaintiffs in this action, James Blacksher, has asked me to respond to assertions in the defendants' brief supporting their motions to dismiss that question whether the citizens of Sumter and Lawrence Counties have made adequate effort under existing state constitutional and statutory law to increase ad valorem taxes for their public schools. Doc. 27 at 4-5. Specifically, defendants assert that these two counties could increase their K-12 education budgets by thirty percent if they voted to increase millage rates to a level that would produce the maximum ad valorem revenues allowed by Amendment 373 to the Alabama Constitution.

Amendment 373, commonly known as the Lid Bill, imposes significant limits in three distinct ways on the ability of the state and local governments to raise property taxes. First, it contains elaborate and cumbersome procedures that must

be followed to raise millage rates, including requiring local property tax referendums to pass both the House and Senate of the Legislature, and, in some cases also requiring approval by a majority of the voters in a state wide election. ALA. CONST. OF 1901, amend. 373(f) (1978). *See also* Amendments 425 & 555 and Cumberland Article at 444-45 & note 21.

Second, Amendment 373 substantially reduces the property tax base, which is the portion of the property's value subject to the millage rates. It does this by dividing all property into four classes with each class having a different percentage of the property's assessed value subject to the millage rates. Class I, which encompasses utility property, is assessed at thirty percent of fair market value. Class II, which includes most commercial and industrial property, is assessed at twenty percent of fair market value. Class IV, which encompasses motor vehicles for personal or private use, is assessed at fifteen percent of fair market value. Class III, which includes personal residences and historic sites as well as timber and agricultural lands, is assessed at ten percent. Personal residences are assessed at ten percent of fair market value and timber and agriculture is assessed at ten percent of current use value. Although personal residences and historic sites and timber and agriculture are technically in the same class, in substance they operate as two different classes of property because the alternative method of valuation

based on current use normally produces an assessed value that is deeply discounted when compared with the assessed value resulting from a fair market value determination. ALA. CONST. OF 1901, amend. 373(a) & (j) (1978). *See also* Cumberland Article at 442-443 & notes 17-19 and Alabama Article at 23-27 & notes 68-81.

Finally, Amendment 373 contains absolute dollar limits on the amount of property taxes that each particular property can generate. These limitations are expressed as a percentage of the individual property's full assessed value before reducing such value by the applicable assessment ratio. The absolute dollar limitation for Class III property is 1% of fair market value (for homes and historic buildings) and 1% of current use value (for timber and agriculture). The absolute dollar limitations are 2% of fair market value for Class I property, 1 1/2% of fair market value for Class II property, 1 1/4% of fair market value for Class IV property. ALA. CONST. OF 1901, amend. 373(i) (1978). *See also* Cumberland Article at 445-46 & notes 23-25.

At my request, Mr. Blacksher asked counsel for defendants, Drayton Nabers, to provide the data which support their assertions. Attached to this affidavit as Exhibits A and B are the tables Mr. Blacksher informs me were provided by Mr. Nabers and that were relied on in the affidavits supporting the motions to dismiss.

Mr. Blacksher also informs me that Mr. Nabers has confirmed that the assessed property values set out in these tables represent the full assessed value multiplied by the assessment ratio for each class of property. Mr. Nabers has also confirmed that the assessed values for Class III property lumps together values assessed for residential properties and values assessed for timber and agricultural lands. Mr. Nabers has not confirmed an exact methodology that was used to produce these figures.

I do not presently have the means to independently confirm any of the figures in these tables. I also do not presently have the means to determine the exact portions of the Class III assessed values that are attributable to residential, and timber and agricultural properties or to determine the assessed values of each individual property within Class III subject to the property taxes in Sumter and Lawrence Counties. My testimony in this affidavit is based on the limited data defendants have provided and depends entirely on their accuracy and reliability.

Assuming the data provided by the defendants is correct, we can make the following calculations for Sumter County and for Lawrence County:

1. In Sumter County the Class III property tax base for purposes of applying millage rate increases is \$51,430,800, as shown on page 1 of Exhibit A. Since that represents ten percent of the assessed value, the full assessed value of

this Class III property is \$514,308,000, and the absolute dollar amount of property tax that can be collected (the "Lid") is \$5,143,080 (1% of \$514,308,000).

2. In Lawrence County the Class III property tax base for purposes of applying millage rate increases is \$92,852,000, as shown on page 1 of Exhibit B. Since that represents ten percent of assessed value, the full assessed value of this Class III property is \$928,520,000, and the absolute dollar amount of property tax that can be collected (the "Lid") on this property is \$9,285,200 (1% of \$928,520,000).

3. In order for Sumter County to reach the \$5,143,080 Lid for this Class III property its millage rate would have to be 100 mills, as shown on the last page of Exhibit A. In order for Lawrence County to reach the \$9,285,200 Lid for this Class III property its millage rate would have to be 100 mills, as shown on the last page of Exhibit B. Mills define the amount of property taxes owed per \$1,000 of assessed value. A "mill" is one-thousandth, that is a rate of \$1.00 per \$1,000 of assessed value (100 mills would produce at rate of \$100 per \$1,000 of assessed value). Mills can also be translated to commonly understood percentage figures. A "mill" is one-tenth of one percent (100 mills translate to a rate of 10%). *See* Alabama Article at 27 & notes 82-83.

4. Technically neither Sumter nor Lawrence at the county level can impose property tax rates on Class III property reaching 100 mills. This is because their respective Lids for this Class III property must also take into account property taxes imposed by the state, municipalities and two school districts. *See* ALA. CONST. OF 1901, amend. 373(i) (1978) and Cumberland Article at 445-446 & note 24 (if the combined millage rates cause potential property tax liability of a particular piece of property to exceed the absolute dollar limitations, the local tax assessor reduces the actual property tax collection at the state, county, municipal and school district levels proportionally according to their relative millage rates).

Based on these calculations, which serve as illustrative examples, and, on the extensive research I have done for the past seven years, for at least two reasons the defendant's assertion that Sumter County and Lawrence County can collect property taxes on Class III property up to the amount set by their respective Lids in this example (as reduced by amounts to allow the state, municipal, and two school districts to share in the Lid) is at best theoretical only. On a practical level the ability of each of these counties to collect property taxes on Class III property is substantially less than the technical absolute dollar limitations defined in Amendment 373(i).

1. It is politically unrealistic to assume that voters would agree to a rate as high as 100 mills. This is because a rate of 100 mills appears abnormally high and the average voter, especially in counties with more citizens at lower income and education levels, does not understand the complex relationship between the millage rate and the portion of the assessed value included in the property tax base when determining tax liability. If the assessment ratios determining the portion of property's value included in the base subject to the millage rate were not so low, and especially low for Class III property, the millage rate could be considerably less and still reach the absolute dollar limitation. In 2007 no jurisdiction in Alabama imposed a millage rate reaching even 50 mills. The highest millage rates in the state are in Vestavia Hills (49.3 mills), 42.3 mills in Mountain Brook (42.3 mills), Fairfield (40 mills), and Huntsville (35 mills). *See* <http://www.revenue.alabama.gov/advalorem/MILLS07.pdf>. Unlike Sumter and Lawrence Counties, which are rural, and, especially Sumter which is also extremely poor, these are urban areas having among the highest levels of per capita and family incomes, as well as having among the highest commercial and residential values in the state. Especially in light of the more economically depressed conditions in Sumter and Lawrence Counties as compared to those in Vestavia Hills, Mountain Brook, Fairfield and Huntsville, it is erroneous to

interpret the failure of local citizens in these two counties to adopt tax rates more than twice as high as those in these more wealthy jurisdictions as evidence suggesting lack of support for public education.

Moreover the big picture nationwide suggests that property tax rates as high as 100 mills or \$100 per \$1,000 of assessed value is quite uncommon. *See generally* Fifty-State Survey (although the complex and local nature of determining property tax rates make it impossible to pinpoint the rate in all local jurisdictions, the chapter on each state containing a broad snapshot of property tax rates indicates that less than ten states have any jurisdiction within them with rates as high as 100 mills).

2. Even if it were theoretically and politically possible to impose property tax rates reaching 100 mills on Class III property it is impossible to do so on a practical level. Although I do not presently have the means to calculate exactly what portion of the theoretical property tax burden reaching the Lids of \$5,143,080 in Sumter County and \$9,285,200 in Lawrence County for Class III Property would be borne by homeowners as opposed to timber and agriculture, my research proves that a general conclusion can be reached that the homeowners would overwhelmingly bear the lion's share, with timber's share being very tiny, even though timber constitutes an important source of wealth in both of these two

otherwise very poor counties. This is because fair market valuation produces a much larger property tax base than current use valuation. My research also supports the general conclusion that the portion of Amendment 373 which prevent both of these counties from raising adequate property taxes from Class III property are the provisions that produce a very small property tax base, especially for timber and agriculture, and, the fact that these very different types of property are lumped together in Class III. Because timber, agriculture and homeowners are tethered together in the same class, and, the property tax base for timber and agriculture is substantially smaller, in order to attempt to raise a fair property tax from timber political leaders would be forced to over tax homeowners to an unacceptable degree.

3. The assessed value of ten percent of current use value for timber and agriculture produces a very tiny base for the millage rates, resulting in timber contributing less than 2% of Alabama's overall property taxes, despite constituting seventy-one percent of Alabama's land mass. The assessed value of ten percent of fair market value produces a significantly larger property tax base, resulting in homeowners contributing approximately 29% of Alabama's overall property taxes. In Sumter County homeowners contribute approximately 33% of property tax revenues, while timber and farm owners contribute approximately 6% of property

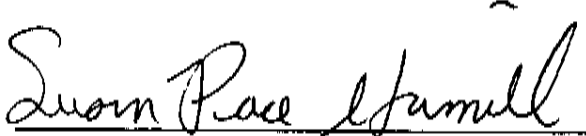
tax revenues, even though timber comprises approximately seventy-four percent of the land mass in Sumter County. In Lawrence County homeowners contribute approximately 31% of property tax revenues, while timber and farm owners contribute approximately 4% of property tax revenues, even though timber comprises approximately 44% of the land mass in Lawrence County. *See Alabama Article at 24-33 & app. C and Addendum at 243-245.*

4. Although I do not presently have the means to compare the exact fair market value of personal residences and historic sites with that of timber and agricultural lands across the state of Alabama or in Sumter and Lawrence Counties, my research proves that the massive presence of timber acres significantly enhances the state's economy with Alabama ranking among the top ten states in forestry and logging, forestry support and wood products industries. *See Alabama Article at 32-33 & notes 96-100 and app. E.* This supports the general conclusion that the provisions of Amendment 373(j) confining the property tax base to ten percent of current use value, keep substantially more of timber's fair market value out of the property tax base than the parallel provision applicable to personal residences does when comparing the property tax base for personal residences to its full fair market value.

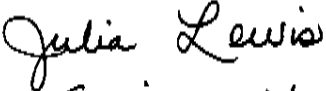
My research also supports the general conclusion that at least in Sumter County the fair market value of timber property is substantially greater than the fair market value of personal residences. *See id.* at app. E, tbl. 4.

5. My time and expertise preparing this affidavit and otherwise assisting the plaintiffs is completely *pro bono*, offered as a fiduciary to the state Alabama and to all citizens of Alabama given my privileged position as a Professor of Law at the state's only public law school.

I declare under penalty of perjury that the foregoing is true and correct.


Susan Pace Hamill

Executed this 30th day of May, 2008.


Expires 4/8/09