

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. \* Civil Action No.

CV-08-S-0450-NE

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. \*

**PLAINTIFFS' REQUEST FOR ADMISSIONS**

Plaintiffs India Lynch et al., through undersigned counsel, submit to all  
defendants, separately and severally, the following requests for admissions  
pursuant to this Court's order entered December 15, 2008, Doc. 57, and Rule 36,  
Fed.R.Civ.P. These requests, which are separately numbered, are for admissions  
about facts, the application of law to fact, or opinions about either and about the  
genuineness of certain documents.

Pursuant to said order, these requests for admissions are being filed with the  
Court, and defendants are required to file their responses within 21 days of

electronic service of these requests.

If a matter is not admitted, defendants' answer must specifically deny it or state in detail why they cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that defendants qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. Defendants may assert lack of knowledge or information as a reason for failing to admit or deny only if they state that they have made reasonable inquiry and that the information they know or can readily obtain is insufficient to enable them to admit or deny.

The grounds for objecting to a request must be stated. Defendants must not object solely on the ground that the request presents a genuine issue for trial.

1. The documents attached to plaintiffs' motion for summary judgment, Docs. 10-3, 10-4, 10-5, 11 through 18, are genuine.

The following requests are facts the State defendants admitted in *Knight v. Alabama*. See Doc 16.

2. The Alabama Supreme Court effectively ended the so-called Equity Funding Cases that were pending when this Court entered its 1991 opinion and remedial decree. *Ex parte James*, 836 So.2d 813 (Ala. 2002). See *Knight v.*

*Alabama*, 787 F.Supp. 1030, 1104 n.24 (N.D. Ala. 1991), *aff'd in relevant part*, 14 F.3d 1534 (11<sup>th</sup> Cir. 1994).

3. The Equity Funding Cases had sought to require the State of Alabama to provide the financial and educational resources needed to ensure that all students in Alabama's K-12 public school system receive an adequate and equal education.

4. Since 1991, an increasing portion of the ETF has been allocated to K-12 appropriations, although the amounts of the ETF allocated to both K-12 and higher education have increased.

5. In 1991 higher education was appropriated \$817,836,385, or 33.4% of the ETF. In 2001-02 higher education received 1,115,999,450, which represented 28.2% of the ETF.

6. The remedies crafted by this Court to eliminate the vestiges of historical discrimination in Alabama's system of public higher education took account of the limited funds available for the entire system.

7. The defendant HWIs have been unable to make more progress in the hiring and retention of African Americans on their faculties and administrations, at least in part, because of the lack of sufficient funds dedicated for competition for black scholars in the academic marketplace.

8. The last proposal of the Monitor and Oversight Committee for resolving

plaintiffs' motion for enforcement of the Remedial Decree provisions regarding black faculty and administrators, which was incorporated in this Court's order entered April 3, 2002, lowered the amount of funds originally proposed to be placed at the disposal of the HWIs for this purpose, in recognition of the competing needs for school funding.

9. The lack of funds dedicated to faculty hiring and retention makes it difficult for all state universities to compete with other states for quality faculty.

10. According to a 2000 survey by the Chronicle of Higher Education, faculty at Alabama public colleges made an average of \$49,640 a year, second lowest in an 11-state Southeastern region, and 10 percent below the regional average of \$55,353.

11. Alabama's property taxes are the lowest in the U.S. and would have to be tripled to reach the national average and doubled just to reach the level in Mississippi, which ranks 49<sup>th</sup>.

12. All state universities have in the last few years increased tuition and, at the same time, have reduced financial assistance for students.

13. In 2002 State School Superintendent Dr. Ed Richardson unveiled the Department of Education's estimate of what improvements need to be made in the state's K-12 system merely to bring it up to the level of adequacy. These

improvements were estimated at that time to cost an additional \$1.6 billion in the state's annual school appropriations for K-12 schools.

14. The State of Georgia ceded to the United States in 1802 all its claims to that part of the Mississippi Territory which now forms Alabama on the conditions that it be admitted as a state "as soon as it shall contain sixty thousand free inhabitants" and that slavery be allowed in the new state. According to paragraph 44 of the Summary of Historical Evidence at 787 F. Supp.1030, 1066, it would have contravened the provisions of the Northwest Ordinance to bring slaves into the "western territories of Georgia" until Alabama was admitted into the Union.

15. There was a debate in Alabama's constitutional convention of 1819, in light of Congress' efforts to restrict slavery in Missouri, about whether statehood should be conditioned on Congress' acceptance of the proposed Constitution of Alabama notwithstanding its provisions legalizing slavery in the new state.

16. The act of Congress admitting Alabama to statehood on March 2, 1819, continued the practice first adopted under the Northwest Ordinances of including in acts creating new territories or states provisions reserving the sixteenth section of every township as a permanent endowment for public schools and reserving one or two full townships as an endowment for a state university.

17. The statewide total of sixteenth section public school lands was

approximately 1 million acres.

18. However, because the Congressional grant of ownership of the public school lands was to the inhabitants of the townships, not to the Alabama state government, the 1819 Constitution could only require the Legislature to “preserve [them], from unnecessary waste or damage ... and apply the funds, which may be raised from such lands, in strict conformity to the object of such grant.”

19. The Alabama Legislature immediately set up local mechanisms for leasing the sixteenth section lands for public schools. School commissioners were authorized to be appointed by the county court both to manage the sixteenth section lands and to appoint trustees for each school district.

20. Rents from the leases were disappointingly low at first, but before a rational scheme for obtaining regular income from the school lands could be devised, the economic circumstances of Alabama’s so-called “flush times” brought irresistible pressure to sell the sixteenth sections.

21. During this ante-bellum period, capital funds were needed to buy slaves and land. No doubt capital was required for all kinds of things, and slaves were more important in some places than others.

22. Private banks were unable to satisfy the demands of borrowers, so in 1823 the Legislature established a state bank to meet their needs.

23. To provide lending capital for the state bank, the Alabama Legislature successfully petitioned Congress in 1827 to authorize the state to sell the sixteenth section lands.

24. The March 2, 1827, act of Congress specified that the school lands could be sold only with the consent of the inhabitants of the township which owned them and that the proceeds be devoted exclusively to the use of the schools.

25. In 1828, the Legislature established procedures for selling the sixteenth section lands, which basically opened them up to speculators, many of whom were authorized by law to pay for their land purchases over time.

26. The proceeds of the school land sales were required to be deposited in the state bank, where they became an additional source of capital for borrowers.

27. By act of the Legislature on January 15, 1828, the State assumed fiduciary responsibility for this “public school fund” and became obligated to pay interest directly to the townships and school districts.

28. When investments outstripped profits, school land purchasers failed to make their payments, and the economy collapsed.

29. The state bank failed in 1843, and most of the sixteenth section lands were lost.

30. Lost was \$1.3 million derived from sales of sixteenth section lands and

over \$300,000 from the sale of the university lands.

31. The Legislature in 1848 committed the State to pay interest at 6% on the indebtedness in perpetuity.

32. Today, even this artificial sixteenth section trust fund, the proceeds of which are supposed to be dedicated to the residents of each township, is being borrowed against by state government to cover shortfalls in the ETF.

33. A statewide public school system was not established until the act of February 14, 1854, which authorized each county to levy a one mill school tax on real and personal property, without the requirement of voter approval in a referendum election, the revenue from which was to be paid directly into the county treasury.

34. Funding for this antebellum statewide school system depended primarily on local taxation.

35. Alabama's ante-bellum public schools were reserved exclusively for whites.

36. In the Black Belt there was hostility toward public education from its beginning. When the Legislature of 1854 voted on the bill to set up and finance a system of public schools, the only negative votes in the House (twelve of them) were cast by Black Belt county representatives. Their opposition was based upon

the provisions of the bill which would take from the counties all the sixteenth section funds, with which the Black Belt was richly endowed, and distribute them throughout the state according to school population.

37. The Black Belt planters opposed taxation for the schooling of poor whites and blacks.

38. Both the Secession Constitution of 1861 and the conservative Reorganization Constitution of 1865 continued the provisions of the 1819 Constitution concerning education.

39. The 1868 Reconstruction Constitution, however, provided for free public education for all children, black and white.

40. The funding provisions for public education in the 1868 Constitution were also far reaching. One-fifth of the aggregate annual revenue of the state was devoted exclusively to the maintenance of public schools. In addition, certain sources of income were designated for education. A state poll tax of \$1.50 was to be used exclusively for public schools. Moreover, school districts were given power to levy a poll tax to be used locally for education. Furthermore, all federal lands granted for educational purposes and a tax placed on industrial and commercial corporations in the state were earmarked for education.

41. Commensurate with this statewide endorsement of public education, the

1868 Constitution placed a duty on the legislature to limit the taxing authority of local governments. 1868 Ala. Const., Art. XIII, § 16 (“It shall be the duty of the general assembly to provide for the organization of cities and incorporated towns, and to restrict their power of taxation, assessment and contracting of debt.”). No constitutional limit was specified, however.

42. In spite of the promises for increased revenues made by the Constitution of 1868, a depression ravaged in the state, charges of misuses of school funds abounded, and controversy swirled about equality of education for blacks and whites alike.

43. In the antebellum period, the primary source of state revenue was the tax on slaves. The tax structure at that time was considered progressive because the wealthier paid a higher portion of taxes.

44. Land taxes, meanwhile, were very low, leaving the yeoman, nonslave-owning farmer with very little tax liability. In fact, the average farmer in Alabama would have paid probably \$5 a year in property taxes between 1820 and 1860.

45. Abolishing slavery abolished a major tax source.

46. During Reconstruction, landowners were suddenly hit with high property taxes.

47. Disputes over tax policy became a principal issue in political fights

between Democrats and Republicans during Reconstruction. Many new officeholders won on promises of returning the tax burdens closer to levels that were in place before the Civil War.

48. White property owners, who controlled the Democratic caucus in the 1875 constitutional convention, used two strategies to insulate their property from taxation: (1) they blamed local governments for the huge public indebtedness incurred during Reconstruction to finance railroads and other industrial ventures, and (2) they justified evisceration of the education tax base with the argument that white men's property should not be taxed to educate blacks. This Court has found, at 787 F. Supp. 1030, 1074: "In order to gain access to the education they so desperately desired, Alabama's black citizens compromised with conservative whites on two major issues: segregation and white control."

49. Republicans unsuccessfully tried to rally poor whites to oppose the conservative Democrats in 1875. They warned that the poor whites would lose their free schools if the constitutional convention ever met and that the people of the poor white counties would lose all their school funds except for their sixteenth section fund, which amounted to but a few dollars.

50. The 1875 Constitution became the first Alabama constitution to place strict constitutional limits on the ability of both the state legislature and local

governments to tax property.

51. State Superintendent of Education Feagin said: “when the constitution of 1875 was adopted, the people of the state, for their own protection against exploitations by those from without and within who had recently come to exercise the right of suffrage, voluntarily surrendered the right of local taxation for schools.”

52. The last year under the 1868 constitution the school revenue amounted to \$484,000 as contrasted with \$348,891 for the first year under the 1875 constitution.

53. The legislative sessions following ratification of the 1875 Constitution took other measures to shield property from taxation. For example, the Legislature further reduced the state property tax to 7.0 mills in 1877, then to 6.5 mills in 1880, and to 4.0 mills in 1890.

54. During the last quarter of the nineteenth century, the Legislature abolished elected county commissions in some Black Belt counties.

55. With whites firmly in control of nearly all aspects of the political process, public pressure mounted for changes that would empower state and local governments to produce the revenues required to provide public services and public schools for whites. Samuel Davis Weakley, later Chief Justice of the

Alabama Supreme Court, joining the chorus in 1896 for constitutional reform and relief from its limits on taxation, said: “Although these safeguards may have been needed in an era when the ignorant Negro electorate and Radical excesses made it doubtful whether a republican form of government could exist in Alabama, conditions have vastly changed since 1875.”

56. Finding it impossible under the 1875 constitutional caps to increase state taxation for schools, those interested in education turned to local taxation, one of the main sources of income for education in most of the states. Some municipalities and counties did appropriate to public schools a part of the five mills which they could constitutionally levy, often at a sacrifice to internal improvements. The legislature adopted a policy in the eighteen-eighties of creating numerous school districts, many of which were given power to levy special taxes of the five mills or less to be used solely for education. However, the Alabama Supreme Court ruled that school districts were neither municipal corporations nor counties and hence as such had no right to levy taxes. *Schultes v. Eberly*, 82 Ala. 242 (1887).

57. Then the Legislature tried to get around the 5 mill constitutional cap on local property taxes by delegating to the local government a part of the state’s own 7.5 mill limit. But the Alabama Supreme Court struck down this device as well.

*Alabama v. Southern Ry.*, 115 Ala. 250, 22 So. 589, 592 (1897).

58. Corporate landowners even challenged laws empowering local governments to dedicate a portion of the property taxes they could levy under the cap established by the 1875 Constitution, but these devices, at least, were upheld by the Alabama Supreme Court. *Southern Ry. v. St. Clair County*, 124 Ala. 491, 27 So. 23 (1899).

59. A constitutional amendment, sponsored by Oscar R. Hundley of Huntsville, which would have authorized local school districts to levy a 2.5 mill property tax finally passed the Legislature in the 1892-93 session. The proposed amendment would have authorized the school districts to apportion to black schools the amount of taxes paid by black citizens and to white schools the amount of taxes paid by white citizens. 1892-93 Ala. Acts, p. 1215.

60. However, the proposed amendment failed to obtain the requisite majority of the whole vote cast in the general election of 1894. This was the heated gubernatorial election between the Populist candidate, Reuben Kolb, and the conservative Democratic candidate, William Oates.

61. The greatest impetus to the convention movement in 1901 came from the black counties (both the Black Belt and counties in which black voters held the balance of power) which in turn were supported by the business interests.

62. Black leaders in 1901 placed greater emphasis on protecting African Americans' access to public education than they did on protecting their right to vote.

63. The white delegates from the Black counties defeated the racial apportionment of taxes because it was against their own interests in securing a greater share of school revenues, which they were already allocating disproportionately to their white schools.

64. Considerable support for dividing funds for public education according to the taxes paid by each race existed in both the white and black counties in 1901. Race feeling, based on social and economic rivalry with blacks, had always run high among the poorer whites.

65. Section 269 of the 1901 Constitution provides:

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, for the support of public schools; provided, that the rate of such tax, the time it is to continue, and the purpose thereof, 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. . . .

This was the first time in Alabama's history that a requirement of voter approval was placed on the authority to levy a tax of any kind.

66. The public school funding provisions of the 1901 Constitution are

directly traceable to the 1875 Constitution, and propertied interests in the state were successful once again in protecting their financial interests.

67. The tax provisions of the Constitution of 1901 are substantially the same as those in the 1875 Constitution.

68. In its general revision of the constitution, the convention of 1901 acted with the utmost conservatism for two reasons. In the first place it was dominated by the conservatives. And in the second place, these conservatives were able to convince other delegates that any change of a controversial nature would endanger ratification of the suffrage decision. The convention provided for a more severe state tax limit, and gave counties and municipalities little relief from tax limits.

69. Fundamentally, except in regard to the suffrage, the Constitution of 1901 was a re-adoption of that of 1875.

70. Thirty-two counties voted against ratification of the 1901 Constitution, and the 26,879 margin for ratification was provided by the majority-black counties.

71. Figures prove that the constitution was adopted by the majorities of the black counties, whether the vote was fictitious or real.

72. In the Black Belt there was general approval of the new teacher certification law, of uniform textbooks, and of the redistricting law. The local tax

privilege, however, was not popular. It was voted by Perry County in 1904 and by Greene and Marengo the following year. By 1914 of the forty-six counties in Alabama which levied the local school tax, only one of them (Marengo) was in the Black Belt.

73. The school statistics for 1905-1906 show that the Black Belt counties did not vote local supplements for the schools. With the state funds already available, and with very low tuition charges, the salaries of the teachers were higher and the school terms longer in their white schools than in the other Alabama counties.

74. In 1919, State Superintendent Spright Dowell reported to Governor Kilby: "Under the present constitution, and in fact, since the Constitution of 1875, we have found ourselves more limited and restricted in the matter of local school support than any state in the Union."

75. In the "educational awakening" during the second decade of the twentieth century, most of the Black Belt counties voted the county tax. It was still true that the state school funds, made available by the legislative enactments, were divided among the counties according to the school population and were apportioned to the schools by the local county authorities as they saw fit; and it was still true that the funds were diverted in favor of the white schools. Therefore,

the white schools of the Black Belt tended to be superior in length of terms, teachers' salaries, and the preparation of teachers.

76. Thus did the Alabama Black Belt share in the "Educational Awakening" of the state. This did not mean that blacks were to be deprived of any educational opportunities. It did mean, however, that the largest portion of the public funds for education were to be used in schools for white children.

77. It became apparent quickly that the constitutional caps on the ability of both the Legislature and local governments to levy property taxes in support of public schools would require resort to other forms of taxation. The Alabama Special Educational Trust Fund was created in 1927 during the first administration of Governor Bibb Graves. Act No. 163, 1927 Ala. Acts.

78. In 1947, the first Folsom Administration sought revenues to ameliorate the post-World War II teacher crisis in Alabama. Conservative land owners were mobilized against incursions on their property taxes. The Boswell Amendment, Ala. Const., Amend. 55, passed in 1946, created the "read and understand" voter registration requirements. Black Belt landowners in particular were worried that local officials would raise their property taxes. In these circumstances, it was hopeless for Folsom to try to raise property taxes, and there was a surplus of income tax revenues, so he procured passage of Amendment 61, which earmarked

90% of income tax revenues for teacher salaries.

79. An attempt was made to raise the constitutional limit on local property taxes in 1955, but it was defeated.

80. The rate of ad valorem taxation which was constitutionally fixed at a maximum of 7.0 mills had not been changed since Amendment 3 was approved in 1916. Permissive legislation and the required constitutional amendments had granted 13 county and 23 city school districts the right to raise their school ad valorem taxes, with the highest rates being 17.5 mills. The local school tax amendment would have allowed the addition of another 5.5 mills to the allowable seven mills to produce a total of 12.5 mills for school purposes when local citizens so desired. But the voters rejected those tax increases over which they had control; these included taxes to benefit education. The same 1955 legislature increased the tax rate 16.67 percent on gasoline to raise \$50 million for highways and levied for welfare a tobacco tax to raise \$2.4 million and increased taxes on alcoholic beverages and corporations. The people of the state had no chance to vote against these issues, but they did exercise their prerogative to disapprove taxes when the school tax amendments were placed before them. The constitutional amendments affecting education were all soundly defeated at the polls on December 6, 1955. This defeat threw education in Alabama into the

worst proration of funding since the depression.

81. On December 20, 1955, the voters approved Amendment 111, which this Court found to have adopted most of the recommendations of the 1954 Interim Legislative Committee report for the racially discriminatory purpose of preserving segregation in the public elementary and secondary schools of the state. 787 F.Supp. at 1104.

82. The legislature and citizens denied additional taxes for the support of public education, a condition which lasted until 1963 and from which it took education many years to recover. This provision remains unchanged today, and the support of public education is constitutionally permitted but not required in Alabama.

83. As the threat of school desegregation intensified, legislative enthusiasm for funding public schools sharply diminished.

84. The 1959 Legislature authorized the creation of independent school districts throughout the state. Acts 1959, 2nd Ex. Sess., No. 126, p. 198.

85. In 1962, at Governor Patterson's request, the Legislature passed a constitutional amendment authorizing county commissions to increase property taxes by 5 mills, subject to approval by a majority of the voters. This amendment was approved by the voters on May 1, 1962, and proclaimed ratified as

Amendment 202 on May 10, 1962.

86. Only three cities and eight counties actually passed additional ad valorem taxes in 1962. Many more than this were turned down.

87. The Legislature put the first limitation on the meaning of fair market value in 1911, when it required that “the taxable property within this State shall be assessed, for the purpose of taxation, at sixty per cent of its fair and reasonable cash value.” 1911 Ala. Acts, Reg. Sess., No. 216, p. 185.

88. In 1935, as a companion to the Minimum Program Acts, the statute was amended to require property assessment at 60% of “its fair and reasonable market value.” 1935 Ala. Acts, Reg. Sess., No. 194, p. 263.

89. Until adoption of the first Lid Bill amendment in 1971, rather than establishing various classes of taxable property, the Alabama Constitution required all taxable property within the state to be included in a single class for ad valorem tax purposes.

90. The taxation system of Alabama was supported by the alliance of Black Belt planters and urban industrialists, who continued to protect their private financial interests.

91. In 1957, the Alabama Education Commission rejected proposals to reform the property tax system and instead recommended a sales tax increase.

This tax had long been supported by the Black Belt planters and urban industrialists as a way to ensure that non-property owners of Alabama paid their ‘fair share’ of the tax burden.

92. In July 1959 Superintendent of Schools Austin Meadows issued a statement that warned, “The enemies of public schools and those who did not want to pay the school bills timed sharp and deep threats at public schools with the fear of integration to choke education in this state.” Their attacks, according to Meadows, were not direct: “They oppose the means for providing education.”

93. The most powerful lobbying organizations in Alabama in 1959 were the Alabama Chamber of Commerce, the Associated Industries of Alabama and the Alabama Farm Bureau Federation.

94. In 1959, exercising his statutory authority as Revenue Commissioner, Harry Haden issued a revenue regulation that required all property to be assessed at 30% of its fair market value. Legislators introduced bills that would strip the Revenue Commissioner of his powers.

95. In the end, Governor Patterson compromised by agreeing to give up Haden’s equalization program in return for abandonment of the bills stripping the Revenue Commissioner of his authority.

96. The reapportionment controversies of 1962 broke down along urban-

rural lines. *See Sims v. Frink*, 208 F.Supp. 431 (M.D. Ala. 1962) (3-judge court), *aff'd sub nom. Reynolds v. Sims*, 377 U.S. 533 (1964). Nevertheless, the Black Belt agricultural interests and Birmingham industry still shared opposition to increased taxes.

97. Whites were concerned about losing control of their local governments, first, because blacks were gaining the balance of power in local elections by the mid-1950s in Montgomery and Tuskegee, and because blacks were gaining voting majorities by 1966 in Macon, Greene and potentially a dozen more counties.

98. For Black Belt landowners the connection between legislative reapportionment, the rise of the black vote and fear of increased property taxes was particularly strong.

99. Behind Sam Engelhardt's concern about black voting lay economic self-interest. "Everybody has an angle when they get in [politics]," he said. "I was worried . . . about the tax assessor . . . because of all our holdings," he said, referring to the many thousands of acres of rich agricultural land the Engelhardt family owned in Shorter. "That was my angle—to protect ourselves. Not only me, but my family. My aunts, uncles, and cousins owned land." He based his concern about who was tax assessor on a racist assumption. "If you have a nigger tax assessor," he rhetorically asked a journalist in 1956, "what would he do to you?"

The obvious answer, to Engelhardt, was that a black tax assessor would try to exploit white landowners.

100. Engelhardt, an early supporter of John F. Kennedy, went on to lead the White Citizens' Councils in Alabama and was a spokesman for the white-supremacist positions through the 1950s and early 1960s, when he was State Highway Commissioner, State Senator and Chairman of the State Democratic Executive Committee.

101. During his first term as governor, George Wallace, who grew up in Barbour County, made no attempt to achieve property tax reform. Throughout the 1960s and 70s, his hallmark opposition to school desegregation, his rural county constituent base, and the growth of private school options for white flight all contributed to the defeat of property tax reform.

102. In January 1964, Governor Wallace toured the newly opened Macon Academy. He praised the private school and a month later called for public contributions to support white students boycotting Macon County's integrated schools.

103. Wallace's office maintained a file of letters from individuals giving money to the Macon Academy; one contribution was for twenty thousand dollars. A woman wrote to Wallace telling him that she would like to donate seven

thousand dollars toward the improvement of education in Alabama and asked him to suggest where it should go. He replied: “You may wish to contact the Macon Academy in Tuskegee, Alabama. The academy is a private school which was set up by individuals in Macon County who were not satisfied with the Federal Court order which did away with their rights to run the schools in that County as they saw fit.” There were many more letters like this in the one-and-a-half-inch-thick file.

104. Wallace also supported white academies in other counties, and he pressured cabinet members to contribute to them. His office maintained lists of contributors.

105. When Lurleen Wallace succeeded her husband as Governor, Wallace’s Black Belt supporters began to push to protect their property against increased taxes.

106. An effort to amend the 1901 Constitution during Lurleen Wallace’s administration to eliminate, once and for all, the century-old requirement of equal assessment and taxation rates, failed.

107. Governor Albert Brewer was a supporter of public schools.

108. In 1967 the legislature’s Joint Committee on Ad Valorem Taxation issued a report that recommended the establishment of a statewide reassessment

program, with professional qualifications required of county boards of equalization and lowering of the fictional 60 percent assessment maximum rate to a more realistic 30 percent. Timberland would be assessed at its bare-land value. Growing timber would be exempt from property taxation, as would be other crops, but a severance tax would be levied on timber when marketed. There would be no exemptions for machinery or other personal property (for example, autos, boats, airplanes, trucks, and trailers) used in a business.

109. A report issued by a four-person minority of the interim committee recommended different percentage levels for the assessment of the various classes of property. In particular, it recommended that rural property be assessed at lower levels than other kinds. Bills reflecting this Farm Bureau Federation perspective were introduced in the Senate on Tuesday in the third week of July 1967 and assigned to the Finance and Taxation Committee.

110. On August 8, 1967, the Farm Bureau bill was defeated in the House because it failed to win the three-fifths vote required of a constitutional amendment. Except for a few scattered “No” votes, the division consisted of Jefferson, Mobile, and Etowah Counties against the rest of the state. Four of Montgomery’s five representatives voted with the rural counties. The reporter Don Wasson cited their vote as evidence that urban interests were split concerning

property tax reform because many wealthy urbanites or their relatives owned rural property.

111. On August 10, 1967, the House voted to reconsider the Farm Bureau bill, and the motion passed seventy-two to sixteen. In the bill that finally passed the House, personal property was assessed at 20 percent, business property at 25 percent, residential property at 20 percent, and utilities at 40 percent. Farm land was assessed at the lowest rate of all, 15 percent.

112. The urban-rural conflict in the Senate over property tax reform in 1967 was intensified by a parallel battle over the education budget.

113. Ultimately, in 1967 the legislature passed a 30 percent cap on property tax assessments plus a number of exemptions that changed virtually nothing. This outcome represented a victory for the rural counties despite the fact that the legislation did not contain property categories. Absent from all accounts of these battles is any significant involvement by the Wallace administration. Wallace did not take a public position in favor of property tax equalization, but there is also no indication that he worked behind the scenes for the rural position. Of course, his legislative leadership appointments were sufficient to assure a rural victory, and his day-to-day involvement was probably unnecessary.

114. Through the early months of 1967, pro-education forces publicized the

need for increased spending as they had at the beginning of the Patterson and first Wallace administrations. Governor Lurleen Wallace released an education budget proposal containing cuts, the deepest of which hit teacher salaries and public school operations. Given an expected \$25 million surplus in the Special Education Trust Fund at the beginning of the 1967 academic year, education forces had little choice but to interpret this as an attack on education fostered by the opposition of many outspoken AEA members to George Wallace's presidential aspirations. Albert Brewer supported this view, maintaining that Wallace became angry at boards of education because they obeyed court orders requiring school integration: "He would call them names such as sissy britches."

115. During his first term and during his wife's administration, George Wallace ignored property tax reform and other tax reforms as well as educational reform.

116. Codified as Ala. Code, Title 51, § 17(1) (Supp.1969), Act No. 502, Acts 1967, p. 1215, did not propose to amend the 1901 Constitution to establish the separate property tax classes the Farm Bureau forces had wanted, but it did formally repeal the 60% uniform assessment ratio, capping all property assessments at 30% of fair market value and granting state and local tax officials wide discretion in the setting of ad valorem assessment rates. This assured that

local officials would not increase taxes significantly.

117. When Lurleen Wallace died and Albert Brewer became Governor, education forces tried once again to get genuine tax equalization through the Legislature. Brewer, however, did not have the political clout to overcome the anti-tax reform lobby and he was content to limit his efforts to an incentive formula for local counties and school districts to raise their own taxes voluntarily.

118. In 1968, an agriculture study commission, concerned that farmers might be asked to shoulder property taxes at rates comparable to what others were paying, proposed to change Alabama law to provide that assessments be based on current use and not the market value of property.

119. Governor Brewer's approach focused on a county's tax effort and ability to pay measured by the county's mean per-capita income compared to the mean per-capita income of the state. A relatively poor county making a relatively strong effort to support its schools would be rewarded with extra state funds. A relatively wealthy county doing a below-average job of supporting its schools would be denied some funds even if it raised more taxes than the poorer county. The plan gave counties two years to bring their tax systems up to the state standard and gave county commissions the power to propose tax increases to their electorates.

120. The urban bloc began a filibuster in the Senate on April 15, 1969. Its proximate target was the bill to create the postsecondary education commission, but it could have been any bill. The urban bloc had tried to wring concessions on property tax equalization out of Brewer in the House and wanted funding distribution formulas closer to a per student basis. Brewer favored property tax equalization, but he feared that it would not get through the special session and that it would probably tangle up his other bills as well.

121. The Achilles' heel in the urban bloc's Senate filibuster was that urban legislators favored much of Brewer's education program. They knew or suspected that in 1970 he would be competing for reelection against George Wallace, who would not support property tax equalization. To embarrass Brewer too much with their filibuster would be counterproductive.

122. Despite doubts about the usefulness of Brewer's new minimum standard property tax bill with its penalty provision, urban legislators supported it. It passed the legislature in 1969 and was signed into law.

123. By 1971, when the penalty provision of the law was scheduled for implementation, few underassessed counties had acted to bring themselves up to the state norm. Some counties had tried but failed to win the taxpayers' approval. For example, the Montgomery County Board of Education asked its electorate for

a 5 mill property tax increase that would have yielded \$1.7 million and was turned down. Under the provisions of the 1969 act, Montgomery schools could lose \$14 million. In all, thirty-nine counties stood to lose funds.

124. This was the situation facing the three-judge federal court in *Weissinger v. Boswell*, 330 F.Supp. 615 (M.D. Ala. 1971) (3-judge court), which proceeded to rule that the 1967 statute violated both the federal and state constitutions.

125. Since the 1967 law had been declared unconstitutional, said the *Weissinger* court, the 30% of market value assessment ratio it contained could no longer be enforced, and the 60% ratio set out in the 1935 statute was restored. The court gave the state one year to bring its property tax laws into compliance with the court's equalization mandate. 330 F.Supp. at 625. Subsequently, in an unreported order, because of the difficulties in conducting a statewide reassessment of property, the court extended to June 29, 1979, the deadline for applying equal assessment ratios for all like property throughout the state.

126. In the meantime, however, George Wallace had defeated Albert Brewer in the 1970 gubernatorial election.

127. Even though only one black legislator had been elected in 1970, the three-judge federal court in Montgomery clearly was headed toward new decrees

that would more nearly equalize the populations in House and Senate districts and empower additional black voter majorities. Property owners were concerned about the prospect of increased property taxes. Legislative power was already passing to urban areas, where there was much stronger support for property taxes, and where rates were already higher than the rates in rural areas. Blacks in the cities were better organized politically and were more capable of making their influence felt in the Legislature.

128. When he addressed the Regular Session of the Legislature on May 4, 1971, Wallace expressly linked opposition to tax increases with opposition to federal intervention in affairs of the State:

Education is still the primary function of State Government, and I believe under existing revenues we can have a teacher salary increase, a better free textbook program, a better retirement program which has already been introduced.

Other legislation along this line will be introduced, because I am proud of the fact that during the time I was Governor the first time, a breakthrough in education came. The largest increases at any time because of our interest. But I am frank to tell you, and to tell educators, that the people of Alabama are simply turned off on education and some educators because of what the Federal Courts and HEW have done to their children from Huntsville to Mobile. Every one of you know I am telling you the truth when I tell you that.

129. The *Weissinger v. Boswell* decision came down on June 29, 1971, and the Regular Session adjourned without passing either a General Fund or an

Education Fund budget. The dissension caused by the issues of legislative redistricting and court-ordered ad valorem tax reform made constructive legislation during the closing days and hours impossible.

130. An Education budget finally was adopted in a second special session in November 1971. A third special session was called to respond to *Weissinger v. Boswell*. A law was enacted requiring local county authorities to reappraise all property or have it done for them by the State Department of Revenue. Act No. 160, 1971 Ala. Acts (Third Special Sess.).

131. Also in the third special session of 1971, a bill was passed proposing what became Amendment 325 of the 1901 Constitution, the first Lid Bill, when it was ratified by the voters on June 8, 1972. Act No. 116, 1971 Ala. Acts (Third Special Sess.).

132. Amendment 325 established for the first time separate classes of property for taxation purposes.

133. The result of Amendment 325 was to legalize the de facto classifications in effect when *Weissinger v. Boswell* was filed in 1969. The reappraisal period was stretched over seven years.

134. The “local option” Amendment 325 provided counties to vary their assessment ratios and tax rates were carefully constrained to maintaining the status

quo. Bill Sellers, political commentator for the Mobile Press Register, explained:

Various technical, legal or constitutional reasons were voiced for the opposition to local option, but some observers feel that the main objection stems from the fact that in a growing number of Alabama counties, blacks are gaining control of county governments. Senators representing some of these counties are considered fearful that the black political leaders, who also enjoy voting majorities, will exercise local options and set property taxes at the highest rates possible in order to raise additional funds for their governmental operations. These taxes will be paid by the property owners, considered by the senators to be white owners of large farms and corporate interests with large timberland holdings

MOBILE PRESS REGISTER, Dec. 12, 1971.

135. The provision in Amendment 325 giving the Legislature authority to vary the assessment ratios from county to county, and the laws enacted pursuant to it, Ala. Code 40-8-1 (1975), were challenged on non-racial equal protection grounds in a separate federal lawsuit filed in Mobile. On April 21, 1978, Judge Hand ruled that the statutory variations of assessment ratios among the counties violated the Equal Protection Clause of the Fourteenth Amendment. *McCarthy v. Jones*, 449 F.Supp. 480, 484 (S.D. Ala. 1978). However, he declined to strike down Amendment 325 itself, on the theory that it was possible that the Legislature could vary the assessment ratios among counties in a rational way that met equal protection standards. 449 F.Supp. at 485.

136. In 1978, Governor George Wallace appealed to the legislature to

approve new legislation designed to circumvent the effect of *Weissinger vs. Boswell* by providing a set of ad valorem tax laws which would produce comparable revenues, both state and local, in the same amounts as those produced before the court mandate.

137. One piece of this package was Amendment 373, an amended Lid Bill, which was adopted in the Second Special Session and “ratified in the November 7, 1978, general election by a vote of 313,577 to 205,782 . . . . Only Jefferson, Shelby, Walker, Blount, and Wilcox counties voted against the measure.

The following requests for admissions are taken from this Court’s findings of fact in *Knight and Sims v. Alabama*, 458 F.Supp.2d 1273 (N.D. Ala. 2004), *aff’d*, 476 F.3d 1219 (11<sup>th</sup> Cir.), *cert. denied*, 127 S.Ct. 3014 (2007):

138. On March 2, 1819, Alabama was admitted to statehood. (Pls.’ Request for Admissions ¶ 17.)

139. The act of Congress admitting Alabama to statehood continued the practice of reserving the sixteenth section of every township as a permanent endowment for public schools and reserving one of two full townships as an endowment for a state university. (*Id.*) The statewide total of sixteenth section public school lands was approximately one million acres. (*Id.* ¶ 18.)

140. The inhabitants of the townships, rather than the State government of Alabama, owned those public school lands; therefore, the 1819 Constitution could only require that the Alabama Legislature preserve the lands from unnecessary waste or damages and apply funding, which could be raised from such lands, in accordance with the purpose of such grants. (*Id.* ¶ 19.)

141. Taxation and appropriations for public education under the 1819 Constitution were statutorily governed – the constitution simply “encouraged” education and gave the General Assembly plenary power to raise funds for schools, as well as the state university. 1819 Ala. Const. Art. on Education.

142. The Alabama Legislature established local mechanisms for leasing the sixteenth section lands for public schools: school commissioners were authorized to be appointed by the county court to manage the sixteenth section lands and to appoint trustees for each school district. (Pls.' Request for Admissions ¶ 20.)

143. Rents from the leases of the sixteenth section lands were initially disappointingly low, and pressure began to build to sell those lands. (*Id.* ¶ 21.)

144. In 1823, the Alabama Legislature established a state bank, because private banks were unable to satisfy the demands of borrowers, who sought capital funds to buy, among other things, slaves and land. (Pls.' Request for Admissions ¶¶ 22-23.)

145. To provide lending capital for the state bank, the Alabama Legislature successfully petitioned Congress in 1827 to authorize the State to sell the sixteenth section lands with the consent of the inhabitants of the townships that owned the lands. (*Id.* ¶¶ 24-25.) Congress also specified that the proceeds of such sales must be devoted exclusively to the use of public schools. (*Id.* at ¶ 25.)

146. In 1828, the Legislature established procedures for selling the sixteenth section lands. (Pls.' Request for Admissions ¶ 26.) Among the purchasers were speculators, many of whom were authorized by law to pay for their land purchases over time. (*Id.*) The proceeds of the land sales were required to be deposited into the state bank, where they became an additional source of capital for borrowers. (*Id.* ¶ 27.)

147. On January 15, 1828, by act of the Legislature, the State assumed fiduciary responsibility of the proceeds of the sales of sixteenth section lands, and became obligated to pay interest directly to the townships and school districts. (*Id.* ¶ 28.)

148. School land purchasers eventually found that their investments outstripped profits, and consequently failed to make payments. (Pls.' Request for Admissions ¶ 29.) In 1843, the state bank failed, and \$1.3 million derived from the sales of sixteenth section lands and over \$300,000 from the sale of the

university lands were lost. (*Id.* ¶¶ 30-31.)

149. In 1848, the Legislature committed the State to pay interest at six percent of the indebtedness in perpetuity. (*Id.* ¶ 32.)

150. Most of the antebellum public schools were concentrated in the Black Belt, a fertile region of the State, so named for the dark color of the soil. (May 4, 2004, Tr. at 103-04.) The high concentration of schools in that region was a result of both the relative high value of the land in that region and the Whiggish residents of the Black Belt counties who tended to value formal education more than the Jacksonian Democrats residing elsewhere in the State. (Dep. of Dr. J. Mills Thornton at 26-29.)

151. On February 14, 1854, the Legislature established a statewide public school system, authorizing each county to levy a one mill school tax on real and personal property without the requirement of voter approval by referendum. (Pls.' Request for Admissions ¶ 20.)

152. Revenue generated from the school tax was paid directly into the county treasury. (*Id.*) The 1854 school statute required local jurisdictions to submit the proceeds from the sixteenth section land grants to the State, which would redistribute the funds based on the number of students in each school system. (Thornton Dep. at 23-25.)

153. Before the Civil War, the slave tax and ad valorem taxes on land were the principal source of revenue for county governments. (Thornton Dep. at 11-14.)

154. For most of the antebellum period, however, “essentially none” of the revenues from the slave tax and ad valorem taxes went to public schools. (*Id.* at 21.)

155. Funding for public schools instead depended on the revenues obtained from the lease or sale of the sixteenth section land grants. (*Id.* at 22-23.)

156. Beginning in 1847, the Black Belt counties succeeded in changing the statutory law to shift more of the tax burden from slaves to an ad valorem tax on land, which benefitted taxpayers in the Black Belt counties because those taxpayers generally owned more slaves than other residents in the Hill and Wiregrass counties. (*Id.* at 19-21, 26-29.)

157. During the five years preceding the Civil War, the amount of ad valorem land tax collected by the State surpassed revenue generated from the slave tax. (*Id.* 20-21.)

158. By 1861, the 1854 public school fund was producing an annual revenue of about \$250,000. (*Id.* at 33.)

159. The 1861 Secessionist Constitution and the 1865 Presidential

Reconstruction Constitution retained the provisions of the 1819 Constitution with respect to education. (Thornton Dep. at 32-33.) Those Constitutions, like the 1819 Constitution, did not restrict the Legislature's plenary authority to regulate the funding and operation of public education. (*Id.* at 33-34.)

160. In 1867 a new state constitution, also known as the Radical Reconstruction Constitution, was drafted, and in 1868 it was ratified (the “1868 Constitution”). (Thornton Dep. at 34.) The 1868 Constitution established a centralized public school system, including the University of Alabama, under the control of a state board of education. (*Id.* at 34-36.)

161. The 1868 Constitution also authorized the Legislature to levy a state poll tax of \$1.50 for the use of public schools, and centralized all the sixteenth section lands under the control of the State Board of Education. (Thornton Dep. at 38-39.)

162. Local school districts also received the power to levy a poll tax to be used for local education. (Pls.' Request for Admissions ¶ 41; Thornton Dep. at 37-38.)

163. A “poll tax” at this time was not a tax levied at the voting place; rather, it was simply a head tax levied on all residents. (Thornton Dep. at 54.) And that created some local support for the schools because that poll tax revenue

in each district in each township went directly to the township.

164. The poll tax that was collected from whites went to the white schools, and the poll tax that was collected from blacks went to black schools.” (*Id.* at 38-39.)

165. Additionally, all federal lands granted for education purposes, as well as a tax levied on industrial and commercial corporations, were earmarked for education. (Pls.' Request for Admissions ¶ 41.)

166. The 1868 Constitution also placed a duty on the Legislature to limit the taxing authority of local governments; however, no constitutional limit was specified. (*Id.* ¶ 42 (quoting 1868 Ala. Const. Art. XIII § 16).)

167. Although the schools in Alabama were segregated while the 1868 Constitution was in effect, the State Board of Education exercised special legislative powers to mandate that state public school funds be distributed on a per capita basis, without regard to race. (Thornton Dep. at 37-38.)

168. In addition to the poll tax and the proceeds of the sixteenth section lands, the 1868 Constitution required that all property, not just land, be assessed on a uniform ad valorem basis. (Thornton Dep. at 40.)

169. Further, because the tax assessors were radical Republican officials and they had no particular interest in protecting well-to-do white property holders,

virtually none of whom were Republicans, there was quite an aggressive effort to make sure that these values were accurate. (*Id.* at 42.)

170. Consequently, the ad valorem general property tax generated substantial revenue, doubling the State revenues for public education from amounts received prior to the Civil War. (*Id.*)

171. The University of Alabama, which was barely functioning with a few students on \$36,000 income from the lost land grant did not receive any of those public school funds, however. (*Id.* at 42-48.)

172. 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. (Thornton Dep. at 53-55.)

173. 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. (*Id.* at 50-52.)

174. 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. (*Id.* at 55-56.)

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. (*Id.* at 55-56.)

175. Following the failure of railroads whose bonds had been guaranteed by the State, and following the Panic of 1873, funding for public education became increasingly strained. (Thornton Dep. at 59-60.)

176. Funding for public education fell even more following the ratification of a new constitution in 1875. (Pls.' Request for Admissions ¶ 53.)

177. Because the 1868 Constitution provided for legislative apportionment on the basis of total population, and because blacks were counted for the first time, legislative power shifted from the white counties to the Black Belt counties. (Thornton Dep. at 56-57.)

178. Although blacks constituted a large portion of the population in the Black Belt counties, after Redemption, blacks were controlled by intimidation and fraud, so as to permit a small number of whites in the Black Belt counties to exercise disproportionate power in the Legislature. (*Id.*)

179. 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. (Thornton Dep. at 60-69; Pls.')

Request for Admissions ¶ 51.)

180. 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. (Thornton Dep. at 60-69; Pls.' Request for Admissions ¶ 51.)

181. 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. (Thornton Dep. at 65-66.)

182. Racial motives permeated the establishment of constitutional caps on millage rates.

183. During Reconstruction, the experience of Black Belt whites had been a county government which was controlled by blacks and their Republican allies and which had very heavily taxed them, and taxed them for purposes that they largely regarded as illegitimate, such as the education of the Freedmen.

184. Now that they had power back in their own hands, whites in the Black Belt were intent on using that new control to protect themselves from the possibility that the black majority in their counties would ever again be able to use that political power to tax them in a way that would force them as the property

holders to cough up funds which would be used to the benefit of the majority of the people in the Black Belt who were black and essentially nonproperty holding.

And so they wanted to write into the Constitution permanent protections.

(Thornton Dep. at 67-68.)

185. Whites living in the Black Belt counties also used their influence over local tax assessors to reduce property assessments in the Black Belt far below market value, which disadvantaged other white counties. (Thornton Dep. at 60-69.)

186. Additionally, the legislative sessions that followed ratification of the 1875 Constitution further lowered the millage rate from 7.0 mills in 1877 to 4.0 mills in 1890 so as to shield property from taxation. (Pls.' Request for Admissions ¶ 54.)

187. From 1875 to 1891, black schools received a proportionate amount of school funding. (Thornton Dep. at 78.)

188. In 1891, however, the Apportionment Act was enacted, thereby giving discretionary authority to local school trustees to apportion funds among schools. (*Id.* at 80-81.) As a result, funding destined for black schools was diverted to white schools all over the State. (*Id.* at 81.) In the majority Black Belt townships, this had an enormous and devastating effect on black education. (*Id.*)

189. The 1891 Apportionment Act also had an impact on the politics of property taxes. (Thornton Dep. at 81, 83.) 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. (*Id.* at 82.)

190. 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. (*Id.*)

191. Disfranchising blacks and maintaining white supremacy were the central purposes of the 1901 Constitution. (Thornton Dep. at 97, 119.)

192. The public school funding provisions of the 1901 Constitution are directly traceable to the 1875 Constitution, and propertied interests in the State were successful once again in protecting their financial interests. (Pls.' Request for Admissions ¶ 67.)

193. 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. (Thornton Dep. at 100-06.)

194. 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. (*Id.* at 105.)

195. This arrangement assured that the Black Belt could thwart attempts to increase property taxes. (*Id.*)

196. Considerable support existed in the 1901 constitutional convention for dividing funds for public education according to the taxes paid by each race. (Pls.' Request for Admissions ¶ 65.)

197. Racial feelings, based on social and economic rivalry with blacks, had always run high among the poorer whites. (*Id.*)

198. White delegates from black counties, however, defeated the racial apportionment of taxes because it was against those whites' interests in securing a greater share of school revenues, which the whites were already allocating disproportionately to their white schools. (Pls.' Request for Admissions ¶ 64.)

199. The urban industrialists and Black Belt planters who controlled the 1901 constitutional convention preserved the 7.5 total millage cap that existed under the 1875 Constitution: the cap on state property taxes was reduced to 6.5 mills, but counties were authorized to levy up to 1.0 mills for schools. (Thornton

Dep. at 108-11.)

200. 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. (*Id.* at 106-07, 115-16; Pls.' Request for Admissions ¶ 66.)

201. 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.

202. And so it was important to the drafters of the 1901 constitution not to have too much power in the hands of the counties, or to make sure that the power that is at the local level is in safe, that is, Democratic and white hands. (Thornton Dep. at 92.)

203. White supremacy was unquestionably the dominant view of education for all the members of the 1901 constitutional convention.

204. There was a wide variety of opinions about the interaction of education and race. There were delegates who believed that blacks should receive essentially only vocational education. And, on the other hand, there were delegates who believed that over a long period of time through the educational

mechanism, it might be possible to improve the status of blacks.

205. There was nobody at the 1901 constitutional convention who was not a white supremacist, but there were varieties of opinions about whether white supremacy was an immediate necessity or whether white supremacy will always exist because of inherent differences between the races. And everything in between. That's a whole spectrum of opinions.

206. There wasn't anyone in the white counties who needed to be convinced at least of the immediate necessity of white supremacy. There was nobody at the convention who was not a white supremacist. (*Id.* at 111-12.)

207. Once blacks were disfranchised by the 1901 Constitution, whites became more willing to support public education. (Thornton Dep. at 123.)

208. In the Black Belt counties, support existed for a new teacher certification law, uniform textbooks, and redistricting. (Pls.' Request for Admissions ¶ 73.) The local tax privilege, however, was not popular in the Black Belt counties – by 1914, of the forty-six counties in Alabama that had levied a local school tax, only one (Marengo) was in the Black Belt. (*Id.*)

209. During the Progressive Period preceding World War I, the Legislature made three attempts to increase funding for education.

(1) First, a state board of equalization was created to police county

tax assessors in an effort to remedy unreasonably low tax assessments. (Thornton Dep. at 125-26.)

(2) Second, in 1911, the Legislature passed a statute, which in 1935, was later slightly amended, establishing a sixty percent assessment ratio for all property. (*Id.* 126-27.)

(3) Third, in 1915, after school revenues again fell beneath expectations, Amendment 3 was ratified, which authorized counties to levy an additional one mill for schools and lowered the referendum margin from three fifths to a simple majority of those voting. (*Id.* at 129-30.)

210. In 1933, a constitutional amendment was ratified authorizing an income tax. (Thornton Dep. at 137-38.) The amendment provided that the proceeds of the income tax would first fund the State's floating debt, then would be allocated to a long term reduction of the State property tax. (*Id.* at 138.) That amendment did not restrict the authority of local governments to levy property taxes. (*Id.*)

211. In 1927, inasmuch as the constitutional caps on state and local taxation of personal property required other forms of taxation to raise revenue, the Legislature by statute segregated public school funds from general funds in the State budget, creating what was then called the Special Education Trust Fund.

(Thornton Dep. at 142-43.)

212. In 1935, the Legislature also statutorily enacted the State's first sales tax and created the Minimum Program Fund for schools. (*Id.*)

213. The establishment of the Special Educational Trust Fund and the Minimum Program Fund represented substantial advances in the funding of public schools in the State. (*Id.* at 143.)

214. Prior to the establishment of the income tax, sales tax, Special Educational Trust Fund, and the Minimum Program Fund, state universities had received appropriations from other state revenues – *i.e.* the State property tax. (*Id.* at 143-44.)

215. In 1947, the state income tax was earmarked for K-12 teacher salaries by Amendment 61 to the Constitution of 1901. (May 4, 2004, Tr. at 155.)

216. The impact of *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), on white Alabamians' support for public education varied according to how seriously they took the threat of federally mandated school desegregation.

217. For many years after *Brown* the feeling was quite widespread in the South that there simply was going to be no way that the federal government would ever have the power to bring integration to the state. There was no sense that

integration was impending or even very likely. And those who were quite confident that was true continued to be advocates of increased funding for the schools and with confidence that these schools would continue segregated.

218. On the other hand, those who believed that there was some real likelihood that schools would be integrated had very much more substantial doubts, because all political leaders at this period said, and some actually believed, that the outcome of the integration of the schools would be the abolition of the schools.

219. Certainly Governor John Patterson was, not merely in rhetoric but actually in his heart, committed to the abolition of the public school system of the state if integration came to the state. If there was no likelihood that it was going to become statewide, he was prepared to close them in particular districts and leave them open elsewhere.

220. And Governor Wallace actually welcomed the thought of general conversion to a system of private segregated academies if there continued to be some form of public funding that did not go to the school, but instead went to the parents in the form of tuition grants or scholarships, which the parents could then use to send their child to the segregated private academy. (Thornton Dep. at 163-64.)

221. An attempt was made to raise the constitutional limit on local property taxes in 1955, but it was defeated. (Pls.' Request for Admissions ¶ 80.)

222. The rate of ad valorem taxation which was constitutionally fixed at a maximum of 7.0 mills had not been changed since Amendment 3 was approved in 1916. (*Id.* ¶ 81.) Permissive legislation and the required constitutional amendments had granted thirteen county and twenty-three city school districts the right to raise their school ad valorem taxes, with the highest rates being 17.5 mills. (*Id.*) The local school tax amendment would have allowed the addition of another 5.5 mills to the allowable seven mills to produce a total of 12.5 mills for school purposes when local citizens so desired. (*Id.*)

223. But the voters rejected those tax increases over which they had control; these included taxes to benefit education. (*Id.*)

224. The same 1955 legislature increased the tax rate 16.67 percent on gasoline to raise \$50 million for highways and levied for welfare a tobacco tax to raise \$2.4 million and increased taxes on alcoholic beverages and corporations. (*Id.*) The people of the State had no chance to vote against those issues, but they did exercise their prerogative to disapprove taxes when the school tax amendments were placed before them. (*Id.*)

225. The constitutional amendments affecting education were all soundly

defeated at the polls on December 6, 1955. (*Id.*) This defeat threw education in Alabama into the worst proration of funding since the depression. (*Id.*)

226. On December 20, 1955, the voters approved Amendment 111, which this Court found to have “adopted most of the recommendations of the 1954 Interim Legislative Committee report for the racially discriminatory purpose of preserving segregation in the public elementary and secondary schools of the state.” (Pls.’ Request for Admissions ¶ 82 (citing *Knight v. Alabama I*, 787 F.Supp. at 1104).)

227. The legislature and citizens denied additional taxes for the support of public education, a condition which lasted until 1963 and from which it took education many years to recover. (Pls.’ Request for Admissions ¶ 83.)

228. This provision, Amendment 111, remains unchanged today, and the support of public education is constitutionally permitted but not required in Alabama. (*Id.*)

229. As the threat of school desegregation intensified, legislative enthusiasm for funding public schools sharply diminished. (Pls.’ Request for Admissions ¶ 84.)

230. Particularly in the Black Belt, whites were committed to the idea that public education could not continue if in fact it was ordered to occur on an

integrated basis. The schools would simply have to be closed; public education would have to end because an integrated education was not acceptable.

231. With that as a fundamental first priority, any efforts to raise property tax, increase any kind of funding of schools, was in serious trouble and of great question until the matter of school integration was settled.

232. And so when there were funding crises in education in the 1950's, it was very difficult to get support for additional school funding even when it was advocated by the staunchest of segregationists like Governor John Patterson, who understood that the white schools needed money, the universities needed money, but he also had to announce this is with the understanding that any new funding occurs only if the schools stay separate. (May 4, 2004, Tr. at 97.)

233. The 1959 Legislature authorized the creation of independent school districts throughout the state. Acts 1959, 2nd Ex.Sess., No. 126, p. 198. (Pls.' Request for Admissions ¶ 85.)

234. In 1962, at Governor Patterson's request, the Legislature passed a constitutional amendment authorizing county commissions to increase property taxes by 5 mills, subject to approval by a majority of the voters. (Pls.' Request for Admissions ¶ 86.) This amendment was approved by the voters on May 1, 1962, and proclaimed ratified as Amendment 202 on May 10, 1962. (*Id.*)

235. Only three cities and eight counties actually passed additional ad valorem taxes in 1962. (*Id.* ¶ 78.) Many more proposals were turned down. (*Id.*)

236. Meanwhile, throughout the 1950s and 1960s, it was becoming more and more certain that the courts would order reform of the crazy quilt system of property assessments around the state. (Thornton Dep. at 167.)

237. Public utilities, because their property was assessed at the state level, were having state and local millage rates applied to their property's fair market value based on substantially higher assessment ratios (although not the full sixty percent state law called for) than were being applied to others by county tax assessors. (*Id.* at 169.) The highest assessment level in the state was 30 percent. And that was in Jefferson County. Everything else was below 30 percent. And it was in some counties vastly, grossly below 30 percent. (*Id.*)

238. The Alabama Supreme Court ruled in favor of the utilities when they challenged their assessments in court. *State v. Ala. Power Co.*, 254 Ala. 327, 48 So.2d 445 (1950).

239. Until adoption of the first Lid Bill amendment in 1971, the Alabama Constitution required all taxable property within the State to be included in a single class for ad valorem tax purposes. (Pls.' Request for Admissions ¶ 90.)

240. In 1957, the Alabama Education Commission rejected proposals to

reform the property tax system and instead recommended a sales tax increase.

241. The sales tax had long been supported by the Black Belt planters and urban industrialists as a way to ensure that non-property owners of Alabama paid their “fair share” of the tax burden. (Pls.’ Request for Admissions ¶ 92.)

242. In July 1959, Superintendent of Schools Austin Meadows issued a statement that warned: “The enemies of public schools and those who did not want to pay the school bills timed sharp and deep threats at public schools with the fear of integration to choke education in this state.” (*Id.* ¶ 93.) Their attacks, according to Meadows, were not direct: “They oppose the means for providing education.” *Id.*

243. The most powerful lobbying organizations in Alabama at this time were the Alabama Chamber of Commerce, the Associated Industries of Alabama and the Alabama Farm Bureau Federation. (Pls.’ Request for Admissions ¶ 94.)

244. In 1959, exercising his statutory authority as Revenue Commissioner, Harry Haden issued a revenue regulation that required all property to be assessed at thirty percent of its fair market value. (*Id.* ¶ 95.)

245. Legislators introduced bills that would strip the Revenue Commissioner of his powers. (*Id.*)

246. In the end, Governor Patterson compromised by agreeing to give up

Haden's equalization program in return for abandonment of the bills stripping the Revenue Commissioner of his authority. (*Id.* ¶ 96.)

247. The reapportionment controversies of 1962 broke down along urban-rural lines. *See generally Sims v. Frink*, 208 F.Supp. 431 (M.D.Ala.1962) (3-judge court), *aff'd sub nom. Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964). Nevertheless, the Black Belt agricultural interests and Birmingham industry still shared opposition to increased taxes. (Pls.' Request for Admissions ¶ 97.)

248. Whites were concerned about losing control of their local governments, first, because blacks were gaining the balance of power in local elections by the mid-1950s in Montgomery and Tuskegee, and because blacks were gaining voting majorities by 1966 in Macon, Greene, and potentially a dozen more counties. (*Id.* ¶ 98.)

249. For Black Belt landowners the connection between legislative reapportionment, the rise of the black vote, and fear of increased property taxes was particularly strong. (*Id.* ¶ 99.)

250. An example of this fear is Sam Engelhardt. Sam Englehardt was a state senator from Shorter, Macon County, Alabama, during the 1950s. (May 4, 2004, Tr. at 88-90.) During his political career, which extended into the 1960s,

Senator Englehardt was also head of the White Citizens Council of Alabama, Chairman of the Alabama Democratic Party, State Highway Director, the legislator who proposed splitting Macon County, and the legislator who procured the famous Tuskegee gerrymander that was struck down in *Gomillion v. Lightfoot*, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960). (*Id.*) See generally *Dillard v. Crenshaw County*, 640 F.Supp. 1347, 1357 (M.D.Ala.1986) (discussing Engelhardt's role in Alabama's efforts to suppress black voting strength).

251. Behind Senator Engelhardt's concern about black voting lay economic self-interest. Pls.' Request for Admissions ¶ 100. "Everybody has an angle when they get in [politics]," he said. "I was worried ... about the tax assessor ... because of all our holdings," he said, referring to the many thousands of acres of rich agricultural land the Engelhardt family owned in Shorter. (*Id.*) "That was my angle – to protect ourselves. Not only me, but my family. My aunts, uncles, and cousins owned land." (*Id.*)

252. Engelhardt based his concern about who was tax assessor on a racist assumption. (*Id.*) "If you have a nigger tax assessor," he rhetorically asked a journalist in 1956, "what would he do to you?" (*Id.*) The obvious answer, to Engelhardt, was that a black tax assessor would try to exploit white landowners. (*Id.*)

253. Engelhardt's attitudes about the threat to whites' property taxes posed by rising black political influence was typical of whites' attitudes throughout Alabama, particularly in the Black Belt. May 4, 2004, Tr. at 90.

254. Mr. Engelhardt was fully representative of the attitude of the folks who had long been in power, who had dominated the Black Belt counties, who had dominated the legislature in Alabama since Reconstruction, and for that matter who had their way about all the crucial issues in politics in Alabama since Reconstruction.

255. From their historical experience in Alabama, the most basic and first public policy effort that blacks had made during Reconstruction once they got the franchise initially was to enact property taxes that were much higher on land than had ever existed in Alabama up to that time. So, that historical experience informed for subsequent generations of Alabamians what a black voter, an empowered black citizen, would want to do, which was to put taxes on white landowners. (Norrell, May 4, 2004, Tr. at 91.)

256. During his first term as governor, George Wallace, who grew up in Barbour County, made no attempt to achieve property tax reform. (Pls.' Request for Admissions ¶ 102.)

257. Throughout the 1960s and 70s, Governor Wallace's hallmark

opposition to school desegregation, his rural county constituent base, and the growth of private school options for white flight all contributed to the defeat of property tax reform. (*Id.*)

258. In January 1964, Governor Wallace toured the newly opened Macon Academy. (*Id.* ¶ 103.) He praised the private school and a month later called for public contributions to support white students boycotting Macon County's integrated schools. (*Id.*)

259. Wallace's office maintained a file of letters from individuals giving money to the Macon Academy; one contribution was for twenty thousand dollars. (*Id.* ¶ 104.)

260. A woman wrote to Wallace telling him that she would like to donate seven thousand dollars toward the improvement of education in Alabama and asked him to suggest where it should go. (*Id.*) He replied: “You may wish to contact the Macon Academy in Tuskegee, Alabama. The academy is a private school which was set up by individuals in Macon County who were not satisfied with the Federal Court order which did away with their rights to run the schools in that County as they saw fit.” (*Id.*) There were many more letters like this in the one-and-a-half-inch-thick file. (*Id.*)

261. Governor Wallace also supported white academies in other counties,

and he pressured cabinet members to contribute to them. (*Id.* ¶ 105.) His office maintained lists of contributors. (*Id.*)

262. The principal opposition to reform of the property assessment system came from the Alabama Farm Bureau and forestry interests, which began lobbying for a classification system that would protect them from high assessment ratios. (Thornton Dep. at 170-71.)

263. The taxation system of Alabama was supported by the alliance of Black Belt planters and urban industrialists, who continued to protect their private financial interests. (Pls.' Request for Admissions ¶ 91.)

264. When Lurleen Wallace succeeded her husband as Governor, Wallace's Black Belt supporters began to push to protect their property against increased taxes. (Pls.' Request for Admissions ¶¶ 106-07.) An effort to amend the 1901 Constitution to eliminate, once and for all, the century-old requirement of equal assessment and taxation rates, failed. (*Id.*)

265. In 1967, the legislature's Joint Committee on Ad Valorem Taxation issued a report that recommended the establishment of a statewide reassessment program, with professional qualifications required of county boards of equalization and lowering of the fictional sixty percent assessment maximum rate to a more realistic thirty percent. (Pls.' Request for Admissions ¶ 109.)

Timberland would be assessed at its bare-land value. Growing timber would be exempt from property taxation, as would be other crops, but a severance tax would be levied on timber when marketed. (*Id.*) There would be no exemptions for machinery or other personal property (for example, autos, boats, airplanes, trucks, and trailers) used in a business. (*Id.*)

266. A report issued by a four-person minority of the interim committee recommended different percentage levels for the assessment of the various classes of property. (Pls.' Request for Admissions ¶ 110.) In particular, it recommended that rural property be assessed at lower levels than other kinds. (*Id.*) Bills reflecting this Farm Bureau Federation perspective were introduced in the Senate on Tuesday in the third week of July 1967, and assigned to the Finance and Taxation Committee. (*Id.*)

267. On August 8, 1967, the Farm Bureau bill was defeated in the House because it failed to win the three-fifths vote required of a constitutional amendment. (Pls.' Request for Admissions ¶ 111.) On August 10, 1967, the House voted to reconsider the Farm Bureau bill, and the motion passed by a vote of seventy-two to sixteen. (*Id.* ¶ 112.) In the bill that finally passed the House, personal property was assessed at twenty percent, business property at twenty-five percent, residential property at twenty percent, and utilities at forty percent. (*Id.*)

Farm land was assessed at the lowest ratio of all, fifteen percent. (*Id.*)

268. In 1967, the legislature ultimately passed a thirty percent cap on property tax assessments plus a number of exemptions that changed virtually nothing. (Pls.' Request for Admissions ¶ 114.) This outcome represented a victory for the rural counties despite the fact that the legislation did not contain property categories. (*Id.*)

269. Although the legislation did not propose to amend the 1901 Constitution to establish the separate property tax classes the Farm Bureau forces had wanted, it did formally repeal the sixty percent uniform assessment ratio, capping all property assessments at thirty percent of fair market value and granting state and local tax officials wide discretion in the setting of ad valorem assessment rates. (Pls.' Request for Admissions ¶ 117.) This assured that local officials would not increase taxes significantly. (*Id.*)

270. In 1968, an agriculture study commission, concerned that farmers might be asked to shoulder property taxes at rates comparable to what others were paying, proposed to change Alabama law to provide that assessments be based on current use and not the market value of property. (Pls.' Request for Admissions ¶ 119.)

271. The governor at that time, Albert Brewer, focused on a county's tax

effort and ability to pay measured by the county's mean per-capita income compared to the mean per-capita income of the state. (*Id.* ¶ 120.) Thus, a relatively poor county making a relatively strong effort to support its schools would be rewarded with extra state funds; likewise, a relatively wealthy county doing a below-average job of supporting its schools would be denied some funds even if it raised more taxes than the poorer county. (*Id.*) The plan gave counties two years to bring their tax systems up to the state standard and gave county commissions the power to propose tax increases to their electorates. (*Id.*)

272. The urban bloc began a filibuster in the Senate on April 15, 1969. (Pls.' Request for Admissions ¶ 121.) Its proximate target was the bill to create the Alabama Commission on Higher Education (“ACHE”), but it could have been any bill. (*Id.*)

273. The urban bloc had tried to wring concessions on property tax equalization out of Governor Brewer in the House and wanted funding distribution formulas closer to a per student basis. (*Id.*)

274. Governor Brewer favored property tax equalization, but he feared that it would not get through the special session and that it would probably tangle up his other bills as well. (*Id.*)

275. The Achilles' heel in the urban bloc's Senate filibuster, however, was

that urban legislators favored much of Governor Brewer's education program. (*Id.* ¶ 122.) They knew or suspected that in 1970 he would be competing for reelection against George Wallace, who would not support property tax equalization. (*Id.*) To embarrass Brewer too much with their filibuster would consequently be counterproductive. (*Id.*)

276. Notwithstanding doubts about the usefulness of Governor Brewer's new minimum standard property tax bill with its penalty provision, urban legislators supported it, and in 1969 it passed the legislature and was signed into law. (*Id.* ¶ 123.)

277. By 1971, two years following enactment, when the penalty provision of the law was scheduled for implementation, few underassessed counties had acted to bring themselves up to the state norm. (Pls.' Request for Admissions ¶ 124.) Some counties had tried but failed to win the taxpayers' approval. (*Id.*) In all, thirty-nine counties stood to lose funds. (*Id.*)

278. In 1971, a three-judge federal court in *Weissinger v. Boswell*, 330 F.Supp. 615 (M.D.Ala.1971) (3-judge court), held that the 1967 statute violated both the federal and state constitutions. (Pls.' Request for Admissions ¶ 125.)

279. Specifically, the *Weissinger* court made the following findings:

In 1969 the State Department of Revenue commenced an

assessment-sales ratio study to determine the ad valorem tax assessment ratio of fair and reasonable market value of real property in each county in the state and to determine the statewide median ratio. The results of this study, the reliability of which is not in issue, reveal that the median ratios for the individual counties in the State of Alabama range from lows of 6.7 and 7 percent of fair market value in rural Hale and Washington Counties to highs of 23.1 and 26.8 percent of fair market value in urban Madison and Jefferson Counties. The study further reveals that the median assessment ratio for the state was approximately 16.9 percent of fair market value.

*Weissinger*, 330 F.Supp. at 621 (footnotes omitted).

280. The *Weissinger* court further ruled that because the 1967 law had been declared unconstitutional, the thirty percent of market value assessment ratio as provided in that law could no longer be enforced; thus, the court restored the sixty percent ratio set out in the 1935 statute. *Id.* at 625.

281. The court gave the State one year to bring its property tax laws into compliance with the court's equalization mandate. *Id.*

282. Subsequently, because of the difficulties in conducting a statewide reassessment of property, the court in an unreported order extended to June 29, 1979, the deadline for applying equal assessment ratios for all like property throughout the state. (Pls.' Request for Admissions ¶ 126.)

283. In the meantime, however, George Wallace had defeated Albert Brewer in the 1970 gubernatorial election. (Pls.' Request for Admissions ¶ 127.)

284. Even though only two black legislators, Fred Gray and Thomas Reed, had been elected in 1970, the three-judge federal court in Montgomery clearly was headed toward new decrees that would more nearly equalize the populations in House and Senate districts and empower additional black voter majorities. (*Id.* ¶ 128.)

285. Property owners were concerned about the prospect of increased property taxes. (*Id.*)

286. Legislative power was already passing to urban areas, where there was much stronger support for property taxes, and where rates were already higher than the rates in rural areas. (*Id.*)

287. Blacks in the cities were better organized politically and were more capable of making their influence felt in the Legislature. (*Id.*)

288. The Sam Engelhardts and the Walter Givhans and the George Wallaces of the world knew exactly that *Reynolds v. Sims* and the subsequent reapportionment decisions that followed from that were going to change the nature of the Alabama Legislature to bring African-American representation into that body. (May 4, 2004, Tr. at 108.)

289. Indeed, when he addressed the Regular Session of the Legislature on May 4, 1971, George Wallace expressly linked opposition to tax increases with

opposition to federal intervention in affairs of the state:

Education is still the primary function of State Government, and I believe under existing revenues we can have a teacher salary increase, a better free textbook program, a better retirement program which has already been introduced. Other legislation along this line will be introduced, because I am proud of the fact that during the time I was Governor the first time, a breakthrough in education came. The largest increases at any time because of our interest. But I am frank to tell you, and to tell educators, that the people of Alabama are simply turned off on education and some educators because of what the Federal Courts and HEW have done to their children from Huntsville to Mobile. Every one of you know I am telling you the truth when I tell you that.

(Pls.' Request for Admissions ¶ 129.)

290. Additionally, white hostility toward court-ordered busing was at a peak in 1971, the year of *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971), and *Davis v. Board of School Comm'rs of Mobile County*, 402 U.S. 33, 91 S.Ct. 1289, 28 L.Ed.2d 577 (1971).

(May 4, 2004, Tr. at 109-10.)

291. The *Weissinger* decision came down on June 29, 1971, and the Regular Session adjourned without passing either a General Fund or an Education Fund budget. (Pls.' Request for Admissions ¶ 130.)

292. The dissension caused by the issues of legislative redistricting and court-ordered ad valorem tax reform made constructive legislation during the

closing days and hours impossible, thus necessitating additional special sessions.

(*Id.*)

293. An education budget finally was adopted in a second special session in November 1971. (*Id.* ¶ 131.)

294. A third special session was called to respond to *Weissinger*. (*Id.*) A law was enacted requiring local county authorities to reappraise all property or have it done for them by the State Department of Revenue. Act No. 160, 1971 Ala. Acts (Third Special Sess.). (Pls.' Request for Admissions ¶ 131.)

295. During that third special session of 1971, the Legislature also passed a bill proposing what became Amendment 325 of the 1901 Constitution. (Pls.' Request for Admissions ¶ 132.) This first Lid Bill was ratified by the voters on June 8, 1972. (*Id.*)

296. Amendment 325 established for the first time separate classes of property for taxation purposes. (*Id.* ¶ 133.)

297. Governor George Wallace expressly linked the federal court's *Weissinger* order to federally court-ordered reapportionment of the Legislature and busing for school desegregation.

298. Wallace, in the Fall, August, of '71, threatened to close some schools. This gave him a very powerful issue looking toward the 1972 presidential election,

and in that context, when he called for a series of special sessions of the legislature to deal with, he said, reapportionment – they had to act on reapportionment at this exact same time – he called for an anti-busing piece of legislation, which was passed and subsequently was declared unconstitutional.

299. The same night he called for that, he called for a lid bill to cap property taxes in Alabama in the context of burgeoning private schools and massive exit from public schools in Alabama because of busing. He said the legislature should cap property taxes, to make sure that no federal judge could raise taxes.

300. Wallace was talking about his old colleague, college mate, law school mate, Frank Johnson, the man about whom during Lee versus Macon, the original desegregation case throughout Alabama, he'd said Judge Johnson needed a barbed wire enema.

301. That was the kind of baiting of federal judges that had been applied then to Pointer in Birmingham, to Pittman in Mobile. It was clearly the kind of racial code messages that Wallace had perfected already, which at this point he applied in Alabama in the fall of 1971 in calling for a shoring up of the caps on property tax which became the Lid Bill. (May 4, 2004, Tr. at 110.)

302. Wallace embraced the Alabama Farm Bureau Federation's plan for a

graded system. He said he didn't want to get into the details. He just wanted to remind everybody that they shouldn't have to pay any more taxes.

303. Wallace said this was a mandate of a federal judge or three federal judges, and people shouldn't have to do it in the climate where these same judges are making their children ride hundreds of miles a day on buses. (*Id.* at 115.)

304. The Chairman of the Senate Finance and Taxation Committee when the Amendment 325 bill passed was Walter Givhan of Dallas County, who was at that time head of the White Citizens Council. (May 4, 2004, Tr. at 102.)

305. The result of Amendment 325 was to legalize the de facto classifications in effect when *Weissinger* was filed in 1969. (Pls.' Request for Admissions ¶ 134.)

306. The reappraisal period was stretched over seven years. (*Id.*)

307. The “local option” in Amendment 325 authorized counties to vary their assessment ratios and tax rates in a manner carefully constrained to maintaining the status quo. (*Id.* ¶ 135.)

308. Bill Sellers, political commentator for the Mobile Press Register, wrote:

Various technical, legal or constitutional reasons were voiced for the opposition to local option, but some observers feel that the main objection stems from the fact that in a growing number of Alabama

counties, blacks are gaining control of county governments. Senators representing some of these counties are considered fearful that the black political leaders, who also enjoy voting majorities, will exercise local options and set property taxes at the highest rates possible in order to raise additional funds for their governmental operations. These taxes will be paid by the property owners, considered by the senators to be white owners of large farms and corporate interests with large timberland holdings.

(*Id.*(quoting *Mobile Press Register*, Dec. 12, 1971).)

309. 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. (May 4, 2004, Tr. at 116.)

310. The provision in Amendment 325 giving the Legislature authority to vary the assessment ratios from county to county, and the laws enacted pursuant to it, Ala.Code § 40-8-1 (1975), were challenged on non-racial equal protection grounds in a separate federal lawsuit filed in Mobile. (Pls.' Request for Admissions ¶ 136.)

311. On April 21, 1978, Judge Hand ruled that the statutory variations of

assessment ratios among the counties violated the Equal Protection Clause of the Fourteenth Amendment. *McCarthy v. Jones*, 449 F.Supp. 480, 484 (S.D. Ala. 1978). Judge Hand declined, however, to strike down Amendment 325 in its entirety on the theory that it was possible that the Legislature could vary the assessment ratios among counties in a rational way that met equal protection standards. *Id.* at 485.

312. In the years between passage of Amendment 325 in 1971 and the *Weissinger* court's 1979 deadline, Governor Wallace made an effort to break the statutory earmarking of the Special Education Trust Fund. May 4, 2004, Tr. at 118-20.

313. He was opposed principally by the Alabama Education Association (“AEA”), which had merged with the all-black Alabama State Teachers' Association (“ASTA”) and was viewed as a liberal, pro-black lobby.

314. AEA was also one of the opponents of the Lid Bill. (*Id.*)

315. As the statewide reassessment program drew to its conclusion and property assessments were going up, again, the Farm Bureau and industrial interests succeeded in getting the Legislature further to amend the state constitution to preserve the status quo of historically low property taxes. (*Id.* at 120.)

316. In 1978, Governor George Wallace appealed to the legislature to approve new legislation designed to circumvent the effect of *Weissinger v. Boswell* by providing a set of ad valorem tax laws which would produce comparable revenues, both state and local, in the same amounts as those produced before the court mandate. (Pls.' Request for Admissions ¶ 137.)

317. One piece of this package was Amendment 373, an amended Lid Bill, which was adopted in the Second Special Session and ratified in the November 7, 1978, general election by a vote of 313,577 to 205,782. (*Id.* ¶ 138.)

318. Only five counties, Jefferson, Shelby, Walker, Blount, and Wilcox, voted against the measure. (*Id.*)

319. The 1971 Amendment 325, which established the first classification system for property taxes in Alabama history, and the 1978 Amendment 373, which modified the assessment ratios and added a current use provision for farm and timber land, were the products of a series of contemporaneous events that brought to an end the ability of Black Belt whites to control the Legislature and to block increases in local property taxes.

320. All of the those events revolved around the rise of black political power: (1) school desegregation, which undermined support for public schools; (2) court challenges to the widespread under-assessment of property for tax

purposes, culminating in the 1971 federal court decree in *Weissinger v. Boswell*, which required uniform property assessments statewide; (3) corresponding pushes by the Farm Bureau and forestry interests to obtain additional constitutional protection from legislative or local tax initiatives; (4) legislative reapportionment resulting in an increase in the number of black legislators, which created a corresponding growing concern on the part of white property owners about their property taxes being raised; and (5) passage of the 1965 Voting Rights Act, re-enfranchisement of blacks, and corresponding litigation challenging racially discriminatory election structures. (Thornton Dep. at 160-80.)

321. 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. (Thornton Dep. at 175-81.)

322. The fact is, that this is a set of assumptions and a set of institutional relationships and a set of social relationships that is created by historical events, that is historically created and interrelated so that the events feed onto each other and it makes a single understandable whole. (*Id.* at 174.)

323. 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. (*Id.* at 178-80; *accord*, Norrell, May 4, 2004, Tr. at 95).

324. The limits were always associated with white supremacist intent, and that occurred in 1875, was strongly reinforced in 1901, and was essentially uninterrupted, unbroken, as main public policy commitments of the state through the 1970's.

325. All tax policy made or revised in the 20th century has effectively been made to conform with the commitments of taxation capped by constitutional mandate, reinforced by limits on local control, local authority to tax, and that of course was the result of fears, especially among Black Belt counties, that in the future some re-enfranchised black electorate would raise property taxes, the very fear that Sam Engelhardt acted on starting about 1950.

326. These themes continue right through the important policy decisions made with regard to property taxes in 1971 and shored up to an extent in 1978. (May 4, 2004, Tr. at 95.)

327. State policies about property taxes were formulated in the context of the racially charged circumstance of Reconstruction and the immediate post Reconstruction years.

328. Those property tax policies were created to maintain the lowest

possible taxation because property taxation is associated with funding for education for black children, and that's anathema to this very conservative white supremacist group that gains dominance in 1875, that reinforces and sort of strengthens its structure in the 1901 constitution, the time at which the vast majority of black voters are taken out of the polity in Alabama, and those policies of minimal property taxes, of white supremacist control of local government, of minimal support for black education in Alabama are effectively uninterrupted even through the various anxieties and concerns that white supremacists had in Alabama as a result of the coming civil rights movement and the reality of the civil rights movement.

329. Even after the modern civil rights movement had succeeded with the Civil Rights Act of '64, the Voting Rights Act of '65, those same forces were able to further reinforce the historic commitment to minimal property taxation, minimal support for education now because it means education, desegregated or integrated racial education in Alabama.

330. It is a story of powerful continuities established in 1875 or thereabouts and continuing effectively uninterrupted in the making of policy through 1978.

331. Folks in Alabama still live very much under policies that were effectively created in 1875 and continuously reinforced up through the years.

332. And the 1971 and 1978 lid bills reinforced those same policies. (May 4, 2004, Tr. at 120-22.)

333. 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. (Thornton Dep. at 211-12.)

334. Professor Susan Pace Hamill, Professor of Law at the University of Alabama, has conducted an in-depth study of Alabama's property tax system. *See generally* Susan Pace Hamill, *Constitutional Reform in Alabama: A Necessary Step Toward Achieving a Fair and Efficient Tax Structure*, 33 Cumb. L.Rev. 437 (2002-03) (the “Cumberland Law Review article”); Susan Pace Hamill, *An Argument for Tax Reform Based on Judeo-Christian Ethics*, 54 Ala. L.Rev. 1 (2002) (“the Alabama Law Review article”).

335. Alabama's income, sales, and property tax laws unfairly burden poor and lower-income Alabamians. (May 4, 2004, Tr. at 10.)

336. Alabama's state and local tax injustice takes two forms: regressive income and sales tax laws overtax poor and lower-income citizens, while grossly inadequate revenues supporting education deny those citizens opportunities to

improve their condition. (*Id.*)

337. The property tax provisions are the primary force driving both injustices. Alabama Law Review Article at 11-20.

338. Alabama's per capita property tax and revenues are the lowest of all fifty states.

339. In 1997 Alabama collected only \$240 in property taxes per person. Alabama Law Review Article at 20 n. 50.

340. The nationwide average of property tax collections per capita imposed at the state, county, municipal, and school district levels, exceed Alabama's per capita property tax collections by more than three times.

341. The top three ranked states in the nation collect over six times more property tax per person than Alabama.

342. Among the Southeastern states, Florida collects almost four times, while Georgia collects almost three times more property taxes per person than Alabama.

343. Mississippi, North Carolina, South Carolina, Tennessee, and Kentucky each collect around twice as much property tax per person as Alabama. *Id.* at 20-21 (footnotes omitted).

344. Moreover, Alabama collects approximately fifty percent less state and

federal revenues from all sources than does the average state in the United States, with property taxes making up as little as five percent of Alabama's revenue sources. Alabama Law Review article at 10 n. 9, 22-23.

345. More than half of Alabama's tax revenue is collected through sales tax, which reaches as high as eleven percent in some areas of the state. *Id.* at 18 n. 43, 19-20, 84-85.

346. In addition to imposing the harshest burdens on the poorest Alabamians, Alabama's over-reliance on sales taxes supports the conclusion that inadequate property taxes cause Alabama's inadequate revenues. (May 4, 2004, Tr. at 14-15, 32.)

347. Specifically, because most rural and low-income counties have small commercial sales bases, sales taxes will never raise adequate revenues to meet minimum needs, including educational needs. (*Id.*)

348. Alabama's low revenues demonstrate that a greater reliance on sales taxes cannot compensate for disproportionately low property taxes. (*Id.*)

349. The two principal mechanisms in the 1901 Constitution that restrict property taxes are (1) the constitutional cap on millage rates at the state and local levels, and (2) the Lid Bill (Amendments 325 and 373) that imposes absolute dollar amount limits on the amount of tax as a percentage of fair market value,

entrenches low assessment ratios for separate classifications of property, and mandates a low current use valuation for timber and farm land. (May 4, 2004, Tr. at 16-18.)

350. In particular, the Lid Bill, by constitutionally keeping the property tax base at a mere fraction of the property's value, guarantees that no level of millage rates will produce minimally adequate property taxes. (*Id.* at 20-22.)

351. As way of example, property tax revenues from timber lands, which constitute seventy-one percent of Alabama's geographic land mass, average less than \$1.00 per acre and account for only two percent of all property tax revenue. (Pls.' Ex. 56; May 4, 2004, Tr. at 22-25.)

352. Further, an increase in millage rates alone would not increase the proportion of the property tax revenue derived from timber. (May 4, 2004, Tr. at 27.) Thus, even with greater millage rates, timber land would still provide merely two percent of revenue derived from property tax.

353. The low assessment ratios are also evident when comparing fair market and current use value of property types with the effective assessed value.

354. For instance, in 1999-2000 the state net assessed value of Class III property, which includes timber, farms, and personal residences, is just under \$10 billion, whereas the fair market and current use value of that same property

exceeds \$120 billion. (Pls.' Ex. 111.)

355. In other words, the state net assessed value of Class III property is 8.33 percent of its fair market and current use value. (*Id.*)

356. Similarly, the state net assessed value of Class I property, utility property, is twenty percent of its fair market value; for Class II property, business property, the state net assessed value is 18.11 percent of its fair market value; and for Class IV property, motor vehicles, the state net assessed value is approximately thirteen percent of its fair market value. (*Id.*)

357. If assessment ratios for the foregoing classes of property were set at thirty percent, approximately an additional \$1.68 billion would be generated. (May 4, 2004, Tr. at 159.)

358. Likewise, if assessment ratios were set at a 40/30 percent hybrid system, an additional \$2.29 billion would be generated. (*Id.*)

359. Under an assessment ratio of sixty percent, as was threatened in *Weissenger*, an additional \$5.09 billion would be raised. (*Id.*)

360. Moreover, those additional revenues would be higher if agricultural and timber land were taxed at some amount other than "current use." (*Id.*)

361. The implications of Alabama's unique constitutional property tax structure are:

(a) the combination of limits on assessment ratios and millage rates makes the capacity of property tax much lower in Alabama than in any other state;

(b) the decision-making process is much more cumbersome in Alabama than it is in other states, making change efforts far more difficult;

(c) because virtually all changes people seek regarding the property tax are efforts to increase it, the cumbersome process in Alabama results in Alabama continuing to fall farther behind other states;

(d) the decision-making process also contributes to Alabama's tax system being one of the least efficient and least equitable in the nation; and

(e) the greater difficulty in making changes, relative to other states, has the effect of preserving the past and preserving any inequities that result from social values and public priorities that were in place at the time the structure was established. (May 5, 2004, Tr. at 79-81.)

362. The effect of low property tax revenues has had a crippling effect on poor, majority black school districts. (May 4, 2004, Tr. at 27-30.)

363. 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. (May 4, 2004, Tr. at 31-32.)

364. 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.*; Pls.' Ex. 57.)

365. Indeed, even areas boasting valuable commercial and residential property have difficulty in raising adequate revenue because of the Lid Bill's low assessment ratios for all property classifications. (May 4, 2004, Tr. at 32-34.)

366. If tuition at Alabama's state public universities continues to increase at a rate of eight to twelve percent per year, families with household incomes less than \$20,000, as well as those with incomes of \$40,000 to \$50,000 per year, will be unable to afford college. (*Id.* at 13-14.)

367. The State Department of Education conducted studies indicating a strong correlation among black students, poverty, and low achievement scores. (Richardson Dep. at 18-20.)

368. Those studies also indicated that a high correlation exists among large black enrollments, high percentages of students eligible for subsidized lunches, and high schools placed on academic watch by the State Department of Education. (*Id.* at 19-21.)

369. Indeed, of the forty-four Alabama high schools placed on academic

watch in 2002, most had both black student majorities and above average percentages of students participating in the reduced lunch program. (*Id.* at 21.)

370. High schools are placed on academic watch when less than eighty percent of graduates pass the exit exam administered by the State Department of Education. (Richardson Dep. at 15-16.)

371. Lack of state funding has also adversely impacted funding for financial aid, which disproportionately burdens poor, black families.

372. Because poor families do not have the ability to assume large indebtedness, those families are increasingly unable to attend institutions of higher education as financial aid remains stagnant while student indebtedness rises. (Richardson Dep. at 28-31.)

373. Additionally, financial aid for students at Alabama's colleges comes almost exclusively from federal Pell grants, which do not cover living expenses; consequently, low income students who receive federal financial assistance must incur substantial debt or find work. (Richardson Dep. at 28-31.)

374. Pell grants are entirely a need-based program and are the largest federal grant program. The only component of merit to Pell grants is that the student must have graduated from high school or have a GED, and once enrolled in college, the student must maintain satisfactory progress as defined by the

institution, which is generally a minimum grade point average. (May 5, 2004, Tr. at 165.)

375. In 2003-04 seventy-six percent of the 6,588 students at AAMU received some sort of financial aid, which includes student loans, grants, scholarships, and work. (May 5, 2004 Tr. at 196.)

376. In 2002-03, as many as eighty-eight percent of AAMU students received financial aid. (*Id.* at 208.)

377. In 2003-04, total student financial aid at AAMU came to \$31 million, compared with \$20 million in the 2000-01 school year. (*Id.* at 208.)

378. Tuition at AAMU rose 12.5% in 2003, and it had risen 120% since 1996, when it cost only \$920 per semester. (May 5, 2004, Tr. at 209.)

379. Financial aid has failed to offset the increasing tuition and fees. (*Id.* at 209-10.)

380. For instance, AAMU received only \$25,000 in state financial aid in 2003 that it could distribute to its students that year, which it awarded to those students who had exceptional need, defined, according to federal methodology, as those students who had an estimated financial contribution, of zero. (May 5, 2004, Tr. at 196-97.)

381. In total, some 100 students received approximately \$200 apiece in

state need-based financial aid. (*Id.*)

382. Federal assistance, in the form of grants, loans, and work-study programs, is limited as well.

383. The maximum federal Pell grant that could be awarded in 2003 was \$2,025 per semester, and the average Pell grant for AAMU students that year was \$1,000. (May 5, 2004, Tr. at 197-98.)

384. Three kinds of student loans were available in 2003: federally subsidized loans, which are need-based, and unsubsidized student and parent-plus loans, which are credit-based. (*Id.* at 198-99.)

385. There is a sliding scale for subsidized loans: freshmen can receive \$2,625 per year; sophomores, \$3,500; juniors and seniors can receive \$5,500. (*Id.*) AAMU received \$461,000 in 2003 from the federal government for campus-based work-study, and it gave \$4,800 each to 108 students. (*Id.* at 199.)

386. AAMU in 2003 also used approximately \$4 million of its institutional funds for merit-based scholarships. (May 5, 2004, Tr. at 200.)

387. In 2003-04 AAMU lost 475 students between the Fall and Spring semesters, half of whom gave financial difficulties as their reason for leaving school. (May 5, 2004, at Tr. at 206-07.)

388. Some of these students transferred to a community college that is

closer to home and that has substantially lower tuition. (*Id.*)

389. Students who stop out or drop out of AAMU also adversely affect other students' ability to receive financial assistance because students who drop out of AAMU usually default on their student loans, and those defaults reduce the amount of federally subsidized loans AAMU is allowed to make in the future. (*Id.* at 211-12.)

390. Moreover, once a student drops out of AAMU, it is unlikely that he or she will return. Only about twenty percent of students who drop out of AAMU ever come back. (*Id.* at 212.)

391. In an effort to assist lower-income students, Auburn University has tapped into its institutional funds to provide merit-based scholarships to students who graduate from “at-risk” high schools.

392. Due to the lack of state funding, Auburn University in 2003 set aside two million dollars of institutional funds for one hundred merit-based scholarships, thirty-six of which were dedicated to students graduating from at-risk high schools. (Richardson Dep. at 38-40.)

393. While this effort is commendable, the overall impact of those scholarships is relatively small – one hundred students out of the 25,000 that attended Auburn university in 2003 represented a minute percentage. (*Id.* at 39.)

394. Additionally, smaller institutions whose tuition is increasing do not have the capability to provide similar scholarships. (*Id.* at 42.)

395. As a result of the lack of state funding, faculty salaries at Alabama's state universities are well below regional and national averages, and absent increased state appropriations, tuition must continue to rise to compete to attract high-quality faculty members. (Richardson Dep. at 46-47.)

396. There are at least 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. (Richardson Dep. at 51-54.)

397. Based on disaggregation of test scores, the most critical variable in terms of success in school is poverty. In other words, higher poverty, less success.

398. Students who are in schools that are not well funded do not have access to advanced classes that would be required to have a good chance of success at Jacksonville or Alabama State or Auburn or any other university.

399. Schools that have good local funding would be able to offer advanced

placement courses, foreign language courses, higher level math, and in many cases the classes would be smaller and offered on a regular basis. So those students then would be able to take four years of aggressive mathematics.

400. Mathematics seems to be the subject that creates most problems for students.

401. The schools with less funding are less able to offer advanced courses that would be instrumental in a student's success in college. (*Id.* at 52-54.)

402. In 2003, Alabama spent \$5,908 per K-12 student, compared with a national average of \$7,376 per student. (Richardson Dep. at 55-56; Pls.' Ex. 36 (Editorial, *Mixed Bag: There's a Reason Schools Struggle to Maintain*, al.com (January 12, 2004)).)

403. One illustration of the strained education budget is Alabama's funding for textbooks. Of 128 school systems in 2003, or 129 perhaps, 80 of that number used its textbook monies to some degree to avoid layoffs. Several school systems, 20 some-odd, had not purchased textbooks in three years.

404. The problem is they have kept the textbooks they have for six years already, so you add three more years on top of that. So you have got textbooks you have been using for nine years. Obviously the condition is bad, pages missing, and in some cases dated, like science and social studies. So that had a

tremendous impact, and it was reflective of school systems that had low local support as well. (Richardson Dep. at 58-59; Pls.' Ex. 37 (Regan Loyola Connolly, *State BOE Closes Books on New Texts*, Montgomery Advertiser (September 12, 2003)).)

405. Additionally, the underfunding of K-12 public schools in 2003 almost entirely eliminated state appropriations for textbooks and remedial programs for students who fail the high school exit exam. (Richardson Dep. at 59-60, 70.)

406. By the 2004-05 school year the reserve funds of 100 of the 128 public school systems in Alabama will have been depleted. (Richardson Dep. at 71.)

407. According to a February 23, 2003, "report card" released by the Alabama Board of Education, a "tremendous gulf" exists among differing racial and socioeconomic groups in Alabama. (Richardson Dep. at 67; Pls.' Ex. 38 (Ken L. Spear, *Cash Woes Tax Schools*, Montgomery Advertiser (Feb. 28, 2003)).)

408. The test scores of whites in Alabama's K-12 schools placed them in the 65th percentile nationwide, Hispanics were in the 46th percentile, and blacks in the 39th percentile. (Richardson Dep. at 67; Pls.' Ex. 38 (Ken L. Spear, *Cash Woes Tax Schools*, Montgomery Advertiser (Feb. 28, 2003)).)

409. Likewise, students receiving a free or reduced-price lunch, a common indicator of poverty, ranked in the 40th percentile nationwide, while students who

paid for their lunches scored in the 67th percentile. (Richardson Dep. at 75-76; Pls.' Ex. 38 (Ken L. Spear, *Cash Woes Tax Schools*, Montgomery Advertiser (Feb. 28, 2003)).)

410. Importantly, 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.

411. In 2002-03, thirty-five percent of freshmen at the state's public colleges and universities were enrolled in remedial courses. (Richardson Dep. at 76-77; Pls.' Ex. 39 (Regan Loyola Connolly, *Students Lack Readiness for College*, Montgomery Advertiser (Feb. 27, 2004)).)

412. The high percentage of college freshmen enrolled in remedial classes is cause for concern, because Alabama has the most rigorous requirement for high school graduates of any state in the nation. We require more math and science than any other state. And for us to have that level of remediation was just rather shocking. (Richardson Dep. at 77.)

413. Poor school systems must also meet the State Department's minimum requirements, but basic problems cannot be overcome without adequate funding.

414. The problem is that in many cases there is difficulty securing teachers with advanced math certification or science in some of the poor and rural schools.

(*Id.* at 77-78.)

415. During the past few years, Alabama's K-12 students had been making “tremendous progress” increasing their standardized test scores, but recent budget cuts have made that progress “unravel.” (Richardson Dep. at 79-80).

416. In 2002, the State Department of Education, responding to the mandate of the state court Equity Funding Case to make a recommendation to the Legislature, performed an analysis that indicated an additional \$1.6 billion annually was needed to provide “adequate” K-12 education in Alabama. (Richardson Dep. at 94-111.)

417. As of 2004, the figure was closer to \$2 billion. (*Id.* at 111.)

418. The methodology the State Department used to calculate what would constitute adequate K-12 funding in Alabama is as follows:

We made a two-year study on every single aspect of education's operation. Just to give you a couple of examples. We went in and we looked at utility bills for schools that we felt were adequately heated and cooled, and averaged those out. We looked at the laws on the books, what does it require for special education? We looked at how much it costs to transport students. That was required. We looked at even how much money teachers are having to spend beyond the supply money that they were allocated. We went out and looked at bills and invoices. It took us about two years. So we could tell you three years ago how much it costs to meet existing state laws, and to meet existing costs in Alabama. We didn't compare ourselves to Tennessee or anything else, just what it costs in Alabama. Just to meet existing state laws and to meet the actual cost of operation.

(Richardson Dep. at 94-95.)

419. The State Department's calculation should satisfy any reasonable legal or legislative definition of adequacy. (*Id.* at 96-97.)

420. Alabama has been hampered by a tax structure that is both inequitable and inadequate.

421. The tax structure places a disproportionate burden on the poor through an over-reliance on sales taxes and does not produce sufficient revenues to fund education, both elementary and secondary and higher education, on levels comparable to that of other Southern states.

422. A critical and necessary step in the process will be rewriting the state's antiquated constitution, because so many of the obstacles to progress, particularly the tax structure, are written into the constitution.

423. One 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.

424. Moreover, inasmuch as higher education is funded from the same source as K-12, the monies available to higher education are substantially reduced.

(Richardson Dep. at 105-11; Pls.' Ex. 46 (William V. Muse, *State Should Heed*

*North Carolina's Example*, Montgomery Advertiser (Jul. 8, 2001)).)

425. Because the ETF funds both K-12 schools and public colleges and universities, the constitutional constraints on property taxes have required an increasing share of the ETF to be allocated to K-12 schools, so that less state funds are available to public colleges and universities. (May 5, 2004, Tr. at 83-84.)

426. If higher education's share of the ETF had remained constant over the ten years from 1993 to 2003, public colleges and universities would have received nearly \$200 million more than those institutions actually received. (Pls.' Ex. 71 (chart depicting amount, distribution, and change in ETF revenues from 1990-91 to 2002-03).)

427. That decline is most significant in the years following 1995 when the State implemented a new foundation program for K-12. In terms of the specific issues related to the impact of the property tax and the relationship between K-12 funding and higher ed. funding, that relationship got a lot tighter after the foundation program was passed in '95, and so that starting 95-96 and then coming forward, you start to see this sort of steady downward trend.

428. There is already a difference which amounts to as much as 200 million dollars between what would have been generated by the share a few years ago and what would be generated by it today. The trend is fairly steadily in the downward

direction, and so one might anticipate that, absent any change, the higher ed. share could continue to decline. (May 5, 2004, Tr. at 85-86.)

429. An important consequence of the reduction in the share of ETF revenue appropriated for higher education has been that the gap between what the State appropriates and what ACHE defines as the “need” for the senior institutions, based on the median funding of the SREB region, continues to widen. (May 5, 2004, Tr. at 86-88.)

430. Since *Knight v. Alabama* was tried in 1990 until 2003, Alabama's state appropriations to senior institutions declined from 84.1% of the ACHE regional standard to 55.8% of the ACHE regional standard. (*Id.* at 88; Pls.' Ex. 72 (chart demonstrating relationship between ETF appropriation for senior institutions and need, as measured by the ACHE standard).)

431. In real dollars, these percentages represent a difference of over \$650 million between Alabama's state appropriations and the regional standard of need and \$400 million less than the 84% level of need that was being met during the 1990 trial. (May 5, 2004, Tr. at 89.)

432. Moreover, these data understate the magnitude of that drop because beginning in 95-96 the appropriation includes the retirement benefits that weren't in there in the early years that were separately appropriated. So some amount of

money, somewhere perhaps between 50 and 100 million dollars, that's now imbedded into that-this higher ed. appropriation wasn't there in the earlier years. (*Id.* at 88.)

433. Senior institutions having to cope with budgets that represent a smaller fraction of their need have been adversely impacted in two ways:

(1) the institutions have been unable to increase salaries as fast as institutions in other states and thus have fallen further behind their SREB counterparts and the United States as a whole (May 5, 2004, Tr. at 89-90); Pls.' Ex. 74(chart indicating median household in SREB states); and

(2) the institutions have been forced to dramatically increase tuition (May 5, 2004, Tr. at 91).

434. Although the dramatic increase in tuition is certainly not unique to Alabama, the results of the tuition increase are more burdensome in the State because:

(1) there is not a corresponding increase in need-based scholarship funding to ensure continued access for students from lower income households, and

(2) the percent of students in Alabama who would be eligible for such aid (using federal guidelines) is well above average. (May 5, 2004, Tr. at 91-99;

Pls.' Exs. 74, 76 (chart comparing need-based financial aid from state sources for students at public institutions) & 77 (chart indicating Pell grant funding in United States, SREB States, and Alabama from 1990-91 to 2000-01).)

435. Those circumstances place considerably more of the burden of increased tuition on low-income students. (May 5, 2004, Tr. at 92.)

436. That is, compared to the situation in other states, it is becoming relatively easier for wealthy students to attend a state university in Alabama and relatively more difficult for poor students to do so.

437. Operations and Maintenance (“O & M”) is a phrase referring to the universities' core spending and not the actual spending for the total operation of the university. (May 4, 2004, Tr. at 165.)

438. O & M includes salaries, benefits and other kinds of maintenance costs, repairs, utilities, and recurring expenditures. *Id.* O & M does not include one-time appropriations or spending that would not be comparable from one university to another, such as agricultural extension and research funds which may be unique to Auburn but not applicable to the University of West Alabama. (*Id.* at 166-67.)

439. From Fiscal Year (“FY”) 1990 through FY 2003, O & M appropriations to universities in Alabama increased from about \$500 million to

\$800 million, while federal funds grew from \$200 million to a little over \$600 million and tuition and fees grew from about \$216 Million to about \$613 Million. (Pls.' Ex. 124 (graph indicating key revenue sources for universities).)

440. In other words, over thirteen years, federal funds and tuition and fees increased by close to two hundred percent, while O & M appropriations by the legislature to universities increased by only sixty percent. (*Id.*)

441. Alabama state appropriations to higher education clearly have not kept pace with other key revenue sources. (*Id.*)

442. The difference between university O & M contributions that have been made from the ETF and instruction, research, and public service expenditures has widened between FY 1990 to FY 2003. (Pls.' Ex. 127 (graph comparing core university spending and ETF O & M appropriations).)

443. The trend is continuing to widen between the amount that is appropriated to higher education for operations and maintenance and the expenditures in these key academic and service areas: instruction, research, and public service. (May 4, 2004, Tr. at 168-69.)

444. The total ETF expenditures for higher education in 2003 had also decreased from 28.5% of total ETF appropriations to 26.1% of ETF appropriations. (May 4, 2004, Tr. at 173-175.)

445. Additionally, although the amount of appropriations to higher education from the ETF increased between FY 1990 and FY 2003, appropriations for K-12 grew more quickly. (*Id.* at 178-79); Pls.' Ex. 132 (indicating percentages and actual amounts of appropriations for K-12 and higher education from ETF.)

446. The 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. (May 5, 2004, Tr. at 161.)

447. A long and extensive body of research in the United States has established that two paths exist to ensuring access to higher education for low and middle income students, and that Alabama's lack of funding is erecting roadblocks to those paths. (May 5, 2004, Tr. at 161-62.) The first path is to offer universally low tuition, which historically is what has been done in most public colleges and universities in the nation. (*Id.*) The second path, in the absence of low tuition, is to offer need-based financial aid, which acts to lower the cost of education for students who are recipients of that aid. (*Id.*)

448. As tuition increases, poorer students are less likely to be able to enroll

in college; likewise, poor students who are already enrolled face dropping out when tuition increases. (*Id.* at 162-63.)

449. Need-based financial aid can protect poorer students from the adverse affects of higher prices – i.e. as tuition goes up, need-based financial aid is directly related to whether or not poorer students are going to enroll in college and to persist and obtain a baccalaureate degree. (*Id.*)

450. The research is consistent with respect to those findings, and there is no reason to believe that the situation in Alabama would be any different from that in the rest of the country. (May 5, 2004, Tr. at 163.)

451. 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.

452. Although in 2003-04 students in about half of all families in the country qualified for Pell grants, the rough cutoff being about \$45,000 annually in household income, keeping in mind that other factors related to net wealth and need are taken into account in calculating Pell grant eligibility, in Alabama fifty-eight percent of the white households and about seventy-eight percent of the black households would have qualified for federal need-based Pell grants. (May 5, 2004, Tr. at 164-65; Pls.' Ex. 91 (Income Distribution of Alabama Households

by Race, 2000 Census).)

453. So, blacks in Alabama are both poorer than whites overall and have higher need for financial aid and assistance to pay for college as well as being poorer than the rest of the nation. (May 5, 2004, Tr. at 165.)

454. As of 2003, Alabama had been increasing tuition at rates very consistent with most of the rest of the country, in the range of five to fifteen percent per year. (May 5, 2004, Tr. at 167; Pls.' Exs. 92 (graph indicating annual change in tuition and fees for comprehensive colleges) & 93 (graph indicating annual change in tuition and fees for flagship universities).)

455. Unfortunately, over the last dozen years in this country we've greatly increased the cost of public higher education to students, and Alabama is no different than the rest of the country in effect. (May 5, 2004, Tr. at 167; Pls.' Exs. 92 & 93.)

456. The principal difference between Alabama and many other states, however, is that Alabama has decreased its amount of spending on need-based financial aid in the face of skyrocketing tuition costs. (May 5, 2004, Tr. at 169-70; Pls.' Ex. 94 (graph comparing Alabama's state spending on need-based grants per 19-24 year old to other regions of the United States).)

457. Alabama started from a much lower base than did any other part of the

country, ranking, in 2001, forty-sixth out of fifty states in spending on need-based aid, and it actually decreased the amount of spending by a little over a third over those eleven years. (May 5, 2004, Tr. at 169-70; Pls.' Ex. 94.)

458. During 2003-04, the State appropriated only about \$800,000 for need-based financial aid. (May 5, 2004, Tr. at 174.)

459. For the period 1991 to 2001, with the exception of one year, 1997, the increase in tuition at Alabama's comprehensive public universities and at the University of Alabama, on a percentage basis, has been higher than the increase in state need-based financial aid. (May 5, 2004, Tr. at 173; Pls.' Ex. 95 (graph entitled Actual Change in Tuition and State Need-Based Grant Spending Per 18-24 Year Old-Alabama).)

460. In fact, there are seven years in which the State actually cut spending on financial aid. (May 5, 2004, Tr. at 173; Pls.' Ex. 95.)

461. In contrast, in all but three of those years, the other Southeastern states increased need-based financial assistance at a greater rate than tuition was increased. (May 5, 2004, Tr. at 174; Pls.' Ex. 96 (graph entitled "Annual Change in Tuition and State Need-Based Grant Spending Per 18-24 Year Old-Other SREB States").)

462. Alabama's lack of funding for need-based student aid has also had an

adverse effect on federal funding. Because the state's level of funding has not achieved a certain level, the State of Alabama has had to turn back matching funds to the federal government. (May 5, 2004, Tr. at 174.) ACHE's 2002-03 annual report confirms this loss of federal assistance:

Because the Alabama Legislature during its Special Session in September, 2003 significantly reduced funding for the state's only need-based student aid program that receives federal matching funds, Alabama must return its \$446,119 share of federal funds for 2003-2004, as the state no longer meets the required maintenance of effort necessary to qualify for the federal monies. *As a result, Alabama will not receive any federal need-based aid funds for 2003-2004 or 2004-2005.*

(Pls. Ex. 15 at 28 (ACHE October 1, 2002-September 30, 2003 annual report)

(emphasis in original).)

463. The trend of rapidly increasing tuition and steadily decreasing need-based financial aid in Alabama corresponds with a growing gap between white and black Alabama high school graduates enrolling in the state's public four-year institutions of higher education. (May 5, 2004, Tr. at 176; Pls.' Ex. 97 (graph depicting enrollment rate of Alabama high school graduates in four-year public institutions by race, excluding historically black colleges and universities), 98 (graph depicting enrollment rate of Alabama high school graduates in four-year public institutions by race).)

464. Analysis of scholarships awarded from 1999 to 2003 from the institutional budgets of Alabama's state universities, including ASU and AAMU, shows that for both white and black students, the average institutional scholarship amount given to white students had been steadily increasing, from about \$500 to about \$722, representing a forty-three percent increase in five years. (May 5, 2004, Tr. at 177-78; Pls.' Ex. 99 (graph depicting institutional scholarships per undergraduate student at Alabama public four-year universities).)

465. Black students, however, received a smaller increase, from \$547 to \$660, a twenty-one percent increase, with the average institutional scholarship for black students actually dropping in the last three years. (May 5, 2004, Tr. at 177-78; Pls.' Ex. 99.)

466. Thus, even though blacks need more financial aid, whites are on average receiving a greater amount. (May 5, 2004, Tr. at 178).

467. At least based on the census data, we know that in Alabama blacks are poorer than whites, and yet whites are receiving more institutional aid in effect.

468. Despite the financial barriers to attending college, however, the number of black Alabamians attending college continues to grow, even as the gap between whites and blacks increases. (*Id.* at 180.)

469. The importance of financial resources to the ability of students to

persist and graduate after they have enrolled in college should be emphasized. Students who stop out of college are much less likely to ever earn a degree than students who enroll as a freshman and persist straight through to get a bachelor's degree. (May 5, 2004, Tr. at 186.)

470. Indeed, research indicates that students who work more than fifteen hours a week are less likely to attain a college degree. (*Id.*)

471. What happens is students who work take a lower course load, they don't put as much time into their studies, they can't get as good grades, can't get the credits they need. (*Id.* at 187.) As a result, those students also lose eligibility for Pell grants. (*Id.*)

472. The adverse racial impact of Alabama's revenue and funding policies for higher education perpetuates the state's historical official policies of forcing African Americans into subordinate social and economic roles in the state's civil life.

473. The big payoff in labor markets today is actually going to college and getting a bachelor's degree.

474. If you go back a generation or two, the big payoff was the difference between dropping out of high school and getting a high school diploma. Back in those days a good middle class wage could be earned by a high school graduate,

who could go out and get a good job often in manufacturing, often in the public sector, and earn a good wage without having to go to college.

475. And in those days a generation or two ago, there wasn't as much of what economists call the college wage premium, the difference between a high school graduate, what he or she earns, and a college graduate.

476. In the last two decades, that college wage premium has increased quite a bit, and we see today that the biggest jump is the difference between that high school diploma now and somebody getting a bachelor's degree.

477. There's not much of a premium in terms of earnings between staying in high school and dropping out of high school, but there's a huge premium when somebody goes on to college and gets a bachelor's degree. (May 5, 2004, Tr. at 179-80.)

478. The Center for Teaching and Learning at the University of Alabama (the "Center") provides assistance to students so that they can remain eligible to stay in school, based on both grade point average and satisfactory academic progress as it relates to financial aid. (May 5, 2004, Tr. at 216-17.)

479. To receive financial aid, students must complete sixty-seven percent of attempted hours as they progress from freshman year to senior year. (*Id.* at 218.) When students fail to meet the sixty-seven percent requirement, the

students lose eligibility for Pell grants and federal financial aid. (*Id.*) Students who have lost financial aid may appeal their suspension, and the Center provides assistance in that regard. (*Id.*)

480. Forty percent of students who came to the Center for assistance in 2003-04 were black, although blacks constituted only fourteen percent of the total student body at the University of Alabama. (May 5, 2004, Tr. at 221.)

Respectfully submitted this 29<sup>th</sup> day of December, 2008,

Edward Still  
Bar No. ASB-4786-I 47W  
2112 11<sup>th</sup> Avenue South  
Suite 541  
Birmingham, AL 35205  
205-320-2882  
fax toll free 877-264-5513  
E-mail: still@votelaw.com

Of Counsel:  
Norman J. Chachkin  
36 Cedar Drive  
Accord, NY 12404-6002  
(845) 626-3092  
E-mail: nchachkin@hvc.rr.com

Attorneys for Plaintiffs

s/James U. Blacksher  
Bar No. ASB-2381-S82J  
P.O. Box 636  
Birmingham AL 35201  
205-591-7238  
Fax: 866-845-4395  
E-mail: jblacksher@ns.sympatico.ca

Robert D. Segall  
Bar No. ASB-7354-E68R  
Shannon L. Holliday  
Bar No. ASB-5440-Y77S  
Copeland, Franco, Screws & Gill, P.A.  
444 South Perry Street  
Montgomery, AL 36101-0347  
334-834-1180  
Fax: 334-834-3172  
E-mail: segall@copelandfranco.com

**CERTIFICATE OF SERVICE**

I hereby certify that on December 29, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Drayton Nabers, Jr.  
James L Mitchell  
MAYNARD COOPER & GALE PC  
1901 6th Avenue N  
2400 Regions/Harbert Plaza  
Birmingham, AL 35203  
Email:  
dnabers@maynardcooper.com  
jmitchell@maynardcooper.com

John B. Tally  
E. Berton Spence  
RUMBERGER, KIRK &  
CALDWELL, P.A., P.C.  
Lakeshore Park Plaza, Suite 125  
2204 Lakeshore Drive  
Birmingham, AL 35209-6739  
Email: jtally@rumberger.com

Respectfully submitted,

s/ James U. Blacksher  
JAMES U. BLACKSHER  
Ala. Bar Code: ASB-2381-S82J  
P.O. Box 636  
Birmingham AL 35201  
Telephone: 205-591-7238  
Fax: 866-845-4395  
E-mail: jblacksher@ns.sympatico.ca