

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. \*

**EXHIBIT M TO  
PLANTIFFS' SUBMISSION OF EXPERT REPORTS**

Supplemental expert report of Prof. Susan Pace Hamill

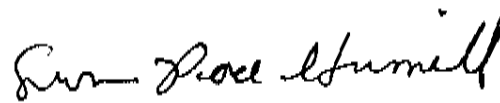
## MEMORADUM

To: James U. Blacksher

From: Professor Susan Pace Hamill<sup>1</sup>

Re: Supplemental Material to Expert Witness Report of April 17, 2009

Date: June 8, 2009



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This memorandum provides additional analysis and citations (including empirical tables set out in five appendices and twelve correlation charts appearing at the end) supplementing the expert witness report of April 17, 2009. Using the most recent data available addressing property tax collections, K-12 funding and race and poverty statistics this research illustrates that the federal district court's findings of fact in *Knight v. Alabama* are still true -- the effects of the Lid Bill's restrictions continue to have a crippling effect on the funding of poor, rural, majority black school districts.<sup>2</sup> During the 2009-2010 academic year I will be supervising a new team of research assistants who will help me further refine and enhance this research which will eventually lead to a published law review article.

**I. Alabama's Property Tax Structure, the 1901 Constitution and Conclusions of Research Published in 2002 and 2003 Relied on by the District Court in *Knight v. Alabama***

Alabama's property tax is an ad valorem tax, which means that the tax is based on the value of the thing being taxed, as opposed to being based on the quantity of the thing being taxed.<sup>3</sup> There are four steps to calculate property tax in Alabama. First the property must be identified, which is done using the tax map at the county assessor's office in the county courthouse. Then property must be appraised. For Class I (public utility property), II (mostly commercial property), III Other (homes and historic sites) and IV (motor vehicles) the appraised value is what the property would sell for on the open market between a willing buyer and seller with neither under pressure to buy or sell.<sup>4</sup>

For Class III Current Use (timber and agriculture) appraised value is determined using a current use formula. Current use is a method of appraisal that allows land to be appraised at a lower amount than its actual value would be in an open market between a willing

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<sup>1</sup> During the 2008-2009 academic year Professor Hamill supervised a research team of seven students whose hard work made this expert witness report possible.

<sup>2</sup> *Knight v. Alabama*, 458 F.Supp. 2d 1273, 1299 (N.D. Ala. 2004).

<sup>3</sup> 71 Am. Jur. 2d State and Local Taxation § 18. Property tax is based on the value of the property rather than the amount of property. For example, if Taxpayer 1 owns 5 acres of property worth \$500,000, he will pay a different amount of tax than Taxpayer 2 whose 5 acres of property are only worth \$30,000. *Id.*

<sup>4</sup> Ala Code (1975) § 40-8-1(a).

buyer and a willing seller. The lower value is supposed to reflect how the land is being used (e.g., a farm), rather than how it could be used (e.g., a shopping mall). Current use exists nationwide and has been historically used to prevent owners of farms on the edge of a sprawling city from being forced to sell their property because they cannot pay the high property taxes on their land that reflect the increased value of their property due to the growth.<sup>5</sup>

Alabama is unique in that current use valuation of land is not limited to property on the edge of urban growth. Current use is used throughout the state on all agricultural and timberland, regardless of its proximity to an area that would increase its value to a point that does not reflect its actual usage.<sup>6</sup> Moreover unlike Georgia, Alabama allows current use valuation for all timber and agricultural lands regardless of size, effectively treating an acre of land owned by a large timber corporation with thousands of acres (agribusiness) the same as an acre of land owned by a small farmer with only several hundred acres. Georgia allows for current use for the first two thousand acres and requires a fair market value appraisal on the willing buyer and seller standard for each acre after that.<sup>7</sup>

Once the property is appraised an assessment ratio determines the portion of the property's appraised value that is in the tax base. Class I property is assessed at thirty percent of fair market value, Class II, at twenty percent of fair market value, Class IV fifteen percent of fair market value, Class III Other (homes and historic sites), ten percent of fair market value and Class III Current Use (timber and agriculture) ten percent of current use value.<sup>8</sup>

Alabama calculates the property tax by applying a millage rate to the assessed value. The unit of one mill is equal to one-tenth of one cent (1/10¢) or 1/1,000 of a dollar, often expressed in terms of 10¢ on each \$100 of assessed value.<sup>9</sup> The millage rate can also be translated to a percentage figure. Each mill is one tenth of a percent with ten mills being one percent. The millage rate at the state level is 6.5 mills or just over half a percent of the property's assessed value. County, municipal and school district mills are levied locally and vary. Mills must be applied equally to each and every class of property.

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<sup>5</sup> The Alabama Farmers Federation, <http://www.alfafarmers.org/issues/current.phtml>.

<sup>6</sup> Ala. Code § 40-7-25.1 provides that "upon request by the owner of such property as hereinafter provided, the assessor shall base his appraisal of the value of such property on its current use on October 1 in any taxable year and not on its fair and reasonable market value."

<sup>7</sup> National Timber Tax Website, <http://www.timbertax.org/statetaxes/states/summary/georgia.asp>.

<sup>8</sup> ALA. CONST. amend. 373 (1978) (amending ALA. CONST. § 217).

<sup>9</sup> Alabama Department of Revenue, <http://www.revenue.alabama.gov/advalorem/other/caltax.html>.

Because of this, the state, the counties, municipalities and school districts cannot tax one class of property at one rate and another class at a higher or lower rate.<sup>10</sup>

In the findings of fact on the continued effects of the Lid Bill the district court relied on the article I published in 2002 extensively studying the relationship between the property tax structure and the funding of K-12 education<sup>11</sup> and the article I published in 2003 documenting how the Lid Bill restrictions to the property tax anchored in Alabama's 1901 Constitution makes it impossible for the rural areas to collect adequate local property taxes from Class III Current Use property.<sup>12</sup>

These two articles support the testimony during the trial of *Knight v. Alabama* that rural areas across the state which have little valuable property, other than timber acres, are precluded from raising adequate local property taxes for local schools because the Lid Bill constitutionally anchors in a small to nonexistent property tax base for Class III Current Use property.<sup>13</sup>

## **II. Most of Alabama's School Districts are Inadequately Funded, Especially in High Poverty Areas, Which Have Higher Percentages of African-Americans.**

When viewing the state as a whole, both the percentage of Alabamians living below the poverty line and the percentage of Alabamians that are African American are substantially higher than the national average.<sup>14</sup> However many of the counties have an African American population and poverty levels that far exceeds the state average.<sup>15</sup>

<sup>10</sup> The Department of Revenue in its explanation of calculation tax indicates that the same millage rate will apply to all property regardless of its classification. See Alabama Department of Revenue, <http://www.revenue.alabama.gov/advalorem/other/caltax.html>.

<sup>11</sup> Susan Pace Hamill, *An Argument for Tax Reform Based on Judeo-Christian Ethics*, 54 ALA L. REV. 1 (2002) [hereinafter Hamill, Alabama Article].

<sup>12</sup> Susan Pace Hamill, CONSTITUTION REFORM IN ALABAMA: A NECESSARY STEP TOWARD ACHIEVING A FAIR AND EFFICIENT TAX STRUCTURE 33 CUMB. L. REV. 437 (2003) [hereinafter Hamill, Cumberland Article].

<sup>13</sup> Hamill, Alabama Article, *supra* note 11 and Hamill, Cumberland Article, *supra* note 12.

<sup>14</sup> Nationally approximately 13% of the population is below the poverty line, while in Alabama approximately 16.6% of the population is below the poverty line; nationally approximately 12.8% of the population is African American, while in Alabama approximately 26.3% of the population is African American. The race statistics are a 2007 estimate based on the year 2000 census made by the U.S. Census Bureau. U.S. Census Bureau, [http://factfinder.census.gov/servlet/ACSSAFFacts?\\_event=Search&geo\\_id=&\\_geoContext=&\\_street=&\\_county=&\\_cityTown=&\\_state=04000US01&\\_zip=&\\_lang=en&\\_sse=on&pctxt=fph&pgsl=010](http://factfinder.census.gov/servlet/ACSSAFFacts?_event=Search&geo_id=&_geoContext=&_street=&_county=&_cityTown=&_state=04000US01&_zip=&_lang=en&_sse=on&pctxt=fph&pgsl=010)

<sup>15</sup> See App. A, *infra*. In all eleven counties where African Americans represent the majority of the population the poverty rates greatly exceed the state's average, with some, including Sumter County, having black populations over 70% and poverty rates exceeding 30%. *Id.* The research team created an excel spreadsheet with four columns: County, Race, Poverty, and Current Use Reliance. The research team found all of the data on the Alabama QuickFacts from the US Census Bureau: <http://quickfacts.census.gov/qfd/states/01000.html>. This enabled the research team to gather Race and

When viewing the state as a whole, African Americans are disproportionately poor.<sup>16</sup> Moreover the counties individually and as a whole reveal a correlation between race and poverty indicating that counties with a high percentage of African Americans also have greater poverty.<sup>17</sup>

Although it is impossible to pinpoint exactly the level of K-12 funding that meets an objective standard of adequacy, numerous cost-out studies and prominent experts support an approximate benchmark of \$10,000 per child establishing a rebuttable presumption of adequacy in school districts that are not high poverty districts.<sup>18</sup> Those same sources as well as the extensive study of the Education Trust support an approximate benchmark of \$14,000 per child establishing a rebuttable presumption of adequacy in the funding of high poverty school districts.<sup>19</sup>

When viewing the state as a whole at just over \$8,000 per child, Alabama's funding of K-12 education fails to even approach the \$10,000 threshold establishing a rebuttable presumption of adequacy. Moreover well over fifty percent of Alabama's public school

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Poverty data for the state of Alabama, as well as all sixty-seven counties. The Current Use Reliance data came from Appendix C. In the left most column on the excel spreadsheet, the research team listed each of the Alabama counties. The research team entered the race and poverty data from the Census for each county and then entered the current use reliance data from the research contained in Appendix C. Finally, the research team sorted the data in descending order by race, so that the counties with the highest percentage of African American residents are at the top of the chart. To sort, the research team used the Data toolbar on Microsoft Excel and chose to sort data. The research team then chose the "African American population" column as the data to be sorted and expanded the selection so that the corresponding county names, poverty rates and current use percentages were kept with the percentages of African Americans. *See infra* App. C at note 32 (documenting sources and methodology determining the amount of local property tax collections for school districts in each county from each class of property, including Class III current use, and the percent the school districts in each county rely on each class of property, including Class III current use).

<sup>16</sup> SUSAN PACE HAMILL, *AS CERTAIN AS DEATH: A FIFTY STATE SURVEY OF STATE AND LOCAL TAX LAWS* 4 and n. 16 (2007) (in Alabama of those living in poverty approximately 50% are black, which represents approximately 30% of the black population).

<sup>17</sup> *See* App. A and Correlation Chart Number 1, *infra*. The research team used Microsoft Excel to create Correlation Chart number 1. At the bottom of the worksheet containing the Appendix A data, the research team right-clicked on the tab and chose to "insert." The research team made a chart and chose to create an XY scatter chart and named the series Race v. Poverty. In the "X Values" slot, the research team highlighted all of the values in Column B, rows 4 through 70, which represented the values for percentage of the population that is African American. In the "Y values" slot, the research team highlighted all of the cells in Column C, Rows 4 through 70, which represent the percentage of the county's population that is impoverished. The research team created the chart, then chose "Chart" from the toolbar and clicked "Add a trendline." The research team then added a linear trendline to show the relationship between African American population and poverty rates: they are directly proportional to one another, meaning that as one value (percentage of the population that is African American) increases, so does the other value (percentage of population that is impoverished).

<sup>18</sup> Susan Pace Hamill, *The Vast Injustice Perpetuated by State and Local Tax Policy*, 117, 123-125 and nn. 26-29 [hereinafter, Hamill, State and Local Tax Policy Article]

<sup>19</sup> *Id.* at 125-26 and nn. 30-33.

students receive free or reduced price lunches and well over thirty percent of Alabama's public school students are African American.<sup>20</sup> Although the funding per child in quite a few of Alabama's individual school districts either exceeds or at least approaches the state-wide average, adequate funding cannot be established by comparing an individual school district to the state-wide average. This is because the state-wide average merely provides a barometer for comparing the individual school districts to each other rather than purporting to measure whether or not funding is in fact adequate.<sup>21</sup>

When viewing the individual school districts, only a handful are within the range of meeting the \$10,000 per child required to establish a rebuttable presumption of adequacy.<sup>22</sup> Moreover in thirty-nine individual school districts both the percentage of students receiving free and reduced lunches and the percentage of students that are African American is over fifty percent. In many of these school districts those figures are well over fifty percent.<sup>23</sup> Moreover the school districts individually and as a whole reveal a correlation between race and poverty indicating that school districts with greater poverty also have a higher percentage of African American students.<sup>24</sup>

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<sup>20</sup> See <http://www.alsde.edu/PublicDataReports>. In 2004, the nationwide average of African-American students in the individual states was 17% while an average 36% were eligible for free or reduced price lunch. The 2006 nationwide average of per-student spending in the individual states was \$9,963. <http://www.edcounts.org/createtable>.

<sup>21</sup> Hamill, State and Local Tax Policy Article, *supra* note 18 at 123.

<sup>22</sup> See App. B, *infra*. These individual school districts are: Mountain Brook City, Homewood City, Hoover City and Vestavia Hills City (all in Jefferson County), Auburn City (in Lee County), Athens City (in Limestone County) Baldwin County and Huntsville City (in Madison County). In all of these school districts except Huntsville City (with 43.30% of the students African-American) the percentage of African Americans in the student population is below the state average. Moreover with 43.39% of the students receiving free or reduced lunch, Huntsville City is arguably a high poverty district and therefore grossly under funded in that \$9,266.37 per child is nowhere near \$14,000 per child. The research team used Microsoft Excel to create Appendix B and downloaded data documenting Free Lunch and Enrollment By Ethnicity and Gender from <http://www.alsde.edu/PublicDataReports>. The research team inserted the Free Lunch percentages directly into Microsoft Excel program. The research team calculated the percentage of African-American students in each school system by adding the number of male African-American students to the number of female African-American students and dividing that sum by the total students in that school system. The research team then inserted this percentage into the Microsoft Excel program. The Alabama Department of Education provided Microsoft Excel files containing the Per-Pupil Local, State, and Federal funding data for each school system. To obtain the "Per Student Total" for each school system, the research team added corresponding Per-Pupil Local, State, and Federal funding figures together. To calculate the "Local Funding Reliance" for each school system, the research team divided the corresponding Per-Pupil Local by the Per Student Total. The Microsoft Excel program performed all calculations. All data is current as of the 2006-2007 school year.

<sup>23</sup> See App. B, *infra*.

<sup>24</sup> See App. B and Correlation Chart Number 3, *infra*. Correlation Chart 3 was created using Microsoft Excel. In order to determine the correlation between the percentage of African-American students in each school system and the school system's percentage of students eligible for Free or Reduced Lunch, the research team inputted the Free/Reduced Lunch and African-American columns from Appendix B into an X-Y scatter chart (created by the Excel software) and a linear regression trend line was added to the picture

### III. The Funding of Local School Districts With Property Taxes From Particular Classes of Property, Especially Class III Current Use Property

It is well known that local property taxes are the backbone of public school financing.<sup>25</sup> Alabama has the lowest property taxes in the nation and relies on property taxes for just over fifteen percent of its state and local tax revenue. Most states rely on property taxes for approximately one third of their state and local tax revenue.<sup>26</sup> When viewing Alabama's school districts together, local property taxes average just over sixteen percent of the revenues funding K-12 education.<sup>27</sup> However these averages camouflage wide disparities among school districts, with many majority black school districts relying on local property taxes for less than ten percent of their funding. The four school districts in Jefferson County that have funding levels in the range of the \$10,000 per child establishing a rebuttable presumption of adequacy, all of which have a percentage of African American students substantially below the state average, rely on local property taxes for well over forty percent of their funding.<sup>28</sup> Moreover the school districts individually and as a whole reveal a correlation between reliance on local property taxes and poverty as well as race, indicating that school districts relying less on local property taxes also have greater poverty and a higher percentage of African American students.<sup>29</sup>

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(also provided by the Excel software and illustrating whether and to what degree a positive or negative correlation exists). See App. B, *infra*

<sup>25</sup> Hamill, Alabama Article, *supra* note 11 at 42 and n. 129.

<sup>26</sup> Hamill, State and Local Tax Policy Article, *supra* note 18 at App. E, tbl. 1.

<sup>27</sup> See App. B, *infra*. The research team calculated the percentage of revenues funding public schools coming from local property taxes by using data provided by the Alabama Department of Education. See methodology described at *supra* note 17 and App. B, *infra*. Using the same data and methodology described at note 17 the research team determined that Alabama's school districts as a whole relied on the federal government for 15.51% of their funding and relied on the state for 68.15% of their funding.

<sup>28</sup> See App. B, *infra*.

<sup>29</sup> See App. B and Correlation Charts Number 4 and 5, *infra*. The research team created Correlation Chart Number 4 by using Microsoft Excel. In order to determine the correlation between the Local Funding Reliance in each school system and the school system's percentage of students eligible to receive Free or Reduced Lunch, the research team inputted the Local Funding Reliance and Free/Reduced Lunch columns from Appendix B into an X-Y scatter chart (created by the Excel software) and a linear regression trend line was added to the picture (also provided by the Excel software and illustrating whether and to what degree a positive or negative correlation exists). The research team also created Correlation Chart Number 5 by using Microsoft Excel. In order to determine the correlation between the Local Funding Reliance in each school system and the school system's percentage of African-American students, the research team inputted the Local Funding Reliance and African-American columns from Appendix B into an X-Y scatter chart (created by the Excel software) and a linear regression trend line was added to the picture (also provided by the Excel software and illustrating whether and to what degree a positive or negative correlation exists). See App. B, *infra*.

When collectively viewing the local property tax collections in 2008 for each of the individual school districts<sup>30</sup> that are located within each county (with school districts located within a county accounted for together),<sup>31</sup> Class II (primarily commercial property) contributed 54.57%, Class III Other (primarily personal residences) contributed 31.20%, Class I (public utilities) contributed 8.58%, Class IV (motor vehicles) contributed 4.57%, while Class III Current Use (timber and agriculture) contributed only 1.08% of property tax collections.<sup>32</sup>

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<sup>30</sup> Amendment 778 of the Alabama 1901 Constitution (ratified on December 4, 2006) requires the Department of Revenue to provide data breaking down property tax collections for each class of property (Class I, Class II, Class III (other), Class III (current use) and Class IV) at the state, level, for each of the sixty-seven counties, for all municipalities and for each individual school district. It took until the middle of March 17, 2009 for the Department of Revenue to provide the 2008 property tax collections for each class of property at the school district level. The research team had to expend an enormous amount of time analyzing this data because Class IV property (motor vehicles) was reported in different formats for each county. The data reporting property tax collections for Class IV motor vehicles contained numerous typos and irregularities. For example, the data was reported differently, even within the same county (e.g. some data was reported monthly, some semi-monthly, and sometimes there were months missing). Moreover, numerous typos in the data prevented the research team from being able to sort the data automatically under the excel program thereby forcing the research team to go through, line by line, 32,738 lines of data on property tax collections from motor vehicles for school districts in order to put the data in workable form so that the research team could calculate the contributions of all classes of property to local school districts. Because Class IV property contributes a small share of Alabama's property taxes (*see* Hamill, Alabama Article, *supra* note 11 (Class IV property contributed 4% of Alabama's overall property taxes and App. C, *infra* at the school district level using the 2008 data Class IV property contributes 4.57% of property tax collections) these difficulties with the 2008 property tax collections data for Class IV property in no way compromise the overall conclusions of the expert report and this memorandum that poor rural counties that have very little valuable commercial property whose principal property value is timber and agricultural lands are unable to raise property taxes remotely adequate to support rural school districts. It was not until April 20, 2009 at the Department of Revenue finally provided the 2008 property tax collections at the state, county and municipal levels for all classes of property. This memorandum examines the continued effects of the Lid Bill restrictions using the property tax collections at the school district level. The 2009-2010 research team will analyze the data provided on April 20, 2009 and incorporate property taxes collected at the state, county and municipal levels and examine the entire picture of the continued effect of the Lid Bill restrictions.

<sup>31</sup> Due to the format in which the data was provided, the research team was unable to isolate property tax collections by class of property for individual school districts in counties having more than one school district. This is because these taxes are assessed at the county level and all of these taxes go to support schools in the county. From the information the Department of Revenue has provided, it is impossible to trace exactly which funding district the money went. For purposes of the Department of Revenue, "school district" refers to the taxation district within a county. The popular education term, "School District," that is used to describe an educational district (e.g., Sumter County School District) is not a legal term. When the research team refers to an educational district, it will be known as a "funding district." Because in a county with more than one funding district, it is impossible to determine how many dollars go to each funding district, the research team compiled the property tax collections for each class of property for local schools by county.

<sup>32</sup> *See* App. C, *infra*. The research team worked from data sets from the state department of revenue. The sets had, for each school district, for each classification of property in that school district, various millage applications (e.g. Smalltown X Mills), the assessed value of property to which that millage applied, and the taxes levied due to the application of the millage to the assessed value. Because no state-mandated protocol for associating a particular school district (for property taxation purposes) with a particular school district exists the research team could not determine which school system the school district funded and

The research of my 2002 article, *An Argument for Tax Reform Based on Judeo-Christian Ethics*, backing up my 2004 testimony in *Knight v. Alabama*, examined the contributions to Alabama's property taxes from each class of property at the state, county, municipal and school district levels and concluded that Class II property contributed approximately 56%, Class III Other (primarily personal residences) contributed approximately 29%, Class I (public utilities) contributed approximately 9%, Class IV (motor vehicles) contributed approximately 4%, while Class III current use property (timber and agriculture) only contributed approximately 2% of the property tax.<sup>33</sup> Because at that time the Department of Revenue was not required to keep detailed records on property tax collections by class of property, the research team approximated the percentage contributions from each class of property by applying the appropriate millage rates to the assessed values of property subject to those millage rates in an excel program.<sup>34</sup> Because the percentage contributions from each class of property approximated in the 2002 article closely mirrors the percentage contributions from each class of property based on the 2008 property tax collections for local school districts, the District Court's findings of fact in *Knight v. Alabama* relying on the research and conclusions in the 2002 article have not changed.

When viewing the contributions made to the property tax revenues from each class of property for local schools in each county individually, wide disparities exist deviating from the overall state total, especially when focusing on Class III Current Use Property. Property tax collections for the school districts in each county individually and as a whole

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therefore analyzed the contribution by the classes of property to local property taxes for schools at the county level. For each class of property, the research team determined the county-wide collection of property taxes by manually adding up all of the taxes collected in the county for that particular class of property. There were 9 classes of property: Class I Airlines & Railroads Class I public Utilities. Class I Motor Vehicles; Class II Real Property, Class II Personal property, Class II Motor vehicles; Class III Current Use, Class III Other; and class IV motor vehicles. The protocol described herein describes how the research team calculated Appendix C for Classes I-III. Because data for Class IV was provided very late and because that data was reported monthly, not yearly, the research team calculated property tax collections for Class IV property in a different manner. To create Appendix C the research team combined all of the property taxes collected into Class I, Class II, Class III Current Use, Class III Other, and Class IV Motor Vehicles. Class I includes the sum of Class I Airlines & railroads, Class I Public Utilities, and Class I Motor vehicles. Class II includes the sum of Class II Real Property, Class II personal Property, and Class II Motor Vehicles. In addition to summing monthly or semi-monthly collections for Class IV property, the research team spent considerable time correcting typographical errors so that the data could be sorted. The research team manually sorted the Class IV collection data by Category to separate the assessments from the exemptions. The research team did this by choosing data from the toolbar and sorting the data by Category. Secondly, the research team also sorted the Class IV collection data by Millage so that the same millages would be together. Our third sorting was by End Date. For each millage, we summed the months for the year to determine how many dollars of property tax were collected due to that millage. Finally the research team combined all of the taxes collected in the county and entered that sum in the "Class IV" for each county.

<sup>33</sup> Hamill, Alabama Article, *supra* note 11 at 29-30 and App. C.

<sup>34</sup> *Id.* at note 90 (describing in detail the methodology the research team used to approximate the percentage contributions to Alabama's property tax revenues by each class of property).

reveal correlations between reliance on current use property and overall property tax revenues and property tax revenues from Class II property, which contributes well over half of the property tax revenues for all local schools. Specifically, school districts in counties that heavily rely on current use property for property tax revenues have very low overall property tax revenues and very low property tax revenues from Class II property.<sup>35</sup>

These correlations based on data from 2008 property tax collections support the conclusions reached in the 2002 Alabama Article and the 2003 Cumberland Article relied on by the District Court in *Knight v. Alabama* that local schools in rural counties having little valuable commercial property, which are therefore forced to rely more heavily on property taxes from timber and agriculture, have no ability to collect adequate property taxes for local schools due to the Lid Bill's restrictions anchored in Alabama's 1901 Constitution.<sup>36</sup>

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<sup>35</sup> See App. C and Correlation Chart Number 6 and 7, *infra*. The research team used Microsoft Excel to create Correlation Chart Number 6. At the bottom of the worksheet containing the Appendix C data, the research team right-clicked on the tab and chose to "insert" and create an XY scatter chart. The research team named the series Current Use v. Total Revenue. In the "X Values" slot, the research team highlighted all of the values in Column G, rows 3 through 70, which represented the values for percentage current use tax relative to total tax revenue. In the "Y values" slot, the research team highlighted all of the cells in Column L, Rows 3 through 70, which represent the total property tax collected. The research team created the chart, then chose "Chart" from the toolbar and clicked "Add a power line" to show the relationship between the reliance on current use property and the overall property tax revenue for local school districts. There is a negative correlation between reliance on current use property and overall property tax revenue for local school districts, meaning that the lower the overall tax revenue, the more reliance counties become on current use tax. Correlation Chart number 7 was also created using Microsoft Excel. At the bottom of the worksheet containing the Appendix C data, the research team right-clicked on the tab and chose to "insert" and create an XY scatter chart. The research team named the series Current Use v. revenue from Class II property. In the "X Values" slot, the research team highlighted all of the values in Column G, rows 3 through 70, which represented the values for percentage current use tax relative to total tax revenue. In the "Y values" slot, the research team highlighted all of the cells in Column D, Rows 3 through 70, which represent the percentage of the county's revenue of Class II property taxes. The research team created the chart, then chose "Chart" from the toolbar and clicked "Add a power line" to show the inverse relationship between reliance on current use and Class II property; that is, the less Class II property a county has, the more reliant it is on current use. Moreover, school districts in counties that more heavily rely on Class II property have greater overall property tax revenues. See App. C and Correlation Chart Number 8, *infra*. Correlation Chart number 8 was created using Microsoft Excel. At the bottom of the worksheet containing the Appendix C data, the research team right-clicked on the tab and chose to "insert." The research team made a chart and chose to create an XY scatter chart and named the series Class II Reliance v. Overall Revenues. In the "X Values" slot, the research team highlighted all of the values in Column B, rows 3 through 70, which represented the values for percentage of Class II property relative to total property tax revenue. In the "Y values" slot, the research team highlighted all of the cells in Column L, Rows 3 through 70, which represents total property tax revenue. The research team created the chart, then chose "Chart" from the toolbar and clicked "Add an exponential line" to show the relationship between reliance on Class II property tax revenue relative to total property tax revenue; there is a positive relationship meaning, generally, that the more Class II property tax collected, the greater the property tax revenue.

<sup>36</sup> See *supra* note 13 and *Knight v. Alabama*, 458 F. Supp. 2d 1273, 1297-99 (N.D. Ala. 2004).

#### **IV. Negative Effects of the Lid Bill's Restrictions, Especially on Class III Current Use Property, Continue to Fall Disproportionately Hard on African American Alabamians**

Although the Lid Bill's restrictions anchored in Alabama's 1901 Constitution make it difficult for many areas of the state to raise adequate property taxes from all classes of property, the part that requires only ten percent of current use value of all timber and agriculture to be included in the base (regardless whether the land owned is a few hundred acres or hundreds of thousands of acres) guarantees that no reasonable millage rate will ever raise adequate property taxes from Class III current use property.<sup>37</sup> Claims that adequate property taxes could be raised by levying an unreasonably high millage rate (such as 100 mills) are not valid for at least two reasons. Rates this high are politically impossible because they are so far off the norm. More importantly because all classes of property must be subject to the same millage rate, the two classes of property currently bearing most of the property taxes (Class II (mostly commercial), which must include twenty percent of fair market value in the base; and Class III Other (mostly personal residences), which must include ten percent of fair market value in the base) would bear an extremely disproportionately high share of the property tax burden from the unreasonably high millage rates. Consequently millage rates this high are not only politically impossible, but also would be extremely inequitable to business and homeowners.<sup>38</sup>

Material covered in this memo has laid out the devastating consequences of the Lid Bill's restrictions, especially with respect to the ability of local school districts to collect adequate property taxes from Class III current use property. School districts in rural areas forced to rely as a percentage more heavily on current use property have substantially less property tax revenues for local schools and are substantially supplemented by funding from state, federal and other sources.<sup>39</sup> School districts in counties that heavily rely as a percentage on current use property also have greater poverty.<sup>40</sup>

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<sup>37</sup> See *supra* note 13.

<sup>38</sup> Affidavit of Susan Pace Hamill, *Lynch v. Alabama* CV-08-S-0450-NE (May 30, 2008).

<sup>39</sup> Using the per-pupil funding data provided by the Alabama Department of Education, *see* n.17, *supra*, the following are the respective Federal, State, and Local Reliance percentages for each school system: Dallas County: 20.48%, 75.65%, 3.87%; Conecuh County: 21.03%, 71.87%, 7.10%; Hale County: 19.91%, 72.64%, 7.44%; Bullock County: 22.19%, 70.36%, 7.45%; Perry County: 24.90%, 66.85%, 8.25%; Coosa County: 19.00%, 72.66%, 8.34%; Clarke County: 19.86%, 71.33%, 8.81%; Wilcox County: 21.70%, 69.25%, 9.05%; Butler County: 19.82%, 71.03%, 9.15%; Barbour County: 25.68%, 65.06%, 9.26%; Greene County: 23.90%, 66.82%, 9.27%; Macon County: 19.33%, 71.37%, 9.30%; Lowndes County: 22.17%, 68.16%, 9.67%; Pickens County: 18.22%, 71.91%, 9.86%; Chambers County: 15.90%, 74.21%, 9.89%; Marengo County: 20.61%, 69.45%, 9.94%; and Sumter County: 20.74%, 68.14%, 11.12%. The Federal and State Reliance percentages were calculated by dividing the respective Per-Pupil Federal and Per-Pupil State funding numbers by the corresponding Per-Student Total for each school system. Local Funding Reliance percentages were taken from Appendix B.

<sup>40</sup> See App. A and Correlation Chart Number 2, *infra*. The research team used Microsoft Excel to create Correlation Chart Number 2. At the bottom of the worksheet containing the Appendix A data, the research

African American Alabamians disproportionately bear a greater share of the negative effects from the Lid Bill's restrictions. In addition to being disproportionately poor, disproportionately in school districts with greater poverty and disproportionately in school districts that receive less funding from local property tax revenues,<sup>41</sup> counties with higher percentages of African Americans in the population tend to rely more heavily on current use property for local school district property tax collections.<sup>42</sup>

The 2002 Alabama article documented that Class III current use property, especially timber, accounts for seventy-one percent of Alabama's land mass and significantly enhances the state's economy.<sup>43</sup> The most recent data available indicates the percentage of Alabama's land mass covered up with timber has decreased a tiny bit, but still accounts for almost seventy percent,<sup>44</sup> and still significantly enhances the state's

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team right-clicked on the tab and chose to "insert" and create an XY scatter chart. The research team named the series Poverty v. Reliance on Current Use. In the "X Values" slot, the research team highlighted all of the values in Column C, rows 4 through 70, which represented the values for percentage of the population below the poverty line. In the "Y values" slot, the research team highlighted all of the cells in Column D, Rows 4 through 70, which represent the percentage of the county's reliance on Current Use taxes. The research team created the chart, then chose "Chart" from the toolbar and clicked "Add a trendline" to show the relationship between the county's reliance on Current Use and the population below poverty: they are directly proportional to one another, meaning that as one value (percentage reliance on Current Use) increases, so does the other value (percentage of population that is impoverished).

<sup>41</sup> See *supra* notes 14-17, 20, 24, 28-29.

<sup>42</sup> See App. D and Correlation Chart Number 9, *infra*. Appendix D is a chart with all of the counties in Alabama sorted from highest to lowest by percentage of the county's population that is African American. The chart also contains amount of local property tax revenues for school districts each county collects from Class III Current Use property, the percentage of the county's overall local school district revenues that come from Class III Current Use property, and the total local school district property tax collection for all classes of property. The percentage of African Americans in the total county population information comes from the United States Census, <http://quickfacts.census.gov/qfd/states/01000.html>. The other data came from Appendix C. The research team used Microsoft Excel to create Correlation Chart Number 9. At the bottom of the worksheet containing the Appendix D data, the research team right-clicked on the tab and chose to "insert" and create an XY scatter chart. The research team named the series African American Population v. Current Use Reliance. In the "X Values" slot, the research team highlighted all of the values in Column E, rows 3 through 69, which represented the values for percentage of the population that is African American. In the "Y values" slot, the research team highlighted all of the cells in Column C, Rows 3 through 69, which represent the percentage of the county's reliance on Current Use taxes. The research team created the chart, then chose "Chart" from the toolbar and clicked "Add a trendline" to show the relationship between African American population and reliance on Current Use taxes: they are directly proportional to one another, meaning that as one value (percentage of the population that is African American) increases, so does the other value (reliance on Current Use taxes).

<sup>43</sup> Hamill, Alabama Article, *supra* note 11 at 32-33, and App. E.

<sup>44</sup> Brian Hendricks, Forest Inventory & Analysis Coordinator at the Alabama Forestry Commission provided the team with Forest Inventory & Analysis (hereafter, "FIA") statistics on property ownership by county in the state of Alabama for the year 2007. This data provided the total amount of acreage for the state and the total amount of timber acres for the state. Total acreage for the state of Alabama is 32,476,147.2; and the number of timber acres in the state is 22,618,641.0. To compile the percentage of acreage covered by timber in the state of Alabama, the team simply divided the number of timber acres by

economy.<sup>45</sup> Moreover the counties individually and as a whole reveal correlations between the percentage of timber acreage and poverty, reliance on current use property for local school property tax collections and race. Counties with higher percentages of timber acres also have a greater percentage of the population below the poverty line, more heavily rely on current use property as a percentage of their property tax collections for local schools and have a higher percentage of African Americans in the population.<sup>46</sup>

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the number of total acres. Thus, 22,618,641.0 (timber acreage) divided by 32,476,147.2 (total acreage) equals 69.65% or just below 70%.

<sup>45</sup> With respect to forestry and logging industries in 2006 (NAICS Code 113), Alabama ranked second nationally with 742 establishments, third in the total number of employees with 5,272, and fourth in annual payroll with \$154,516,000. U.S. Dep't of Comm., Census Bureau, County Business Patterns Database, <http://censtats.census.gov/cbpnaic/cbpnaic.shtml> (last visited May 11, 2009). The national rankings for number of establishments and employees were unchanged from 2000 (*id.*), while the annual payroll ranking dropped slightly from 2000, when it was third. See Hamill, Alabama Article, *supra* note [] at 32 n.96. Private earnings in Alabama from the forestry industry amounted to \$372,648,000, which was the fourth highest state total in 2006 (up from fifth in 2000). Bureau of Econ. Analysis, Regional Accounts Data, Annual State Personal Income, tbl. SA05N, <http://www.bea.gov/beat/regional/spi> (last visited May 11, 2009). In 2006, Alabama ranked fourth nationally with 120 establishments dedicated to forestry support industries, sixth in number of employees with 817, and fifth in annual payroll with \$23,806,000. U.S. Dep't of Comm., Census Bureau, County Business Patterns Database. In 2000, these rankings were fifth, sixth, and second, respectively. See Hamill, Alabama Article, *supra*.

<sup>46</sup> To create Appendix E the research team used data provided by Brian Hendricks, Forest Inventory & Analysis Coordinator at the Alabama Forestry Commission for the year 2007 (*available at* <http://fia.fs.fed.us/tools-data/other/default.asp> (last visited May 21, 2009 or [Brian.Hendricks@forestry.alabama.gov](mailto:Brian.Hendricks@forestry.alabama.gov).) This data included total acreage, timber acreage, privately-owned timber acreage, and government-owned timber acreage –at the county level and for a state total. For easier analysis, the team converted the amount of timber acreage into a percentage; thus, “Timber %” is simply: timber acres divided by total acres. Unlike the Hartsell and Brown data relied on by Hamill, Alabama Article, *supra* note 11 at App. C (which has not been updated) the FIA does not breakdown “private” timber holdings into: Private Industry, Private Non-Industry Personal, and Private Non-Industry Corporate. Although FIA broke down government-owned timber acreage into several separate categories (National Forest, National Park Service, Department of Defense, Other Federal, State, and County and Municipal), the research team combined these categories. The research team use Microsoft Excel to create Correlation Charts Number 10, 11, and 12. In order to determine the correlation between the Total Timber Percentage in each county and the county school system’s percentage of students eligible to receive Free or Reduced Lunch for Correlation Chart 10, the Total Timber % and Poverty columns from Appendix E were input into an X-Y scatter chart (created by the Excel software) and a linear regression trend line was added to the picture (also provided by the Excel software and illustrating whether and to what degree a positive or negative correlation exists). In order to determine the correlation between the Total Timber Percentage in each county and the corresponding counties reliance on Current Use for Correlation Chart 11, the Total Timber % and Current Use % columns from Appendix E were input into an X-Y scatter chart (created by the Excel software) and a linear regression trend line was added to the picture (also provided by the Excel software and illustrating whether and to what degree a positive or negative correlation exists). In order to determine the correlation between the Total Timber Percentage in each county and the county school system’s percentage of African-American students for Correlation Chart 12, the Total Timber % and Black columns from Appendix E were input into an X-Y scatter chart (created by the Excel software) and a linear regression trend line was added to the picture (also provided by the Excel software and illustrating whether and to what degree a positive or negative correlation exists). See App. E, *infra*.