

**Expert Report of Professor David Brunori - *Lynch v. Alabama***

I hereby provide this expert report which I have prepared for this case at the request of counsel for Defendants.

Qualifications: An updated copy of my CV is attached to this report.

Compensation: I am being compensated at a rate of \$100/hour for my work in this case.

Previous Testimony as an Expert: None

Data relied on in forming my opinions: Plaintiffs' complaint in this action, expert report and deposition testimony of Daniel Sullivan and Susan Hamill, and various sources cited in my expert report.

Signed this the 24<sup>th</sup> day of July, 2009,

s/ David Brunori

David Brunori

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## **Executive Summary**

This report discusses Alabama's property tax system in the broader context of property taxes in the United States. In particular, the report addresses whether Alabama is unique or unusual in the way it limits or restricts property taxes. It is common knowledge that Alabama is a low tax state. The burden of taxation in Alabama (and all other states) is a reflection of the level of public services demanded by the public. Public service demands and tax burdens are quintessentially political questions.

That Alabama limits property taxes is hardly unusual. Every state has some form of property tax limitation. Indeed, state governments have been limiting property taxes for the last century. The limits are invariably the result of public dislike of the property tax – a fact long documented by public finance scholars. That dislike has produced a variety of limits -- some, but not all, of which have been adopted in Alabama. Alabama imposes a property tax rate limit. But 37 other states do as well. And 17 of those states impose limits at or near Alabama's limits. Moreover, like Alabama, 17 states impose the limits constitutionally. Alabama also provides the opportunity for citizens to override the limits; eight states do not provide override provisions.

The report also discusses, in a national context, the very favorable treatment allotted agriculture and timber land in Alabama. Alabama provides fractional assessments on current use value of agriculture and timber land. But 41 states value land under current use and 24 states use fractional assessments for agriculture and timber. Again, there is nothing unique or unusual about the way Alabama treats such land owners. Indeed, many states provide as much or more tax benefits to owners of agriculture and timber land.

Viewed in the context of historical and present day property tax laws across the country, there is nothing out of the ordinary about Alabama's constitutional restrictions on state and local property taxes.

## **ALABAMA PROPERTY TAXES IN CONTEXT**

This report addresses whether Alabama is unique or unusual in the specific ways it limits property taxes. The report first describes Alabama's revenue system in general. It next discusses property taxes in the United States, with a particular emphasis on its role in funding local government and the public's attitude toward the tax. The report then explores Alabama's laws imposing property tax rate limits and providing favorable treatment to agriculture and timber interests. These laws are viewed in the context of how other states deal with these issues. Finally, the report concludes that in the context of the public's views of the property tax and the property tax regimes in other states, there is nothing unusual or unique about the specific types of limits imposed by the Alabama constitution.

### **I. Alabama Public Finances**

There are great variations among the states as to how taxes are imposed (Brunori 2005)<sup>1</sup>. Those variations are the result of political decisions within each state. The amount of money raised is a function of the level of government services (i.e., schools, transportation, public safety) the citizens in the state desire. And it is a function of what those citizens are willing to pay for in the form of taxes. Some states, particularly those in the Northeast, have traditionally opted for more state and local government services than other parts of the nation. States in the Southeast, by contrast, have traditionally chosen less government services than other parts of the nation.

For example, Connecticut has, for the last decade, the highest or nearly the highest per capita state and local tax burdens in the nation. Alabama, by contrast, has had the lowest or nearly the lowest tax burdens over that time. But, the tax burdens themselves are meaningless when viewed in a vacuum. Connecticut has also opted to spend the most (or nearly the most) money per capita on state and local government services. Alabama has chosen not to spend nearly as much. The relative spending and taxation policies in these and all states reflect political decisions made by elected officials and ultimately the citizens.

The variations extend to the mix of state and local taxes and services as well. New Hampshire, for example, has very limited state government. It imposes no broad based state level taxes. Despite repeated attempts, New Hampshire citizens have long rejected adoption of state wide income and sales taxes. Thus, many government services are performed at the local level and property tax burdens are very high compared to the rest of the country. Other states, Alabama among them, have taken the opposite approach and rely on state governments to perform many more functions and local governments relatively few. In those states, state level taxes are usually higher on a per capita basis than average while property tax burdens are usually much lower than average.

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<sup>1</sup> Brunori, David. 2005, *State Tax Policy: a Political Perspective*. Urban Institute Press.

In that regard, it is important to note that no single tax should be viewed or analyzed in a vacuum. Property taxes in Alabama (or any state) are part of an often complex system of public finance. Property tax burdens and limitations are influenced by state level taxes. States without a broad based income (Texas) or sales (Oregon) taxes often have higher property tax burdens. States with more balanced broad based systems tend to have less reliance on property tax burdens.

The amount of government citizens in a state desire, the mix of local versus state levels of responsibility, and ultimate tax burdens are intrinsically political issues. Indeed, there is no more profoundly political question than the level upon which a government taxes its citizens. The current public finance rules in every state are a function of either legislative action (for most statutory laws) or popular vote (for most constitutional provisions). In either case, the political process (including the myriad of interests that influence that process) guides the decision making. It is worth noting that those interests vary from state to state. In some states, agriculture interests dominate the process. In other states, the manufacturing sector is more influential. In yet other states, high technology, tourism, and financial services sway political decisions on taxes and spending. Still, these economic interests that influence policy usually represent the desires of broad portions of the electorate. After all, if manufacturing dominates a state's economy, its citizens are likely to be working in that sector.

Alabama citizens through the political process have chosen the level of education, health, transportation, public safety and other public services they desire. Alabama citizens also chose which level of government will ultimately be responsible for providing most services. Throughout the years, Alabama has opted to spend much less than most states on most public services. Moreover, like many Southern states, Alabama has chosen to place most government responsibility at the state level. Local governments in Alabama have traditionally not had significant autonomy over their budgets. Because the property tax is primarily a local government revenue source, those states with relatively weak local government systems have imposed much lower property tax burdens on their citizens. This is a fact long recognized by public finance scholars (see Brunori 2007 for a discussion).<sup>2</sup>

Alabama has traditionally not spent significant amounts of money on state (and certainly not local) government services. As a result it has always been a low tax state. Putting aside for a moment, property tax limitations, Alabama could if it chooses spend significantly more money on government services. That requires a demand on the part of a majority of citizens for more government. And that demand has not existed.

In this respect, Alabama is not different than any other state. The legislature faces decisions on the level of services and consequently the level of taxation. Many interest groups – business, educators, advocates for the poor, etc. – try to influence the outcomes. For example, Alabama has been at the forefront of offering tax incentives to businesses that invest in the state. The state has given large manufacturers, particularly automobile

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<sup>2</sup> Brunori, David. 2007. Local Tax Policy, a Federalist Perspective. Urban Institute Press.

manufacturing companies, hundreds of millions of dollars in tax breaks. Indeed, Alabama became the leader of the modern day tax incentive era in the early 1990s with its decision to offer extensive tax incentives to Mercedes Benz. Like property tax limits, economic development incentives are widely criticized by public finance experts (see Brunori 2005 for an in depth discussion). But, like property tax limits, incentives are used routinely by virtually every state. Offering incentives results in the government limiting revenue for public services.

The political nature of the tax system is best illustrated by Alabama's unsuccessful tax reform effort in 2003. At that time, the governor proposed significant reforms designed to increase the state's ability to raise income and property taxes. The reforms were heralded by public finance experts. And state political leaders who supported reform warned that Alabama would have to cut services if the measure failed.

But the reform proposals caused a firestorm of controversy as many of those who would ultimately pay higher taxes, including wealthy citizens, certain businesses, and large landowners, rallied against reform. The reform effort failed in a statewide vote by more than a 2-1 margin. But because taxes are so politically sensitive, the vote on Alabama reform was hardly unusual. Comprehensive tax reform efforts across the nation rarely succeed.

## **II. Property Taxes in the United States**

### **A. Overview**

The property tax is the only tax levied in all fifty states and the District of Columbia. The tax has been, traditionally, the primary source of tax revenue for local governments. While reliance on the tax has eroded steadily over time, the property tax has dominated local government finance throughout the 20th Century and into the 21st Century. In 1957, local governments raised over \$12 billion or 85 percent of their total tax revenue from property taxes. In 2006, local governments in the United States raised over \$347 billion or 71 percent of their own source tax revenue from property taxes (U.S. Census Bureau).

However, property tax reliance varies, often greatly, by region. Local governments in the northeast and mid-west have traditionally relied more heavily on property taxes than local governments in the south or western parts of the United States. For example in 2006, New Hampshire, Maine, Vermont, New Jersey, Rhode Island and Connecticut were the states with highest property tax collections as a percentage of personal income. Conversely, Alabama, New Mexico, Oklahoma, Hawaii, Kentucky, West Virginia, and North Carolina were the lowest. Not coincidentally, those regions in the nation that have the heaviest reliance on property taxes have also had the strongest commitment to local autonomy; thus, a clear connection between the property taxes and local autonomy exists. Again, it should be emphasized that Alabama has never placed

great importance on the strength of its local governments. Consequently, it is not surprising that Alabama has never relied heavily on property taxes.

For the most part, the property tax is highly regarded among public finance experts as the best source of revenue to finance most local government services. For decades, scholars have argued that all other types of revenue, including intergovernmental aid, pale in comparison to the property tax in terms of efficiency and effectiveness (see Brunori 2007 for an in depth discussion of how public finance scholars view the property tax).<sup>3</sup> The only service traditionally provided by local governments that is not as well suited to property tax finance is public education. Property tax revenue is dependent on real estate values. Jurisdictions with low property values will be able to raise less revenue than property rich jurisdictions. As discussed below, the resultant disparities between rich and poor school districts have led many states to centralize education funding.

While economists and public finance scholars laud the tax, the public has traditionally despised this levy. It has now become part of public finance lore that citizens believe the property tax is the "worst tax." It certainly is among the most disliked of taxes. During the latter half the 20th Century, the Advisory Commission on Intergovernmental Relations (ACIR) conducted an annual public opinion poll to gauge the people's views on the federal, state, and local tax systems (see Brunori 2007). One of the most cited aspects of the poll was the request for people to identify the tax that they dislike the most. Over the course of the ACIR polling, the property tax was almost always listed as the worst tax (in a couple of years the property tax ran a close second to the federal income tax). The property tax remains the most disliked of all taxes, a fact routinely discussed in public finance literature (see Brunori 2007 for more discussions on the public's intense dislike of the property tax).

The public's opposition to the property tax has led to its steady decline over the past century. Before the Great Depression, the property tax provided two thirds of all local government revenue. Local government reliance on the tax reached its peak in the mid 1970s. By 2006, however, the property tax accounted for only about 25 percent of total local government revenue (U.S. Census Bureau 2006).

The decline in the importance of the property tax is attributed to five broad reasons. First, as noted above, the tax has long been very unpopular among citizens in general and homeowners in particular. The unpopularity has created significant political opposition to the tax. Second, the public's dislike of the tax has led to the adoption of statutory and constitutional limitations regarding rates, assessments, and the amount of revenue that can be raised. Third, there has been a proliferation of exemptions for charitable organizations, as well as for businesses in order to foster economic development. These exemptions have constricted the base from which tax revenue can be raised. Fourth, efforts to provide relief to elderly and poor homeowners (whose income generally does not keep pace with property tax increases) have further curtailed the

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<sup>3</sup> Brunori, David. 2007. *Local Tax Policy, A Federal Perspective*. Urban Institute Press.

revenue raising potential of the tax. Finally, reliance on the property tax has diminished because of the increased centralization of elementary and secondary education finance. State governments are paying for a greater share of public education that was once almost exclusively the responsibility of local governments. Centralization in education finance has weakened the rationale for taxing property and further undercut the public's already meager support for the property tax.

These factors have combined to reduce reliance on the property tax nationwide. Moreover, most public finance scholars believe that the property tax will never play as dominant role in the future of local government finance as it has in the past (see Brunori 2007).

### **B. Consequences of Public Unhappiness**

The effects of the public's unhappiness have been dramatic in terms of increasing limitations on the role of property taxes in local government finance systems. The public's displeasure has directly led to significant statutory and constitutional limitations on the property tax. But even apart from the legal limitations placed upon the tax, the public's unhappiness has created a strong political bias against the tax.

The ACIR polling results have been cited repeatedly in both the general press and academic writing for years. Indeed, that the property tax is the worst tax is almost a given in public policy discussions regarding local taxation. This in turn has led many political leaders to seize upon these public perceptions and call for further reductions in the tax. There is no doubt that political leaders, particularly at the state level, have taken a negative view of the property tax. One poll showed that fifty percent of all state legislators think the property tax is unfair. A review of news articles, many published in *State Tax Notes* magazine from January 2002 to June 2009, shows at least 500 instances in which state political leaders have called for additional limitations on, or outright elimination of, the property tax. Such political views have facilitated development or creation of policies designed to limit the property tax.

The most obvious consequence of the public's unhappiness has been the myriad of constitutional and statutory limitations placed on the tax. The property tax revolts that began in the late 1970s wreaked havoc on the tax. As of 2009, all states have some restrictions on the ability of local governments to impose property taxes. And in at least 37 states, those restrictions are substantial -- resulting in property tax revenue declines of 15 percent or more since their inception. The specific limitations are discussed in more detail below. Numerous studies have shown that tax limitations have reduced reliance on the property tax nationwide (see Brunori 2007 for a discussion of the many studies illustrating the effect of property tax limitations nationwide).<sup>4</sup> The amount of property tax revenue foregone as a result of the various limitations is in the tens of billions of dollars nationwide.

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<sup>4</sup> Ibid.

### **C. The Trend Continues**

It should be noted that in recent years, there have been numerous attempts to not only further limit property taxes, but to outright repeal them. The significance of recent history cannot be overemphasized. The public dislike of the property tax has grown to such a degree that merely limiting rates and assessments is no longer enough.

Florida adopted a strict property tax limitation in 1992 (capping assessment growth at three percent a year). That limitation did not however mollify public discontent. In 2008, Florida Taxation and Budget Reform Commission proposed Amendment 5 to the constitution in which:

- school districts would not be required by the Legislature to levy a property tax;
- the Legislature would replace the lost revenue of property tax eliminations; and
- the limit on assessment growth for nonhomestead real property would be cut from 10 percent per year to 5 percent.

While Amendment 5 was struck down by the courts on technical grounds, the provision would have essentially eliminated the property tax as a source of revenue for schools. The measure may be resubmitted to a public vote in 2010.

In Georgia, Speaker Glenn Richardson proposed completely eliminating the property tax as a means of funding elementary and secondary education in 2007. The speaker proposed raising state sales taxes to replace the lost revenue. Although the proposal ultimately failed, it was hotly debated through 2008. A significant majority of Georgians supported the measure.

In Arkansas, in 2000, two different constitutional amendments were proposed to completely eliminate the property tax. The measures failed to make the ballot, but property tax opponents have regularly revisited the idea of complete repeal.

Among the most serious efforts to repeal tax came in Indiana in 2007. A group of 80 state legislators proposed a constitutional amendment calling for the repeal of the tax. They proposed increasing state sales taxes to replace the lost revenue. The measure passed the House. A sharp debate ensued in the Senate after which a legislative compromise significantly reducing property tax burdens was reached in 2008. That compromise involved adoption of a one percent rate limit on residential property –with no override provisions. But efforts continue to place even stricter limits in the Indiana constitution.

In 2007, Pennsylvania state senator James Rhoades proposed sweeping legislation that would have repealed all property taxes for schools and replaced the lost revenue with state sales taxes. Rhoades' proposal had widespread support among citizens (56 percent according to the polls) and many lawmakers.

Other states including Arizona in 2009, Vermont in 2006 (statewide), and New Hampshire in 2006 (statewide) considered repeal of property taxes in recent years. None of the before mentioned proposals were successful. But their very existence proves the debate has shifted. At one time, the discussion centered on the wisdom of limiting property taxes. But today the debate has stretched well beyond limitations to the wisdom of out right repeal.

In many respects, states have been moving toward a model of state and local government finance used in Michigan. In 1994, Michigan citizens overwhelmingly (by a 70-30 vote) approved a measure significantly reducing property taxes and replacing the lost revenue with higher state sales taxes. The measure effectively ended the property tax as a significant source of funding for schools.

Many states have increased their share of school funding and have reduced reliance on property taxes. This shift has occurred as a result of the public's unhappiness with the property tax. And it has occurred as a result of school finance litigation (or in the case of Michigan the threat of litigation). School finance lawsuits across the country have challenged the use of the property tax as a source of funding for public schools on the grounds that the property tax produced significant disparities between rich and poor communities or could not otherwise guarantee a source of funding to provide adequate levels of education. As a result, many states reduced their reliance on the property tax and opted for state level broad based taxes, especially sales taxes, to fund elementary and secondary education. Breaking the connection between the property tax and education has further eroded support for the tax.

Alabama has a long tradition of relatively weak local governments with limited property tax burdens. Consequently, the state historically contributed a much higher than average share toward funding education. As noted above, the centralization trend has been motivated in part by concerns over fairness. Poorer jurisdictions could not raise as much money as richer jurisdictions, and thus had less money for education.

Alabama is certainly not unique in having some jurisdictions with significantly less property wealth than others. Indeed this is an issue in every state. Interestingly, according to a recent Education Week (2009) report, Alabama is among the top five states in the country in multiple measures of equity in funding between rich and poor school districts (see <http://www.edweek.org/media/ew/qc/2009/17sos.h28.finance.pdf>, specifically the columns entitled "Coefficient of Variation" and "Restricted Range"). In fact, many states are moving toward an education financing system that Alabama had long ago adopted.

### **III. Are Alabama Property Tax Limits Unique or Unusual?**

#### **A. Alabama's Property Tax Limitations – General Observations**

Essentially, Alabama has had strong property tax limits since at least 1901. When viewed historically, there is nothing unusual or unique about the timing of Alabama's

enactment of property tax limitations. Indeed, there is a common misperception that the property tax limitation movement began with California's Proposition 13 in 1978. If that were true, then Alabama's earlier adoption of property tax limits in 1901 would have been unusual. In fact, states have been imposing property tax limits throughout the 20<sup>th</sup> century. As states repealed their general property taxes they immediately placed limitations on the property tax on real property. Wisconsin, which had property tax limits in place while still a territory, adopted additional rate and assessment limits in 1902. Illinois established its first property tax rate limit in 1907. New Mexico (1914) and Oregon (1916) are examples of states that adopted early rate limits. But whether on rates or assessments, by the first decade of the 1900s nearly every state had some form of property tax limitation in place. These limits were often aimed at protecting agriculture, timber, and industrial interests.

In 1930, at the onset of the Great Depression, property tax protests occurred throughout the nation. Those protests were led by taxpayer organizations seeking relief during the economic crisis. But they were largely funded by the National Association of Real Estate Boards and other industry groups seeking to bolster the devastated real estate market. Moreover, farmers faced with foreclosure were at the forefront of the property tax revolt in the 1930s.

During this period, Utah (1929), Michigan (1933), Nevada (1936), North Dakota (1929), Ohio (1929) and Oklahoma (1933) all placed statutory or constitutional limits on property tax rates. Later Nebraska (1957), West Virginia (1939), Washington (1944), and Kentucky (1946) would limit rates. But the greatest limitation on the property tax during the Great Depression was the adoption of homestead exemptions. Every state except three (Colorado, Missouri, South Dakota) adopted homestead exemptions during this time. In many states, the homestead exemptions virtually eliminated the property tax as a viable source of revenue. For example, the Georgia General Assembly in 1937 authorized a \$2,000 homestead exemption at a time when the average value of a home in the state was \$1,946.

Another spate of property tax limitations occurred in the late 1960s and early 1970s (before Proposition 13). During that time Alabama (1972), Alaska (1972), Florida (1968), Iowa (1972), Louisiana (1974), Montana (1971), New Mexico (1973), North Carolina (1973), and Washington (1973) enacted or strengthened property tax rate limits. Moreover, five other states (Delaware -1972, Indiana -1973, Kansas -1970, Ohio - 1976 Washington - 1971) enacted property tax revenue limits during this time. These measures forced local governments to roll back tax rates or assessments if property tax revenue grew faster than a predetermined rate.

The modern day tax revolts are almost always thought of as beginning in California with Proposition 13 in 1978. The public continued to dislike the property tax, particularly in California. Proposition 13 passed overwhelmingly and resulted in the most severe property tax limitations in the United States. Indeed, the year after passage, property tax revenue fell 57 percent. Proposition 13 limited property tax rates to one percent (with no override), limited increases in assessments for all property to two

percent a year, required all state tax increases be approved by a two thirds majority of legislature, and all local tax increases be approved by a vote of the electorate. No state has ever placed more stringent limitations on its property tax system.

The revolt in California illustrated the public's intense dislike of the property tax. Indeed, it proved to be the catalyst for anti-property tax movements nationwide. Within six months after passage of Proposition 13, tax limitation measures were on the ballots in 17 states (all but five were approved). From 1979 to 1985, there were 58 ballot measures seeking to limit property tax collection in some manner.

Between 1978 and 1980 forty three states – including Alabama -- adopted new, revised, or expanded property tax limitations or relief plans. Given the nationwide animosity toward the property tax and the overwhelming number of states that have adopted limitations, Alabama is hardly an outlier in the timing of its adoption of property tax limits.

### **B. Rate Limits**

As noted, Alabama constitutionally limits the rate at which local governments can tax property. The rate limit is one to two percent of fair market value depending on property type. However, citizens can override the limit through a procedure that provides for a simple majority vote. Some might argue that Alabama's rate limit is severe especially compared to other states. However, the fact that most Alabama jurisdictions do not impose property taxes at levels high enough to invoke the limitation (see Ely and Walthall 2003)<sup>5</sup> indicates that this rate limit is not a significant factor in preventing Alabama jurisdictions from raising property taxes.

In any event, it is much rarer to find states that do not limit rates. As of January 2009, thirty seven states have some form of rate limit on property taxation. The chart set forth in the Appendix illustrates property tax rate limits nationwide and shows that there is nothing unusual about Alabama's property tax rate limits.

Of the thirty seven (37) states with some form of property tax limits, seventeen (17) have limits at or near Alabama's ceiling. Thus, Alabama's rate limit is in line with the majority of states that impose limits. More importantly, Alabama allows citizens the right to exceed the rate limit with a vote in a special election. Unlike Alabama, eight (8) states do not allow the limits to be overridden by either the local legislature or the citizens. In five (5) other states, the rate limits can only be overridden by a supermajority (i.e., 2/3) vote of the electorate. Therefore, in thirteen (13) states, citizens either cannot override the limits or face more significant hurdles than Alabamians face in doing so.

The override provisions make Alabama's rate limit weaker than limits in many states. Indeed, voters in states with override provisions can and often do choose to exceed

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<sup>5</sup> Ely, Bruce, and Howard Walthall. 2003. State Constitutional Limitations on Taxing and Spending. *Cumberland Law Review* (33 Cumb. L. Rev.463).

limits when services need more funding. Still, the plaintiffs argue that since Alabama's rate limits are constitutionally imposed, local governments are at a disadvantage because they do not have the power to exceed the limits. Nor can the state legislature change the limits. But in this situation, Alabama is once again hardly unique. In seventeen (17) states including Alabama, the property tax limits are constitutionally mandated. So citizens in most states with rate limits face the same issues as citizens in Alabama. The point is that while the rate limits curtail Alabama's ability to raise property tax revenue, the state is not unusual in this respect. Actually, the override provisions give citizens in Alabama much more power to raise property tax revenue than in most states with rate limits.

### **C. Other Property Tax Limits**

While Alabama is often criticized for its significant property tax limitations, it should be noted that the state has chosen not to use other limitation methods employed by other states.

#### **1. Limits on Increased Assessments**

Interestingly, Alabama has chosen not to use the most effective method for limiting property taxes – assessment limits. Assessment limits generally restrict the annual increase in assessed value to a specified percentages of the previous year's assessment. Public finance scholars have long criticized assessment limits as the most draconian of the methods used to limit property taxes. Such limits impose differing tax obligations on owners of identical property, distort taxpayer decision making, and reduce transparency and accountability.

As of January 2009, twenty states imposed assessment limits on property taxes. The limits range from two percent in California to fifteen percent in South Carolina. Five Southern states (Arkansas, Florida, Georgia, South Carolina, and Texas) impose such limits. And in half the total number of states, the assessment limits were imposed by Constitutional amendment. Moreover, voters cannot override the limitations in any of the twenty states.

Anti-property tax advocates have long argued for assessment limits because they are the most restrictive. Alabama has chosen not to adopt this much more stringent type of property tax limitation. Yet, an assessment limit with no override possibility is a far more restrictive limitation than anything imposed by Alabama.

#### **2. Levy Limits on Annual Revenue**

Almost as restrictive as assessment limits are constitutionally imposed levy limits. Levy limits specify the maximum allowable annual increase in property tax revenue. These limits apply to the aggregate property tax revenue from all property in a district and not to the revenue generated from individual properties. Growth in the tax base from new construction, improvements, and annexations is usually excluded from the calculation of the allowable increase in the tax levy. Levy limits are also subject to

override by local voters in most states that have them. Growth provisions vary significantly across states. Some states have a maximum growth rate that is a fixed percent, while other states tie the maximum growth rate to inflation, population growth, or tax base growth.

As of January 2009, thirty states imposed some form of property tax levy limits, including six Southern states (Arkansas, Kentucky, Louisiana, Mississippi, South Carolina, and Texas). The property tax levy limitations are constitutionally required in six states. These limitations seriously curtail the ability of local governments to rely on property taxes and Alabama has chosen not to utilize them. In the past year, six states have proposed adopting or expanding their property tax revenue limitations.

### **3. Full Disclosure Limits**

Curiously, Alabama has chosen not to enact a full disclosure (sometimes known as truth in taxation) law. Full disclosure laws are not nearly as restrictive as levy, assessment or rate limitations. Yet, they are a very common method of limiting property taxes. Indeed, many states with more severe limitations also utilize full disclosure laws. These laws typically require local governments to advertise in local newspapers information regarding the proposed tax rate and rollback rate, to hold public hearings to discuss the tax rates, and to vote on any tax rate that exceeds the rollback rate. The rollback rate is the tax rate that yields the same amount of property tax revenue as in the previous year given the increase in assessed value but excluding new construction, improvements, and annexations from the increased assessed value. The local legislative body must vote to approve a tax rate that exceeds the rollback rate.

As of January 2009, 23 states imposed full disclosure laws, including seven Southern states (Florida, Georgia, Kentucky, Louisiana, Tennessee, Texas, and Virginia.) In all twenty-three states the full disclosure laws are constitutionally imposed. Alabama has chosen not to utilize this particular type of limitation.

## **IV. Is Alabama's Treatment of Agriculture and Timber Property Unique?**

Alabama provides very favorable property tax treatment to agricultural and timber lands. Such lands are taxed at current use value and then fractionally assessed at ten (10) percent of that value. This regime provides a significant benefit to owners when compared to a property tax system that assesses property at 100 percent of highest and best use.

### **A. Agriculture**

All fifty (50) states including states where farming is an insignificant part of the economy provide some form of tax break for owners of agriculture land. Forty one (41) states, including Florida, Mississippi, and Tennessee, all explicitly value land at current use. The other nine (9) states either use an income approach (which is implicitly a current use valuation) or provide some other method of tax relief. Georgia, for example, provides

that agricultural land be assessed at 75 percent of the value which other real property is assessed. Nationwide, the current use valuation significantly reduces the amount of revenue that can be raised from property taxes on agricultural land.

The fractional assessment for agriculture in Alabama is ten (10) percent of use value as defined by statute. That produces a relatively modest tax burden on owners of farms in the state. But twenty-four (24) states use a fractional assessment for agriculture land. That is, those states impose taxes on less than 100 percent of the current use value. At ten percent, Alabama is among the lowest in terms of its fractional assessment, but Alabama is not the lowest. Wyoming uses 9.5 percent (on current use). South Carolina uses 4 percent (on current use). Montana uses 3.46 percent (on a productivity value). Louisiana and North Dakota both use ten percent on current use. And other states are close to Alabama's fractional assessment. Arizona uses 16 percent on current use. Arkansas uses 20 percent on current use. Oklahoma uses 13.5 percent (with local options to go lower) on current use. Mississippi uses 15 percent on current use. And Missouri uses 12 percent on current use.

Agriculture land is almost always provided significant tax benefits across the United States. This is true in Alabama. But it is also true everywhere else.

### **B. Timber Land**

Alabama uses the same ten percent fractional assessment of current use for timber that it does for agriculture. This produces significant property tax benefits to owners of timber land. As with agriculture, forty-one (41) states value timber land under some form of current use. The other nine states tax timber land on a flat per acre or productivity basis. In this regard, Alabama is right in line with virtually every other state when it comes to fractional assessment of agriculture land.

Comparing Alabama's fractional assessment of timber land with other states is more difficult. Most states explicitly (via statute) treat timber land exactly as they do agriculture land for property tax purposes. But other states treat timber as agriculture through their statutes, regulations, or administrative rulings. In general, twenty four (24) states (including Alabama) provide fractional assessments of timber land. In Mississippi for example, timber land is taxed at fifteen (15) percent of current use value. In South Carolina, timber land is taxed at four (4) percent of current use. Thus, Alabama is not an outlier nationally or among its neighbors.

### **C. Understanding Tax Benefits for Agriculture and Timber**

The political process has an enormous influence on the way state and local governments tax farm and timber land throughout the United States. Traditionally, agriculture and timber industries have been politically powerful interest groups. Indeed, in many states they were the dominant economic power and thus among the most influential political interests. In Alaska, for example, the timber industry managed to convince the state legislature to make all of its land exempt from property taxation.

Agriculture and timber interests have received favorable tax treatment for over a hundred years in most states.

The landed economic interests have found allies to support their continued receipt of tax benefits. Conservative political groups interested in preserving family farms have supported tax relief for agriculture in general. And liberal groups interested in conservation have supported tax breaks to prevent development. Thus, nationwide there has been no retrenchment in the number of laws aimed at providing tax relief to farmers and timber owners.

## **V. Conclusion**

This report shows that while Alabama is a low tax state, its property tax system is neither unusual nor unique. The public's dislike for the property tax is so strong that limitations are pervasive throughout the country. That dislike is at least decades old. Yet, as this paper illustrates, the dislike and political opposition continue to this day. It is likely that the public opposition to the property tax will continue well into the foreseeable future.

Most public finance scholars, including this author, still believe that the property tax remains an effective method for financing many local government services. Most public finance experts decry the extensive use of property tax limitations. But the public and the political leadership in the country does not share that view. That is evident by the significant limitations placed on the tax across the country and in Alabama.

## Appendix

Property Tax Rate Limits			
State	Limit	Override	Citation
Alabama	1-2 % FMV depending on property type	majority vote in a special election	State Const. Amend 373 of Section 217
Alaska	Municipalities: 3% of assessed value	None	AS 29.45.090
	Second Class Cities: 2% of assessed value		AS 29.45.590
Arizona	Cannot exceed 1% of full cash value	Override by majority vote of electorate	AZ const. Art 9, Section 18 (1)
Arkansas	All governments 5 mills	None	Ark Const. Art. 12 sec. 4
California	Cannot exceed 1%	None	Calif Const. Proposition 13
Colorado	All govts limited to rate of previous year	Override by majority vote of Electorate	Col Const Art X, sec 20(7)
Connecticut	None		
Delaware	Kent County (only) limited to 50 cents per \$100 of assessed value	None	Del Sta Title 9, Ch 80
Florida	All governments 10 mills	Override by majority vote of electorate	Fl Const. Art. VII. Sec.9
Georgia	Rate for school districts: 20 mills	Override by majority vote of electorate	O.C.G.A. 48-5-8
	No limits for independent cities/counties		GA Const. Art VIII, sec 6
Hawaii	None		
Idaho	Idaho has multiple rate limits for a variety of general purpose and special purpose governments	None	All statutory
Illinois	Local option	Referendum	35 ILCS 100/18-125
Indiana	\$0.6667/\$100 municipal \$0.4167/\$100 all other local gov.	None	Indiana statutes Sec. 6-1.1-18-3
Iowa	Counties 3.5 mills, Municipalities 8.1 mills	Majority vote of electorate in special election	Iowa Code sec. 331.423
Kansas	None		
Kentucky	\$.75-1.50/\$100 municipalities (sliding scale), \$.50/\$100 county	Voter Approval	KY Const. Sec. 157 41.50/100 School District
Louisiana	4 mills	Majority vote of electorate	LA Const. Part 3, Sec. 26
Maine	None		
Maryland	No state limit, but Prince George's county limit at 96 cents per \$100		
Massachusetts	None		

Michigan	15 mills for all governments except 18 mills for counties	Can be increased to 50 mills with voter approval	Mich Const. Article 9, Sec. 6
Mississippi	None		
Missouri	Municipalities - \$1 on the \$11 assessed valuation Counties - \$0.35 on \$100 assessed valuation School districted formed of cities & towns - \$2.75 on \$100 All other school districts - \$0.65 on \$100	2/3 vote of electorate  Majority of electorate for schools	State Const. Article 10, Sect. 11b
Montana	The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the previous three years.	Majority of electorate	MT Code 15-10-420
Nebraska	Rate limit for county government is \$0.50 per \$100  Schools - \$1.05 per \$100 Counties - \$0.50 per \$100 Cities- \$0.45 per \$100 Natural resource districts - \$0.045 per \$100 Community Colleges - \$0.08 per \$100	School boards can vote in an additional 1% over limit. Requires a supermajority	Neb statutes 77.3442
Nevada	Rate capped at 5 cents per \$100 assessed value	Can vote on additional levy. Proposal placed on general or special election ballot.	State Const. Article 10 Sect. 2 NRS 354.5982
New Hampshire	None		
New Jersey	None		
New Mexico	\$11.85 per \$1,000 county \$0.50 per \$1,000 school district \$7.65 per \$1,000	Majority of electorate	NMSA 7-37-7
New York	The New York State Constitution sets a limit of 1.5% of the full market value of taxable real estate, averaged over the last five years. For municipalities the limit is 2%. For NYC the limit is 2.5%	None	NY Const. Article 8 sec. 10
North Carolina	Counties and municipalities may levy taxes for several specified purposes up to a combined rate of \$1.50 per \$100 assessed value	Majority vote in referendum	North Carolina Statutes - 153A-149

North Dakota	23 mills (county limit) Various other special levy limits 38 mills (city limit) 18 mills (township limit)	2/3 vote of gov body plus majority vote of electorate	NDSA 57-15-06 NDSA 57-15-06.7 NSDA 57-15-08 NSDA 57-15-20
Ohio	Rate limit at 1% of taxable value	Majority vote of electorate	Ohio Revised Code 5705.02, 5705.19 Ohio Constitution art 12.02
Oklahoma	5-15 schools, 5 County government, 2.5-10 Municipal government, 5 Special districts 3-4 Assessment districts 3-10	Majority vote of electorate	Oklahoma Const. Article 10, sec. 9
Oregon	School rates capped at 0.5% of FMV Non-school rates capped at 1% of FMV	Increases must be voted on by double majority	Oregon Constitution Article XI
Pennsylvania	rates cannot exceed 12 mills of market value	None	PA.S. 53.6917
Rhode Island	None		
South Carolina	None		
South Dakota	General county limit \$12 per thousand	Three-quarters majority of electorate (school district majority)	SDCL 10-12-21 et seq
Tennessee	None		
Texas	County/Municipality 8 mills School districts 13.3 mills	Majority vote of electorate	TX Const. Art VII, Art VIII
Utah	County .0032	Under limited circumstances	Utah Code 59-2-908
	School district set by legislature School capital outlay .0024 School reading program .000121		Utah Code 53A-17a- 135
	City/town .007		Utah Code 10-6-133
Vermont	None		
Virginia	None		
Washington	rates limited to 1%	Three-fifths majority of electorate	WA Const. Art VII, Sect 2.
West Virginia	Class one \$0.50/100 Class two \$1/100 Class three \$1.50/100 Class four \$2.00/100	Majority vote of electorate	WVC 11-8-6
Wisconsin	Counties: 1 mill or rate in effect in 1992 whichever is greater	Majority vote of electorate	WI statutes sec 59.685.
Wyoming	Counties: 1.2% of assessed value Cities and towns: 0.8% of assessed value School districts: 2.5% of assessed value	None	Wyoming Statutes Sec. 39-13-104

Data on property taxes collected by author and accurate as of July 2009.