

## APPENDIX A - STANDING

- 1. To the extent that Plaintiffs claim they have been injured by anything other than the reduction in their tax base effected by the challenged provisions, they have not established causation.**

Even if Plaintiffs had been able to establish a particularized injury (which they have not), Plaintiffs still must prove that their alleged injury has been caused by the challenged tax provisions. *See Lujan*, 504 U.S. at 560-61. Plaintiffs have failed to do so.

The Alabama Constitution provides two methods by which local governments can raise property tax rates above the levels otherwise allowable by law: constitutional amendment, either locally applicable only or with statewide effect, or through the procedures set forth in Amendment 373. *See ALA. CONST.* art. XVIII § 284; *id.* at amend. 373. Both methods require approval by the State Legislature as well as by the voters in the particular jurisdiction for which the taxes are being proposed. *See id;* *see also* Aff. of Greg Pappas, Doc. 27-11. Plaintiffs complain that these restrictions prevent local governments and taxing authorities from raising property taxes. *See, e.g.* Doc. 44, Section V.

However, Plaintiffs' own evidence and witnesses contradict that claim. For example, Professor Susan Hamill stated that "[i]t is politically unrealistic to assume that voters would agree to a rate as high as 100 mills" even though that rate would fully comply with the constitutionally proscribed "lid" on allowable

property tax rates as a percentage of market value. *See* Aff. of Susan Pace Hamill, Doc. 31-2 at 9. In other words, it is voter preferences, not any procedural hurdle in Amendment 373, that limit Plaintiffs' ability to raise local property tax revenues. Former Lawrence County school Superintendent DeWayne Key testified that there is an anti-property tax mentality in Lawrence County in particular and Alabama in general. Key Dep. at 43. Plaintiff's representative Miranda Ball testified that people in Lawrence County are generally opposed to higher taxes. Ball Dep. at 33-34. Plaintiff's representative Ms. Stella Anderson testified that "no one wants to pay higher taxes." Anderson Dep. at 39:23-40:1.

Alabamians' historical and current opposition to property taxes are well-documented. A recent statewide example of this deep-rooted opposition can be found in the voters' rejection of Governor Riley's 2003 tax reform plan that would have raised over one billion dollars in new taxes, including over \$400 million in increased property taxes, along with the elimination of current use protection for farm and timber property in excess of 2,000 acres per parcel. That plan passed the State Legislature but was rejected by voters by a margin of 68% to 32%.

Furthermore, Plaintiffs' potential fact witness Dr. Paul Hubbert, head of the Alabama Education Association, noted that, in his experience, the success of local property tax referenda depended on how well the tax proposal was marketed by the local school system advocating the proposal. Hubbert Dep. at 47. Sumter County

Superintendent Fred Primm believes a Sumter County referendum to increase property taxes by 15 mills in 2006 failed because the opposition was better organized and ran a better campaign than proponents of the tax. Primm Dep. at 30. On the other hand, the voters in Mountain Brook recently overwhelmingly approved a tax extension of 9.9 mills for 30 years, with 97% of voters supporting the tax. *See* William Thornton, “97% of Mountain Brook voters OK renewing school property tax,” *Birmingham News*, January 26, 2010; available online at [http://blog.al.com/spotnews/2010/01/97\\_of\\_mountain\\_brook\\_voters\\_ok.html](http://blog.al.com/spotnews/2010/01/97_of_mountain_brook_voters_ok.html).

In addition, undisputed evidence demonstrates that Plaintiffs have never been harmed by the requirement that local property tax increases be passed by the State Legislature. The Alabama Legislature has long observed an informal local courtesy rule, pursuant to which local laws that have the unanimous support of a county’s local delegation are not opposed. *See* Doc. 31-6, Singleton Aff. at 4. Since Amendment 373 took effect in 1978, counties and other local taxing authorities have been successful in obtaining Legislative approval in substantially all the instances where a county or other local taxing authority has sought such approval to hold a referendum on local property tax increases. *See* Pappas Aff. For example, in the 2007 Regular Session of the Alabama Legislature, the Legislature approved no less than thirteen new or increased property taxes in various local taxing jurisdictions (including counties such as Barbour, Bullock, Wilcox, and

Tallapoosa, and cities such as Auburn and Phenix City), subject to a favorable vote of the qualified voters of the affected jurisdictions. *See, e.g.*, 2007 Ala. Acts 295.

State Representative John Knight and Dr. Hubbert both testified that they are not aware of a single instance in which a local legislative delegation has been unable to obtain Legislative approval of a property tax referendum bill. *See* Knight Dep. at 81-82; Hubbert Dep. at 49. Lawrence County, where a portion of Plaintiffs reside, has received legislative approval for at least two local ad valorem tax increases under Amendment 373: one for 3 mills in 1989 and one for 11 mills in 1992. *See* 1989-90 Ala. Acts 30; 1992 Ala. Acts 842. Both proposals were thereafter submitted to the voters of Lawrence County for approval. Both referenda were rejected by Lawrence County voters. *See* Key Aff., Doc. 31-7, at 3.

Sumter County has successfully obtained legislative approval for at least three local ad valorem tax increases since 1978 (11 mills in 1987, 3 mills in 1997, and 15 mills in 2006). *See* 1987 Ala. Acts 829; 1997 Ala. Acts 262; 2006 Ala. Acts 513. Sumter County has approximately 5,870 black registered voters and 2,200 white registered voters. *See* Singleton Aff., Doc. 31-6, at p. 3.

In Sumter County, with an African-American voting majority of roughly three to one, the electorate in 2006 soundly defeated, by a 60-40 margin, the modest proposal to increase property taxes by 15 mills. The majority-black Sumter County Commission also opposed the tax increase. *See* Singleton Aff.

The simple fact is that the citizens of Lawrence and Sumter counties, where all the Plaintiffs live, have freely voted to reject proposed tax increases and instead have determined to keep their property taxes at levels they deem desirable, as Plaintiffs' affidavits show. *See* Aff. of Sen. Bobby Singleton; Aff. of DeWayne Key.

Thus, in declining to raise their own taxes, it is the voters who have caused Plaintiffs' alleged injury, not any illusory Constitutional restrictions on local elected officials' ability to raise taxes. As a result, Plaintiffs cannot show that their alleged injury is caused by the challenged tax provisions.

- 2. To the extent that Plaintiffs claim they have been injured by anything other than the reduction in their tax base effected by the challenged provisions, they have not established redressability.**

Even if Plaintiffs had been able to establish a particularized injury and causation, they have not shown redressability. Defendants hereby incorporate Section I.C. from Doc. 27, Defendants' Motion to Dismiss Brief as if fully set forth herein. Defendants add to those arguments by directing the Court's attention to the following evidentiary sources: Doc. 68, Int. 16 (increased spending on public education will not provide a remedy for Plaintiffs' alleged injuries), Int. 17 (same for increased property tax revenues), and Int. 91 (same for greater wealth redistribution by the state among school systems).