

APPENDIX D – REFORM COMMISSIONS

As further evidence that the Legislature could not have been aware of any racially discriminatory effect when passing these property tax provisions, no tax reform or constitutional reform commission has ever noted such effect. Decades after passage of the property tax provisions, there is still no awareness of the racially discriminatory effect that Plaintiffs argue the Legislature should have known (and, in fact, does not exist).

Tax reform and constitutional reform movements have been common in Alabama, especially in the last few decades. Reformers approached property tax bills with a critical eye and made recommendations that would improve these provisions' effectiveness, efficiency, and equity. Though decades had passed since the property tax provisions had been put in place, no reform effort ever mentioned any discriminatory impact of these provisions.

A. The Torbert Commission

In 1990, the Alabama Legislature established the Alabama Commission on Tax and Fiscal Policy Reform, to be chaired by the Honorable C. C. Torbert. For this reason, the commission is informally known as the "Torbert Commission." Twelve members of the Commission⁹ were assisted by professionals from

⁹ The twelve members of the Torbert Commission were as follows: Hon. C.C. Torbert, chairman; Hon. James C. White, vice-chairman; Charles Allison, secretary; Hon. Albert Brewer; Roy J.

academic and research backgrounds, and various state agencies opened their records to the Commission for study. Judge Torbert described the Commission's report as "a blueprint for the future of this state," and the "recommended reforms will result in a system which is more balanced, fair, and equitable to both citizens and business." Furthermore, Torbert said, "The reforms will encourage stability and provide simplicity and flexibility."¹⁰

The Torbert Commission was extremely critical of the State's tax systems in general, and the property tax was no exception, but there is no hint in the Report that Alabama's property tax laws were racially discriminatory. The Commission criticized the tax system on its failure to provide vertical equity, but never on any racial grounds. It is notable that the Torbert Commission did not recommend that current use to be "totally discarded,"¹¹ only slightly modified. Certainly, no member of the Commission was aware of any discriminatory intent or effect if the Commission recommended that the statute remain in force.

B. Ely & Walthall Report 2002

Crawford, Esq.; Dr. William D. Gunther; Hon. Rick Manley; Mack J. Ogren; James H. Sanford; Hon. William M. Slaughter; Dr. Keith J. Ward; Dan Waters; Levi Watkins; Joe Williamson; and Louis J. Willie.

¹⁰ C. C. Torbert, Jr., "Preface to the Report and Comments of the Chairman," *Report of the Alabama Commission on Tax and Fiscal Policy Reform* (January 1991), 2-3. Reprinted in the *Alabama Law Review*, vol. 43, no. 3 (Spring 1992), pp. 741-775. Original page numbers are maintained in the reprinted edition and are used throughout.

¹¹ *Report of the Alabama Commission on Tax and Fiscal Policy Reform* January 1991, 11.

Bruce P. Ely, a lawyer at Bradley Arant Rose & White, and Howard P. Walthall, Sr., a law professor at Samford University, set out in 2002 to study the taxation provisions embedded in the Alabama Constitution and present their findings to the Alabama Citizens' Commission on Constitutional Reform (ACCR). Their report was designed to serve as a basis for future revisions to and reforms of the taxation system. This report was widely circulated; it was initially published as a working paper in the *Cumberland Law Review* in 2002, then republished in *Tax Analysts' State Tax Notes* magazine in 2003.

Ely and Walthall, like the Torbert Commission, recommended that current use remain "undisturbed" by reform efforts because "given the nearly universal acceptance of current-use valuation, it is doubtful the reform commission would want to recommend that it be abandoned."¹² They also suggested that the "lid" provision of Amendment 373 remain in place. The authors explained that "imposing a limitation on the annual ad valorem tax as a percentage of the fair market value of the property only rarely becomes applicable to property other than . . . public utilities . . . and it is consistent with the provisions in several other state constitutions, so we have not suggested any revision of that proviso."¹³ Again,

¹² Bruce P. Ely and Howard P. Walthall, "Alabama's Constitutional Limitations on Taxing and Spending Compared with Other States," 30 *State Tax Notes* 117 (Oct. 13, 2003), 123.

¹³ Ely and Walthall, "Alabama's Constitutional Limitations," 127.

there was no suggestion that Alabama's property tax laws have any racially discriminatory effect.

C. The Report of the Alabama Citizens' Commission on Constitutional Reform

In January 2003, the Alabama Citizens' Commission on Constitutional Reform ACCR submitted a "report of its recommendations to the people of Alabama and to their elected leaders" regarding proposed steps for updating the State Constitution to fit the needs of modern Alabamians and to "provide the framework for better government in Alabama."¹⁴ The Commission dedicated six months of research to preparing the report, and the document includes a section dedicated to issues of debt and taxation. No mention is made of any racially discriminatory effect in Alabama's property tax laws.

Furthermore, the ACCR Commission recommended that "classification of property for ad valorem taxation should continue," and "the Lid Bill contained in Amendment 373 section i, should be retained in some form as a protection for taxpayers."¹⁵ This suggests that ACCR was not aware of any discriminatory effect from the property tax provisions.

¹⁴ *Report of the Alabama Citizen's Commission on Constitutional Reform*, submitted January 16, 2003, by the Honorable Jim Bennett, Chair, [&] Sallie Creel, Vice-Chair, 3.

¹⁵ *Report of the Alabama Citizen's Commission on Constitutional Reform*, 11.