

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.                                                       \*

**APPENDIX A  
TO PLAINTIFFS' BRIEF OPPOSING  
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

**Evidence showing purposeful discrimination**

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**Overarching themes:**

1. Alabama's revenue laws have always been the product of competition between whites who used discrimination against blacks as an instrument to decide which of the white economic interests would gain the advantage.
2. The centrality of blacks to this economic and political competition among whites is the major factor explaining the geographic sectionalism that has persisted throughout Alabama history, whether it is viewed in terms of North Alabama vs. South Alabama or as urban vs. rural counties.
3. The invidious racially discriminatory purpose behind the revenue provisions in Alabama's constitutions has always had two basic objectives:
  - a. To shield the wealth of whites from taxation,
  - b. the proceeds of which might be used to educate blacks.
4. There were always three main mechanisms for achieving these racially motivated objectives:
  - a. Capping millage rates and making it difficult to override the

caps,

- b. Maintaining political control of county tax assessors to keep valuation of white-owned property artificially much lower than its fair market value, and
  - c. Maintaining political control of local school authorities to provide white schools disproportionately large shares of state and local school revenues.
5. The principal political impetus for protecting property from taxation and limiting funding for black education came from white landowners in the Black Belt.
- a. In the 19<sup>th</sup> Century (1874-1900) they still had most of the wealth, political power, and population in Alabama.
  - b. In the 20<sup>th</sup> Century (through 1982) the Black Belt continued to maintain significant political power by refusing to reapportion the Legislature, by maintaining leadership positions in the Legislature, and by the formation of the Alabama Farm Bureau as the principal political and policy apparatus of the Black Belt.
  - c. Walter Givhan, Sam Engelhardt, Roland Cooper, Joe McCorquodale, Rick Manley, and, most importantly, George

Wallace, were among the principal political leaders of these interests from 1946 to 1982.

- d. The power of the Black Belt white landowners ebbed with reapportionment, the re-enfranchisement of blacks under the Voting Rights Act, and their relatively declining population and wealth. But before they lost their seats in the Legislature to African Americans, and after most whites had fled the public schools under federal court desegregation orders, Black Belt whites were able to entrench in the state constitution the historically minimal valuations of their land that kept their property taxes low.

### **The Antebellum Period.**

1. The 1819 Alabama constitution contained no restrictions on the Legislature's plenary power to raise taxes and to raise school revenues, except for a requirement that "[a]ll lands liable to taxation in this State shall be taxed in proportion to their value."<sup>1</sup>

2. Because "plain" white small-holders and property-less men were able to dominate the 1819 constitutional convention, this first Alabama constitution was

its most “democratic.”<sup>2</sup> It vested the balance of power in a Legislature elected by all white male residents of the state, with no property qualifications.<sup>3</sup> The major victory for the white yeomanry was their ability to defeat the efforts of wealthy slaveholders to apportion seats using the federal ratio, which would have counted each slave as 3/5th of a person, and to adopt instead apportionment of seats in both the House and Senate based on white population.<sup>4</sup> This favored the “white counties” in North Alabama over the large slaveholding counties of South Alabama.<sup>5</sup>

3. Because the 1819 constitution required property to be taxed in proportion to wealth (ad valorem), and because black slaves were a major portion of white wealth, antebellum taxes were mainly progressive. Whites who owned few or no slaves were able to shift most of the revenue burden onto slaveholders.<sup>6</sup> Beginning in 1847, however, whites in the slaveholding Black Belt were able statutorily to shift more of the tax burden onto real property, and “[d]uring the five years preceding the Civil War, the amount of ad valorem land tax collected by the State surpassed revenue generated from the slave tax.”<sup>7</sup>

4. Schools during the antebellum period were funded not from ad valorem taxes but from sixteenth section land revenues, until the Legislature created the first statewide school system in 1854. The 1854 statute authorized “each county to

levy a one mill school tax on real and personal property without the requirement of voter approval by referendum.”<sup>8</sup> Of course, these school taxes did not benefit blacks, most of whom were enslaved, all of whom were disfranchised, and all of whom were forbidden to be taught how to read and write.<sup>9</sup>

5. Thus, during the antebellum period, blacks provided the main source of state and local revenues, all of which provided opportunities for whites to acquire and to maintain landed wealth, and none of which was used to benefit blacks.<sup>10</sup>

### **The Civil War and Presidential Reconstruction**

6. The 1861 Secessionist Constitution and the 1865 Presidential Reconstruction Constitution retained the provisions of the 1819 Constitution with respect to taxation and education.<sup>11</sup> Those Constitutions, like the 1819 Constitution, did not restrict the Legislature's plenary authority to regulate the funding and operation of public education.

7. But tax policy was at the heart of the major battles in the Alabama Legislature during Presidential Reconstruction. This was the first legislature that was forced to confront the problem of finding some revenues to replace the tax on slaves, which had been the principal source of antebellum taxes.<sup>12</sup> This crucial question revived the conflict going back to the Jacksonian era between white small

farmers from the Hill Counties and Wiregrass and the white planters from the Black Belt.<sup>13</sup> Whose property would have to bear the brunt of paying for schools (at this point in time, white schools only) and other public services?

8. The lack of confidence in planter leadership that had carried Alabama into a disastrous Civil War had increased the representation of the small farmers in the post-war Legislature. But the white small farmers faced a dilemma: if they supported ratification of the Fourteenth Amendment, which likely would lead to black enfranchisement and reapportionment of legislative seats on the basis of total population instead of white population, would it produce an independent black electorate who would join them in a coalition that could raise taxes on the relatively well-to-do planters, or would it produce a captive black electorate that Black Belt planters could manipulate to dominate state government and raise taxes on the land of poor white farmers?

9. Finally, most Hill County and Wiregrass legislators of 1866 decided – correctly, as it turns out – that a black electorate would be controlled by Black Belt white landowners, so they joined the planters who, for their own reasons, feared enfranchisement of blacks and voted to reject Congress' demand to ratify the Fourteenth Amendment. This rejection ushered in Congressional Reconstruction, a.k.a. Radical Reconstruction, and the eventual economic and violent intimidation

of black voters that, following Redemption, would enable whites in the Black Belt to shield their property from taxation.<sup>14</sup> Thus began the long history in Alabama of white wealth employing the race card to the disadvantage of both blacks and poorer whites.

### **Congressional Reconstruction and the 1868 Constitution**

10. When the Radical Reconstruction convention<sup>15</sup> met on November 5, 1867, it was almost totally controlled by whites.<sup>16</sup> “The most important constitutional question before the convention was that of the franchise. ... [S]ince the Reconstruction acts had made Negro suffrage a prerequisite for admission to the Union and had disfranchised certain whites, the real issue in the convention was the disfranchisement of more whites.”<sup>17</sup> Even though most of the native white delegates were from the white counties in North Alabama, and even though they still feared manipulation of a black electorate by Black Belt whites, they had no choice but to go along with enfranchisement of blacks.<sup>18</sup>

11. In 1867 a new state constitution, also known as the Radical Reconstruction Constitution, was drafted, and in 1868 it was ratified (the “1868 Constitution”). The 1868 Constitution established a centralized public school system, including the University of Alabama, under the control of a state board of

education.<sup>19</sup> “Former Alabama constitutions had contained sections on education; but the article on education in 1868 broke with the past both in regard to the administrative system and the large amount of funds allocated to schools. ... the Republicans recognized that an efficient school system was desperately needed to educate the new electorate, but declared that thousands of whites were also illiterate. ... Hence, when the convention met, the educational problem had been made second in importance only to the suffrage.”<sup>20</sup>

12. The 1868 Constitution also authorized the Legislature to levy a state poll tax (head tax) of \$1.50 for the use of free public schools in every township or school district. Local school districts also received the power to levy a poll tax to be used for local education. Additionally, all federal lands granted for education purposes, as well as a tax levied on industrial and commercial corporations, were earmarked for education.<sup>21</sup>

13. The 1868 Constitution also placed a duty on the Legislature to limit the taxing authority of municipal corporations.<sup>22</sup> This was “[t]he first limit on taxation to be found in any Alabama constitution....”<sup>23</sup>

14. Although the schools in Alabama were segregated while the 1868 Constitution was in effect,<sup>24</sup> the State Board of Education exercised special legislative powers to mandate that state public school funds be distributed on a per

capita basis, without regard to race.<sup>25</sup>

15. During the convention and throughout the campaign for ratification of the 1868 Constitution, before it was even implemented, fears and resentment of higher taxes on white property, in particular because they would be used to educate blacks, were already being equated with “corruption.”<sup>26</sup>

16. In addition to the poll tax and the proceeds of the sixteenth section lands, the 1868 Constitution required that all property, not just land, be assessed on a uniform ad valorem basis.<sup>27</sup> Further, “because the tax assessors [were] radical Republican officials and they [had] no particular interest in protecting well-to-do white property holders, virtually none of whom were Republicans, there ... was quite an aggressive effort to make sure that ... these values were accurate.” Consequently, the ad valorem general property tax generated substantial revenue, doubling the State revenues for public education from amounts received prior to the Civil War.<sup>28</sup>

17. During Radical Reconstruction, white small farmers found themselves paying substantially higher taxes on their property, yet receiving fewer public benefits, because the State was distributing those funds equally among white and black schools. Whites resented having to pay for the education of blacks, who paid relatively few taxes, and that resentment fueled accusations of mismanagement and

abuse of public funds-*i.e.* that their increased taxes were simply lining the pockets of white carpetbaggers and radical officials. As a result, poorer white landowners became motivated to cooperate with wealthier whites to form a “sort of all white alliance of the Democratic party,” united for reducing taxes and establishing supremacy for whites. On the other side of the political line were the Republicans, who were essentially blacks and a handful of their white allies, carpetbaggers, and scalawags.<sup>29</sup>

18. Virtually no native white Alabamians supported black education. New black schools became, with the Union League political meetings, the main object of white terrorism in the years between 1865 and 1875. Many black schools were burned, and many teachers threatened and terrorized and a few were killed.<sup>30</sup>

19. The granting of citizenship rights to African Americans in 1868 resulted in a large expansion of the power of the Black Belt counties in state politics. Black Republicans were typically elected to fill many county and state legislative offices during the late 1860s and 1870s. Blacks were elected county commissioners, judges, tax assessors, and state legislators.<sup>31</sup>

20. Following the failure of railroads whose bonds had been guaranteed by the State and the Panic of 1873, funding for public education became increasingly strained.<sup>32</sup>

## **Redemption and the 1875 Constitution**

21. Because the 1868 Constitution provided for legislative apportionment on the basis of total population, and because blacks were counted for the first time, legislative power shifted from the white counties to the Black Belt counties. Although blacks constituted a large portion of the population in the Black Belt counties, after Redemption, blacks were controlled by intimidation and fraud, so as to permit a small number of whites in the Black Belt counties to exercise disproportionate power in the Legislature.<sup>33</sup>

22. By 1874 Republican electoral power had eroded to the point that the Democrats were able to gain control of the governor's office, and the Republicans retained power only in the Black Belt counties.<sup>34</sup>

23. As soon as the Democrats regained control of state government, they set out to overthrow the Radical Constitution of 1868.<sup>35</sup>

24. There were two problems that were thought to require the adoption of a new constitution: debt and taxes.<sup>36</sup>

25. Huge debts had been accumulated by both state, county and municipal governments under both the 1865 and 1868 constitutions. The Reconstruction era had seen a contest among northern capitalists seeking government endorsement of their bonds to build the railroads that were transforming Alabama's economy.

Some northern capital and their railroads backed the Democrats, and others backed the Republicans. When the recession of 1873 devalued the railroad bonds, the state and many local governments were left with debts they could not pay.<sup>37</sup>

26. Taxes had been raised during Radical Reconstruction not only to service government debt but to pay for the newly created free public schools for both whites and blacks. These school taxes were levied primarily by county governments, and white landowners in the Black Belt feared black voter majorities. But restricting property taxes in the Black Belt would also undermine funding for public schools in the white counties, and the Republican opponents of the convention tried to rally white opposition by pointing this out.<sup>38</sup>

27. Because blacks were still enfranchised, the margin of victory between Democrats and Republicans remained narrow. But, rather than attempting to persuade Republicans to join the movement for a constitutional convention, the Democrats decided to draw the color line.<sup>39</sup>

28. Republican efforts to block a convention failed. “The people voted on August 3, 1875, to call a convention by a vote of 77,763 to 59,928, a majority of 17,835 for a convention.”<sup>40</sup> The Redeemer Democrats were in control,<sup>41</sup> and “Bourbon Reconstruction” had begun.<sup>42</sup>

29. The Democrat delegates to the 1875 convention were united in purpose,

and they determined to shield as much of their deliberations as possible from the Republican delegates and from the Federal Government, present and future.<sup>43</sup>

Neither disfranchisement of blacks nor an explicit requirement of racial segregation were ever seriously considered for fear of federal intervention.<sup>44</sup>

30. The Redeemers placed many new constitutional restrictions on the power of the legislature to prevent any recurrence of what the Reconstruction legislature, with the support of a black electorate, had done,<sup>45</sup> all of which they labeled “corruption.”<sup>46</sup>

31. In 1875, whites from the Black Belt, concerned that a black majority might regain political power and raise taxes, placed in the constitution millage caps for both state and local property taxes. The 1875 Constitution thus became the first Alabama constitution to place strict constitutional limits on the ability of both the State and local governments to tax property.<sup>47</sup>

32. Specifically, the 1875 Constitution established a maximum tax rate of seven and one half mills, which was the same legislatively established rate that had been assessed under the 1868 Constitution, and a maximum tax rate of five mills for counties and municipalities.<sup>48</sup>

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

[D]uring Reconstruction, the experience of [Black Belt] whites had been a county government which was controlled by blacks and their Republican allies and which had very heavily taxed them, and taxed them for purposes that they largely regarded as illegitimate, such as the education of the Freedmen. Now that they had power back into their own hands, they were intent on ... using that new control to protect themselves from the possibility that the black majority in their counties would ever again be able to use that political power ... to tax them in a way that would force them as the property holders to cough up the funds, ... which would be used to the benefit of the majority of the people in the Black Belt who were black and essentially nonproperty holding .... And so they wanted to write into the Constitution permanent protections.<sup>49</sup>

34. The Redeemers made destruction of the hated State Board of Education a primary objective of the 1875 constitutional convention.<sup>50</sup> Their charges against the Board of inefficiency and corruption were directly related to the schools the Board had provided for blacks.

The convention voted down a “provision requiring equal facilities for education to be provided white and colored children in separate schools.” “When ... [the Bourbons] assert [wrote the editor of the *Montgomery Alabama State Journal*, March 25, 1876] that they refuse to tax the white property owners for the education of the Negroes, they only exhibit the malice in their hearts against a race which toiled and struggled for them in the days of slavery.<sup>51</sup>

As a result, public school funds were drastically reduced.<sup>52</sup>

35. The main constraint on the Redeemers’ constitutional restriction of the millage rate was its potential for repudiating the large state debt.<sup>53</sup> Black Belt delegates would have lowered the millage caps even further, repudiating the state

debt almost entirely.<sup>54</sup> But many delegates, including Governor Houston,<sup>55</sup> had vested interests in the railroad bonds, and they prevailed to keep the caps more or less at current levels.<sup>56</sup> However, within the next five years, Black Belt legislators did reduce the state millage rate to 6.5 mills.<sup>57</sup>

36. In sum, the new constitution submitted to the voters in 1875 almost fully implemented the agenda of the Redeemers, the agenda of the Bourbons in the Black Belt in particular. It restricted future legislatures and county governments from raising taxes either to incur more indebtedness or to fund public schools, and in general it reversed the Reconstruction agenda of the freed slaves and their white allies in the Republican Party.<sup>58</sup>

37. In the ratification campaign, Democrats emphasized the linkage between their claims of corruption and inefficiency and the issue of race.<sup>59</sup> The Republicans opposed ratification, but they realized the futility of their efforts in the face of the Democrats' call for white supremacy.<sup>60</sup>

On November 16, 1875, the people ratified the proposed constitution by a vote of 85,662 to 29,217. Only the four Black Belt counties of Autauga, Dallas, Lowndes, and Montgomery voted against it. The people had voted for the convention by a majority of 17,835; the constitution received a majority of 56,445. The Democratic party was more entrenched in power than at any time since the Civil War.<sup>61</sup>

38. After ratification of the 1875 Constitution whites in the Black Belt eventually became able to manipulate the black vote through fraud and

intimidation,<sup>62</sup> as the white counties had feared.<sup>63</sup>

39. “These decades of Bourbon rule left an impression on Alabama institutions that penalized Alabamians into the next century. This was particularly true of the ceilings placed on taxation and the parsimonious support for public education.”<sup>64</sup>

40. “The key to control of the Negro vote was always to be found on the local government level where sheriffs, probate judges, and other officers were made responsible for elections.”<sup>65</sup> Where white control of black majorities was not secure enough, the Legislature replaced elected county commissions with courts of revenue appointed by the governor<sup>66</sup> to protect white’s property from being taxed by black county officials.<sup>67</sup>

41. Whites living in the Black Belt counties also used their influence over local tax assessors to reduce property assessments in the Black Belt far below market value, which disadvantaged other white counties.<sup>68</sup> Additionally, the legislative sessions that followed ratification of the 1875 Constitution further lowered the millage rate from 7.0 mills in 1877 to 4.0 mills in 1890 so as to shield property from taxation.<sup>69</sup>

42. Black Belt whites had successfully invoked white supremacy to protect their economic interests in the 1875 Constitution. Soon thereafter, agitation for

another revision of the constitution pitted whites in urban counties against rural Black Belt counties and whites in North Alabama rural counties against whites in South Alabama rural counties. The millage caps in the 1875 Constitution prevented the urban and North Alabama counties from raising local taxes for both economic development and education.<sup>70</sup> They argued that the racial reasons for adopting the millage caps were no longer a threat.<sup>71</sup>

43. Supporters of education sought ways around the millage caps for school purposes, but each such attempt was struck down by the Alabama Supreme Court.<sup>72</sup> The Hundley Amendment, which would have given local school districts the power to levy 2.5 mills and which would have allowed division of the revenues between white and black schools based on the taxes paid by each race, passed the Legislature but was defeated in the referendum.<sup>73</sup> But supporters of education understood that adequate school revenues were inextricably tied to the suffrage issue in the Black Belt.<sup>74</sup>

44. From 1875 to 1891, by law black schools were supposed to receive a proportionate amount of school funding. In 1891, however, the Apportionment Act was enacted, thereby giving discretionary authority to local school trustees to apportion funds among schools.<sup>75</sup> As a result, funding destined for black schools was diverted to white schools all over the State, although it disadvantaged schools

in the white counties of North Alabama.<sup>76</sup> “But of course in the majority Black Belt townships, ... this ha[d] an enormous and devastating effect on black education.”<sup>77</sup>

45. The 1891 Apportionment Act also had an impact on the politics of property taxes. By diverting funds from black schools to white schools, there was less of a need for additional property taxes in Black Belt counties because white schools were being funded adequately.<sup>78</sup> Consequently, the Black Belt whites, due to total population apportionment, were able to thwart attempts by reformers in urban areas and in white counties to raise taxes to increase funding for public schools.<sup>79</sup>

### **The 1901 Disfranchisement Constitution**

46. The Populist revolt in the 1890s and the U.S. Supreme Court’s approval of Mississippi’s 1890 disfranchisement provisions finally convinced Black Belt Bourbons that it was necessary to disfranchise their captive black voter majorities to preserve their power and to prevent division within the Democrat Party and its program of white supremacy.<sup>80</sup> But there was strong opposition in the white counties based on fear that a new constitution also would disfranchise many poor whites.<sup>81</sup>

47. The two major conditions demanded by Black Belt whites for their

support of a constitutional convention were maintenance of legislative apportionment based on whole population (notwithstanding the fact that blacks would not be voters) and retention of the millage caps in the 1875 Constitution.<sup>82</sup>

48. After an 1898 enabling act calling for a constitutional convention was repealed, the same enabling act passed again in 1900, with the same conditions, which were in turn endorsed by the Democratic State Committee.<sup>83</sup>

49. Disfranchising blacks and maintaining white supremacy were the central purposes of the 1901 Constitution.<sup>84</sup> These racist objectives were the common ground among the competing white economic interests in the state: white landowners in the Black Belt, white rural counties in North Alabama,<sup>85</sup> and urban industrialists.<sup>86</sup> Otherwise, support and opposition to a new constitution broke down along the old familiar urban vs. rural<sup>87</sup> and Black Belt vs. rural white county divisions.<sup>88</sup>

50. The public school funding provisions of the 1901 Constitution are directly traceable to the 1875 Constitution, and propertied interests in the State, by invoking white supremacy,<sup>89</sup> were successful once again in protecting their financial interests.<sup>90</sup>

51. Black Belt whites were willing to support legal disfranchisement of blacks in the 1901 Constitution, and thus relinquish their control over state politics

through control of the large black voting populations, out of fear that events at the national level would eventually lead to the re-enfranchisement of blacks, thus placing whites' property in danger of being taxed to support education for blacks.<sup>91</sup>

52. The ensuing compromise between the whites in the 1901 constitutional convention was that the white counties would effectively control the executive offices of the State,<sup>92</sup> while the Black Belt counties would control the Legislature.<sup>93</sup>

This arrangement assured that the Black Belt could thwart attempts to increase property taxes.<sup>94</sup> The refusal of the Alabama Legislature to reapportion itself during the twentieth century (until federal courts ordered reapportionment of seats beginning in the late 1960s), actually made Black Belt control of the Legislature even stronger.<sup>95</sup>

53. “The problems of taxation and education, two of the most important issues to come before the convention, were closely related since education was by far the largest single item in the state's budget. Future funds for education would depend on the degree to which limits were set on the state’s taxing power, on the share of tax levies assigned to education, and on whether the convention provided for local taxation for public schools.”<sup>96</sup>

54. Education and the taxes needed to fund education were areas where the conflict between the Black Belt and the white counties were greatest. The white

counties chafed under the advantages the Apportionment Act of 1891 had given Black Belt whites to provide adequate school funding for their white students.<sup>97</sup>

55. Considerable support existed for dividing funds for public education according to the taxes paid by each race.<sup>98</sup> Racial feelings, based on social and economic rivalry with blacks, had always run high among the poorer whites.<sup>99</sup> Black leaders in Alabama, like Booker T. Washington, President of Tuskegee Institute, and William Hooper Council, President of (what is called today) Alabama A&M, feared the racial division of school revenues even more than disfranchisement.<sup>100</sup>

56. White delegates from black counties, however, defeated the racial apportionment of taxes because it was against those whites' interests in securing a greater share of school revenues, which the whites were already allocating disproportionately to their white schools.<sup>101</sup> The 1901 Constitution incorporated the phraseology of the 1891 Apportionment Act to insure the continued redirection of funds from black schools to white schools, thus making explicit apportionment of taxes on the basis of race, which might invite U.S. Supreme Court scrutiny, unnecessary.<sup>102</sup> “The main argument, however, was that the white people demand such a division because ‘they have the negroes hung about their necks like a chain.’”<sup>103</sup> Indeed, the whole plan to divide school revenues by the race of

taxpayers was

an attempt at political strategy by the white county delegates. They knew that with the Black Belt and industrial interests in control of the convention, the only hope of district taxation for schools lay in hurdling the race issue. They reasoned that the Black Belt might support the plan if relieved of dividing funds with a Negro school population that exceeded two-thirds of the whole. Therefore, what seems to be a more bitter attitude toward the Negro on the part of the white county committee members was really only an effort to secure support for local district taxation by playing the game of the black counties--making the issue a race issue. They failed in their attempt to use a strategy so often used successfully by the Black Belt as the convention voted down the plan 90 to 31.<sup>104</sup>

57. The urban industrialists and Black Belt planters who controlled the 1901 constitutional convention<sup>105</sup> preserved the 7.5 total millage cap that existed under the 1875 Constitution: the cap on state property taxes was reduced to 6.5 mills,<sup>106</sup> but counties were authorized to levy up to 1.0 mills for schools.<sup>107</sup>

58. The 1.0 mill optional county tax for schools contained for the first time in Alabama history a voter referendum requirement, which was crafted to ensure, with disfranchisement, that only whites could give their consent to higher local property taxes.<sup>108</sup>

59. This general hostility to home rule in the 1901 Constitution, as well as the 1875 Constitution, was motivated at least in part by race: “white control of the state government ... is an important fall-back provision for guaranteeing the maintenance of white supremacy in majority black counties. And so it's important

not to have too much power in the hands of the counties, or to make sure that the power ... that is at the local level is in safe, that is, Democratic and white hands.”<sup>109</sup>

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

[T]here is a wide variety of opinions about ... the interaction of education and race. There are delegates who believe that blacks should receive essentially only vocational education. And there, on the other hand, are delegates who believe that over a long period of time through the educational mechanism, it might be possible to improve the status of blacks. There is nobody at the convention who is not a white supremacist, but there are varieties of opinions about ... whether white supremacy is an immediate necessity or whether white supremacy will always exist because of inherent differences between the races. And everything in between. That's a whole spectrum of opinions. I doubt, however, that there was anyone in the white counties who needed to be convinced, at least of the immediate necessity, of white supremacy. There is nobody at the convention who's not a white supremacist.<sup>110</sup>

61. Professor McMillan summed up the 1901 Constitution this way:

In its general revision of the constitution, the convention of 1901 acted with the utmost conservatism for two reasons. In the first place it was dominated by the conservatives. And in the second place, these conservatives were able to convince other delegates that any change of a controversial nature would endanger ratification of the suffrage decision. It was the old story of using the Negro issue to prevent change or reform. The convention refused to provide for an elective railroad commission with mandatory powers, discarded all except a fragment of the progressive report on municipalities, made no reforms in regard to child labor or convict leasing, provided for a more severe state tax limit, and gave counties and municipalities little relief from tax limits. The convention made some progress in education and refused to adopt the unjust and unconstitutional proviso

for division of the schools funds according to the amount of taxes paid by each race. Here, however, the decision was made with its effects on suffrage revision in mind. It provided for infrequent elections and embarked the state on a new and untried course in regard to quadrennial sessions. It strengthened the power of the governor and continued the process begun in 1875 of putting the legislature in a strait-jacket. Fundamentally, except in regard to the suffrage, the Constitution of 1901 was a re-adoption of that of 1875. “The Constitutional Convention of 1901 was called for the paramount purpose of reforming the suffrage and removing from our electorate the menace of an ignorant and purchasable vote,” declared Governor Emmet O’Neal in asking for a new constitution in 1914. “Little consideration was given to matters of reform, and hence the Constitution of 1875 which had been framed to meet conditions which can never again exist, was practically readopted.”<sup>111</sup>

62. The proposed new constitution drafted by the 1901 convention still had to be submitted to the voters for approval.<sup>112</sup> The referendum strategy of the new constitution’s supporters was, once again, to play the race card.<sup>113</sup> The proponents told white voters that the new constitution was needed to continue the project of redemption from Reconstruction.<sup>114</sup>

63. Opposition among poor whites, who (correctly) feared that they too would be disfranchised, was strong. But none of these whites opposed the disfranchisement of blacks.<sup>115</sup>

64. As it turned out, many whites (and blacks outside the Black Belt) voted against ratifying the 1901 Constitution, and once again the Black Belt “counted in” their black voters to provide the margin of victory.<sup>116</sup> As a result, almost all blacks

and many whites were disfranchised.<sup>117</sup>

65. The 1901 Constitution succeeded in its purpose of perpetuating the power of the Black Belt oligarchy over the Alabama Legislature.<sup>118</sup>

66. The 1901 constitution was not a “living document” in the sense that its enforcement allowed Alabama’s public policies to adapt to changes in circumstances. The requirement that the legislature be reapportioned decennially was simply ignored, thus making the 1901 apportionment of state power in the legislature a permanent fixture, in defiance of large changes in population by region in the state. This froze the arrangement of power in the moment of 1901 and was not addressed in actuality until the 1970s. Also effectively frozen were attitudes about public policies about black education and black political rights. In essence, 1901 realities dictated public policies in the 1970s.<sup>119</sup>

67. Once blacks were disfranchised by the 1901 Constitution, whites became more willing to support public education.<sup>120</sup> In the Black Belt counties, support existed for a new teacher certification law, uniform textbooks, and redistricting. The local tax privilege, however, was not popular in the Black Belt counties-by 1914, of the forty-six counties in Alabama that had levied a local school tax, only one (Marengo) was in the Black Belt.<sup>121</sup>

68. During the Progressive Period preceding World War I, the Legislature

made three attempts to increase funding for education.<sup>122</sup> First, a state board of equalization was created to police county tax assessors in an effort to remedy unreasonably low tax assessments. Second, in 1911, the Legislature passed a statute, which in 1935, was later slightly amended, establishing a sixty percent assessment ratio for all property. Third, in 1916, after school revenues again fell beneath expectations, Amendment 3 was ratified, which authorized counties to levy an additional one mill for schools and lowered the referendum margin from three fifths to a simple majority of those voting.<sup>123</sup>

69. In 1933, a constitutional amendment was ratified authorizing an income tax.<sup>124</sup> The amendment provided that the proceeds of the income tax would first fund the State's floating debt, then would be allocated to a long term reduction of the State property tax. That amendment did not restrict the authority of local governments to levy property taxes.<sup>125</sup>

70. In 1927, inasmuch as the constitutional caps on state and local taxation of personal property required other forms of taxation to raise revenue, the Legislature by statute segregated public school funds from general funds in the State budget, creating what was then called the Equalization Fund.<sup>126</sup> In 1935, the Legislature also statutorily enacted the State's first sales tax and created the Minimum Program Fund for schools.<sup>127</sup> The establishment of the Equalization

Fund and the Minimum Program Fund represented substantial advances in the funding of public schools in the State. Prior to the establishment of the income tax, sales tax, Special Educational Trust Fund, and the Minimum Program Fund, state universities had received appropriations from other state revenues--*i.e.* the State property tax.<sup>128</sup>

71. In 1947, the state income tax was earmarked for K-12 teacher salaries by Amendment 61 to the Constitution of 1901.<sup>129</sup>

72. Even during the first six decades of the twentieth century when African Americans were disfranchised, “[n]o political decision occurred without some reference to race. Even though politicians had erected an elaborate structure of disfranchisement that kept all but a handful of blacks from voting, the racial issue would not disappear from political discourse.”<sup>130</sup>

### **Amendments 325 and 373: The Classification and Lid Bills**

73. The impact of *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), on white Alabamians’ support for public education<sup>131</sup> varied according to how seriously they took the threat of federally mandated school desegregation:

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

very likely. And if you are quite confident that that's true, then you can continue to be an advocate of increased funding for the schools and the confidence that these schools ... will continue segregated. If, on the other hand, you believe that there is some real likelihood that schools will be integrated, then you would have very much more substantial doubts because all political leaders at this period said, and some actually believed, that the outcome of the integration of the schools would be the abolition of the schools. Certainly Governor John Patterson was, not merely in rhetoric but actually in his heart, ... to the abolition of the public school system of the state if integration came to the state, or particular school districts, ... if there was no likelihood that it was going to become statewide, he was prepared to close them in particular districts and leave them open elsewhere. And Governor Wallace, I think actually welcomed the thought of general conversion to a system ... of private segregated academies if there continued to be some form of public funding that did not go to the school, but instead went to the parents in the form of tuition grants or scholarships, ... which the parents could then use to send their child to the segregated private academy.<sup>132</sup>

74. An attempt was made to raise the constitutional limit on local property taxes in 1955, but it was defeated. The rate of ad valorem taxation which was constitutionally fixed at a maximum of 7.0 mills had not been changed since Amendment 3 was approved in 1916. Permissive legislation and the required constitutional amendments had granted thirteen county and twenty-three city school districts the right to raise their school ad valorem taxes, with the highest rates being 17.5 mills. The local school tax amendment would have allowed the addition of another 5.5 mills to the allowable seven mills to produce a total of 12.5 mills for school purposes when local citizens so desired. But the voters rejected

those tax increases over which they had control; these included taxes to benefit education. The same 1955 legislature increased the tax rate 16.67 percent on gasoline to raise \$50 million for highways and levied for welfare a tobacco tax to raise \$2.4 million and increased taxes on alcoholic beverages and corporations. The people of the State had no chance to vote against those issues, but they did exercise their prerogative to disapprove taxes when the school tax amendments were placed before them. The constitutional amendments affecting education were all soundly defeated at the polls on December 6, 1955. This defeat threw education in Alabama into the worst proration of funding since the depression.<sup>133</sup>

75. The Supreme Court's decision in *Brown II* had an immediate negative impact on the willingness of white Alabamians to raise school revenues.<sup>134</sup> On December 20, 1955, the voters approved Amendment 111, which this Court found to have "adopted most of the recommendations of the 1954 Interim Legislative Committee report for the racially discriminatory purpose of preserving segregation in the public elementary and secondary schools of the state." (*Knight v. Alabama*, 787 F.Supp. at 1104)<sup>135</sup> This provision remains unchanged today, and the support of public education is constitutionally permitted but not required in Alabama.<sup>136</sup>

76. As the threat of school desegregation intensified, legislative enthusiasm for funding public schools sharply diminished. Particularly in the Black Belt,

whites were

committed to the idea that public education could not continue if in fact it was ordered to occur on an integrated basis. The schools would simply have to be closed; public education would have to end because an integrated education was not acceptable. [W]ith that as a fundamental first priority, any efforts to raise property tax, increase any kind of funding of schools, was in serious trouble and of great question until the matter of school integration was settled. And so when there were funding crises in education in the 1950's, ... it was very difficult to get support for that even when it was advocated by the staunchest of segregationists like Governor John Patterson, who understood that the white schools needed money, the universities needed money, but he also had to announce ... this is with ... the understanding that any new funding occurs only with the understanding that schools stay separate.<sup>137</sup>

77. The 1959 Legislature authorized the creation of independent school districts throughout the state. Acts 1959, 2nd Ex.Sess., No. 126, p. 198.<sup>138</sup>

78. In 1962, at Governor Patterson's request, the Legislature passed a constitutional amendment authorizing county commissions to increase property taxes by 5 mills, subject to approval by a majority of the voters.<sup>139</sup> This amendment was approved by the voters on May 1, 1962, and proclaimed ratified as Amendment 202 on May 10, 1962. Only three cities and eight counties actually passed additional ad valorem taxes in 1962. Many more proposals were turned down.<sup>140</sup>

79. Meanwhile, throughout the 1950s and 1960s, it was becoming more and more certain that the courts would order reform of the crazy quilt system of

property assessments around the state. Public utilities, because their property was assessed at the state level, were having state and local millage rates applied to their property's fair market value based on substantially higher assessment ratios (although not the full sixty percent state law called for) than were being applied to others by county tax assessors. “The highest assessment level in the state was 30 percent. And that was in Jefferson County. Everything else ... was below 30 percent. And it was ... in some counties vastly, grossly below 30 percent.” The Alabama Supreme Court ruled in favor of the utilities when they challenged their assessments in court. *State v. Ala. Power Co.*, 254 Ala. 327, 48 So.2d 445 (1950).<sup>141</sup>

80. Until adoption of the first Lid Bill amendment in 1971, the Alabama Constitution required all taxable property within the State to be included in a single class for ad valorem tax purposes.<sup>142</sup>

81. In 1957, the Alabama Education Commission rejected proposals to reform the property tax system and instead recommended a sales tax increase. This tax had long been supported by the Black Belt planters and urban industrialists as a way to ensure that non-property owners of Alabama paid their “fair share” of the tax burden.<sup>143</sup> In July 1959, Superintendent of Schools Austin Meadows issued a statement that warned: “The enemies of public schools and

those who did not want to pay the school bills timed sharp and deep threats at public schools with the fear of integration to choke education in this state.” Their attacks, according to Meadows, were not direct: “They oppose the means for providing education.”<sup>144</sup>

82. The most powerful lobbying organizations in Alabama were the Alabama Chamber of Commerce, the Associated Industries of Alabama and the Alabama Farm Bureau Federation.<sup>145</sup> In 1959, exercising his statutory authority as Revenue Commissioner, Harry Haden issued a revenue regulation that required all property to be assessed at thirty percent of its fair market value. Legislators introduced bills that would strip the Revenue Commissioner of his powers. In the end, Governor Patterson compromised by agreeing to give up Haden's equalization program in return for abandonment of the bills stripping the Revenue Commissioner of his authority.<sup>146</sup>

83. Nevertheless, so long as Black Belt whites retained local control over the valuation of their property and attempts to raise millage rates, they continued until 1969-70 to support efforts to increase state funding for schools, including the black schools that were being built in the last gasp of separate but equal.<sup>147</sup>

84. Governor Patterson expressly linked reapportionment of the Legislature with ending the Black Belt's power to block property tax equalization.<sup>148</sup> These

were the major issues that led to a breakup of the formal Big Mule-Black Belt alliance.<sup>149</sup> Understanding this linkage, Black Belt legislators tried to block reapportionment.<sup>150</sup>

85. The reapportionment controversies of 1962 broke down along urban-rural lines.<sup>151</sup> *See generally Sims v. Frink*, 208 F.Supp. 431 (M.D.Ala.1962) (3-judge court),<sup>152</sup> *aff'd sub nom. Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964). Nevertheless, the Black Belt agricultural interests and Birmingham industry still shared opposition to increased taxes.<sup>153</sup> Whites were concerned about losing control of their local governments, first, because blacks were gaining the balance of power in local elections by the mid-1950s in Montgomery and Tuskegee, and because blacks were gaining voting majorities by 1966 in Macon, Greene, and potentially a dozen more counties. For Black Belt landowners the connection between legislative reapportionment, the rise of the black vote, and fear of increased property taxes was particularly strong.<sup>154</sup>

86. An example of this fear is Sam Engelhardt. Sam Englehardt was a state senator from Shorter, Macon County, Alabama, during the 1950s. During his political career, which extended into the 1960s, Senator Englehardt was also head of the White Citizens Council of Alabama,<sup>155</sup> Chairman of the Alabama Democratic Party, State Highway Director, the legislator who proposed splitting

Macon County, and the legislator who procured the famous Tuskegee gerrymander that was struck down in *Gomillion v. Lightfoot*, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960). (*Id.*) See generally *Dillard v. Crenshaw County*, 640 F.Supp. 1347, 1357 (M.D.Ala.1986) (discussing Engelhardt's role in Alabama's efforts to suppress black voting strength). Behind Senator Engelhardt's concern about black voting lay economic self-interest. "Everybody has an angle when they get in [politics]," he said. "I was worried ... about the tax assessor ... because of all our holdings," he said, referring to the many thousands of acres of rich agricultural land the Engelhardt family owned in Shorter. "That was my angle-to protect ourselves. Not only me, but my family. My aunts, uncles, and cousins owned land." He based his concern about who was tax assessor on a racist assumption. "If you have a nigger tax assessor," he rhetorically asked a journalist in 1956, "what would he do to you?" The obvious answer, to Engelhardt, was that a black tax assessor would try to exploit white landowners.<sup>156</sup>

87. Engelhardt's attitudes about the threat to whites' property taxes posed by rising black political influence was typical of whites' attitudes throughout Alabama, particularly in the Black Belt.

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

crucial issues in politics in Alabama since Reconstruction.... From their historical experience in Alabama, the most basic and first public policy effort that blacks had made during Reconstruction once they got the franchise initially was to enact property taxes that were much higher on land than had ever existed in Alabama up to that time. So, there's that historical experience that informed for subsequent generations of Alabamians that ... what a black voter, an empowered black citizen, would want to do, ... was to put taxes on white landowners.<sup>157</sup>

88. During his first term as governor, George Wallace, who grew up in Barbour County, made no attempt to achieve property tax reform.<sup>158</sup> Throughout the 1960s and 70s, his hallmark opposition to school desegregation, his rural county constituent base, and the growth of private school options for white flight all contributed to the defeat of property tax reform.<sup>159</sup> In January 1964, Governor Wallace toured the newly opened Macon Academy. He praised the private school and a month later called for public contributions to support white students boycotting Macon County's integrated schools. Wallace's office maintained a file of letters from individuals giving money to the Macon Academy; one contribution was for twenty thousand dollars. A woman wrote to Wallace telling him that she would like to donate seven thousand dollars toward the improvement of education in Alabama and asked him to suggest where it should go. He replied: "You may wish to contact the Macon Academy in Tuskegee, Alabama. The academy is a private school which was set up by individuals in Macon County who were not

satisfied with the Federal Court order which did away with their rights to run the schools in that County as they saw fit.”<sup>160</sup> There were many more letters like this in the one-and-a-half-inch-thick file. Governor Wallace also supported white academies in other counties, and he pressured cabinet members to contribute to them. His office maintained lists of contributors.<sup>161</sup>

89. The Alabama Farm Bureau represented Governor Wallace’s core constituency, and Wallace could always be counted on to promote the Farm Bureau’s economic interests.<sup>162</sup>

90. The principal opposition to reform of the property assessment system came from the Alabama Farm Bureau and forestry interests, which began lobbying for a classification system<sup>163</sup> that would protect them from high assessment ratios.<sup>164</sup> The taxation system of Alabama was supported by the alliance of Black Belt planters and urban industrialists, who continued to protect their private financial interests.<sup>165</sup>

91. During the first administration of Governor George Wallace and the succeeding administration of Lurleen Wallace Alabama’s expanding economy allowed the Governor to raise education funding without seeking additional revenues.<sup>166</sup>

92. When Lurleen Wallace succeeded her husband as Governor, Wallace's

Black Belt supporters began to push to protect their property against increased taxes. An effort to amend the 1901 Constitution to eliminate, once and for all, the century-old requirement of equal assessment and taxation rates, failed.<sup>167</sup>

93. In 1967, the legislature's Joint Committee on Ad Valorem Taxation issued a report that recommended the establishment of a statewide reassessment program, with professional qualifications required of county boards of equalization and lowering of the fictional sixty percent assessment maximum rate to a more realistic thirty percent. Timberland would be assessed at its bare-land value. Growing timber would be exempt from property taxation, as would be other crops, but a severance tax would be levied on timber when marketed. There would be no exemptions for machinery or other personal property (for example, autos, boats, airplanes, trucks, and trailers) used in a business.<sup>168</sup>

94. A report issued by a four-person minority of the interim committee recommended different percentage levels for the assessment of the various classes of property. In particular, it recommended that rural property be assessed at lower levels than other kinds. Bills reflecting this Farm Bureau Federation perspective were introduced in the Senate on Tuesday in the third week of July 1967, and assigned to the Finance and Taxation Committee.<sup>169</sup>

95. On August 8, 1967, the Farm Bureau bill was defeated in the House

because it failed to win the three-fifths vote required of a constitutional amendment. On August 10, 1967, the House voted to reconsider the Farm Bureau bill, and the motion passed by a vote of seventy-two to sixteen. In the bill that finally passed the House, personal property was assessed at twenty percent, business property at twenty-five percent, residential property at twenty percent, and utilities at forty percent. Farm land was assessed at the lowest ratio of all, fifteen percent.<sup>170</sup>

96. In 1967, the legislature ultimately passed a thirty percent cap on property tax assessments plus a number of exemptions that changed virtually nothing. This outcome represented a victory for the rural counties despite the fact that the legislation did not contain property categories.<sup>171</sup> According to Governor Brewer, the rural counties that resisted efforts to equalize property assessments were primarily those in the Black Belt and in the Tennessee River counties of north Alabama.<sup>172</sup> “Madison and Limestone Counties and, to some extent, Lawrence County were in that category; that is, where there was large landholdings, and that’s where most of the resistance came to reappraisals.”<sup>173</sup>

97. Although the legislation did not propose to amend the 1901 Constitution to establish the separate property tax classes the Farm Bureau forces had wanted, it did formally repeal the sixty percent uniform assessment ratio, capping all property

assessments at thirty percent of fair market value and granting state and local tax officials wide discretion in the setting of ad valorem assessment rates. This assured that local officials would not increase taxes significantly.<sup>174</sup>

98. The Governors Wallace, meanwhile, pursued a policy of massive resistance to federally ordered school desegregation and actually tried to reduce funding for public schools.<sup>175</sup>

Wallace basically served the role of caretaker for a dismal public primary and secondary education system while vigorously promoting the cause of segregated private academies. The growth of these institutions weakened political support for public schools among middle- and upper-middle-class parents who could afford to send their children to private schools.

...

Wallace disrupted education at all levels with his demagogic defense of segregation. Schools were surrounded by troopers to prevent blacks from entering. The careers of university faculty were threatened when they expressed dissent against Wallace-appointed administrators or exercised their constitutional rights of free speech on their own time. Funding for black universities was threatened for political reasons. And Wallace helped to create an atmosphere in which white students felt free to intimidate and isolate newly enrolled blacks.

He also damaged the schools by inaction. He ignored property tax reform and other tax reforms as well as educational reform.<sup>176</sup>

99. Governor Lurleen Wallace died on May 7, 1968, and Lt. Governor Albert Brewer became Governor.

100. In 1968, an agriculture study commission, concerned that farmers might be asked to shoulder property taxes at rates comparable to what others were

paying, proposed to change Alabama law to provide that assessments be based on current use and not the market value of property.<sup>177</sup> The governor at that time, Albert Brewer, focused on a county's tax effort and ability to pay measured by the county's mean per-capita income compared to the mean per-capita income of the state.<sup>178</sup> Thus, a relatively poor county making a relatively strong effort to support its schools would be rewarded with extra state funds; likewise, a relatively wealthy county doing a below-average job of supporting its schools would be denied some funds even if it raised more taxes than the poorer county. The plan gave counties two years to bring their tax systems up to the state standard and gave county commissions the power to propose tax increases to their electorates.<sup>179</sup>

101. The urban bloc began a filibuster in the Senate on April 15, 1969. Its proximate target was the bill to create the Alabama Commission on Higher Education (“ACHE”), but it could have been any bill. The urban bloc had tried to wring concessions on property tax equalization out of Governor Brewer in the House and wanted funding distribution formulas closer to a per student basis. Governor Brewer favored property tax equalization, but he feared that it would not get through the special session and that it would probably tangle up his other bills as well.<sup>180</sup> The Achilles' heel in the urban bloc's Senate filibuster, however, was that urban legislators favored much of Governor Brewer's education program.

They knew or suspected that in 1970 he would be competing for reelection against George Wallace, who would not support property tax equalization.<sup>181</sup> To embarrass Brewer too much with their filibuster would consequently be counterproductive.<sup>182</sup> Notwithstanding doubts about the usefulness of Governor Brewer's new minimum standard property tax bill with its penalty provision, urban legislators supported it, and in 1969 it passed the legislature and was signed into law.<sup>183</sup>

102. Governor Brewer's school revenue package passed during the special session of the Legislature in Spring 1969. But the proposed constitutional amendment to increase income taxes from 5% to 7% was not scheduled for a ratification vote until the general election in November 1970.

103. During the regular session of summer 1969 the *Weissinger* case was filed by urban forces, and urban legislators responded with renewed bills calling for equalization of property assessments across the state.<sup>184</sup> In response, the Alabama Farm Bureau renewed its efforts to embed in the state constitution the artificially low property assessments white landowners in the Black Belt<sup>185</sup> had enjoyed for nearly a century.<sup>186</sup>

104. Until the federal courts ordered merger of student bodies between white and black schools in 1969-70, most white Alabamians believed freedom-of-

choice plans would satisfy federal desegregation mandates,<sup>187</sup> and with few exceptions,<sup>188</sup> the schools remained mostly segregated, especially in the Black Belt. Black Belt leaders supported Brewer's school tax package because it would not raise their local property taxes and instead would increase state revenues that would help fund their efforts to improve the black schools.<sup>189</sup>

105. Governor Brewer supported freedom-of-choice plans,<sup>190</sup> expressing his fear that more aggressive school desegregation orders would undermine his efforts to raise public school revenues.<sup>191</sup> The Alabama Farm Bureau and its representatives in the Legislature, meanwhile, were urging white resistance to all school desegregation efforts.<sup>192</sup>

106. Governor Brewer's program of increased school revenues at the state and local level was undermined by federal court mandates for effective school desegregation and merger of student bodies,<sup>193</sup> by almost total white flight from public schools in the Black Belt,<sup>194</sup> and by George Wallace's campaign for Governor and President on a platform attacking federal courts in general and busing in particular.<sup>195</sup>

107. Rep. Rick Manley, a sponsor of the 1971 Lid Bill and floor manager of the 1978 Lid Bill, representing the Pickens County Board of Education, warned the federal court what would happen in the Black Belt if it ordered merger of the

student bodies:

The Board argues that the implementation of the plan as proposed by the United States in the Southern Zone of Pickens County will result in all the public schools in this zone being attended only by Negro students. The argument is based upon the thesis that, when a student body is composed of predominantly Negro students, the white students will flee. The law is clear that “white flight,” or the threat thereof, from the public school system is not a valid consideration when formulating a plan for a unitary school system.

*Lee v. Macon County Bd. of Education (Pickens County)*, 317 F.Supp. 95, 98

(M.D. Ala. 1970) (3-judge court).<sup>196</sup>

108. These events turned white voters against increased revenues for public schools,<sup>197</sup> and Brewer’s proposed constitutional amendment to raise income taxes was soundly rejected in the same November 1970 general election that brought George Wallace back to the Governor’s office and the first two African Americans to the state House of Representatives.<sup>198</sup> Notwithstanding their growing black voter majorities, whites were re-elected to most local offices in the Black Belt counties.<sup>199</sup> These circumstances made it unlikely that the 1971 Legislature would be willing to raise new school revenues of any kind.<sup>200</sup>

109. By 1971, two years following enactment, when the penalty provision of the law was scheduled for implementation, few underassessed counties had acted to bring themselves up to the state norm. Some counties had tried but failed to win the taxpayers' approval. In all, thirty-nine counties stood to lose funds.<sup>201</sup>

110. In the meantime, however, George Wallace had defeated Albert Brewer in the 1970 gubernatorial primary election. In the May 1970 primary runoff Wallace resorted to some of the nastiest and most explicit racial campaign tactics ever seen in Alabama.<sup>202</sup> But after he was elected in November 1970, Wallace put aside explicit references to race and resorted to code words that had clear racial connotations to white Alabamians<sup>203</sup> and tailored his rhetoric toward a national audience as he prepared to run again for President.<sup>204</sup>

111. In 1971, a three-judge federal court in *Weissinger v. Boswell*, 330 F.Supp. 615 (M.D.Ala.1971) (3-judge court), held that the 1967 statute violated both the federal and state constitutions. Specifically, the *Weissinger* court made the following findings:

In 1969 the State Department of Revenue commenced an assessment-sales ratio study to determine the ad valorem tax assessment ratio of fair and reasonable market value of real property in each county in the state and to determine the statewide median ratio. The results of this study, the reliability of which is not in issue, reveal that the median ratios for the individual counties in the State of Alabama range from lows of 6.7 and 7 percent of fair market value in rural Hale and Washington Counties to highs of 23.1 and 26.8 percent of fair market value in urban Madison and Jefferson Counties. The study further reveals that the median assessment ratio for the state was approximately 16.9 percent of fair market value.

*Weissinger*, 330 F.Supp. at 621 (footnotes omitted). The *Weissinger* court further ruled that because the 1967 law had been declared unconstitutional, the thirty

percent of market value assessment ratio as provided in that law could no longer be enforced; thus, the court restored the sixty percent ratio set out in the 1935 statute. *Id.* at 625. The court gave the State one year to bring its property tax laws into compliance with the court's equalization mandate. *Id.* Subsequently, because of the difficulties in conducting a statewide reassessment of property, the court in an unreported order extended to June 29, 1979, the deadline for applying equal assessment ratios for all like property throughout the state.<sup>205</sup>

112. The Legislature was in regular session, and urban representatives reacted immediately to the *Weissinger* decree by advancing bills to equalize property assessments statewide.<sup>206</sup> Governor Wallace, however, attacked the federal court.<sup>207</sup> In the same news conference, Wallace said “he is asking Attorney Gen. John Mitchell to furnish police protection to students returning to newly-reopened schools this fall. Wallace has said he will reopen schools closed by federal court orders.”<sup>208</sup> And he proposed taking \$12 million from the teacher retirement fund for each of the next two years to build mental health facilities in compliance with federal court orders.<sup>209</sup>

113. Two weeks after the *Weissinger* decision, Governor Wallace told private school patrons in Bibb County, “I think it’s a horrible thing that you people have to pay taxes to support public schools. Then you have to dig in again to pay

for quality education for your children in a private school.”<sup>210</sup> He continued to link opposition to federal court school desegregation orders with resistance to increased school taxes.<sup>211</sup> And he repeatedly vowed to “veto any direct taxes” for schools,<sup>212</sup> including any bill which would raise property taxes.<sup>213</sup> By September 1971, about 25,000 white students, including most white students in the Black Belt, were attending private schools to avoid school integration.<sup>214</sup>

114. Even though only one [sic, two] black legislator[s], Fred Gray [and Thomas Reed], had been elected in 1970, the three-judge federal court in Montgomery clearly was headed toward new decrees that would more nearly equalize the populations in House and Senate districts and empower additional black voter majorities.<sup>215</sup> Property owners were concerned about the prospect of increased property taxes. Legislative power was already passing to urban areas, where there was much stronger support for property taxes, and where rates were already higher than the rates in rural areas.<sup>216</sup> Blacks in the cities were better organized politically and were more capable of making their influence felt in the Legislature. According to Dr. Norrell, “there's no question but that the Sam Engelhardts and the Walter Givhans and the George Wallaces of the world knew exactly that *Reynolds v. Sims* and the subsequent reapportionment decisions that followed from that were going to change the nature of the Alabama Legislature to

bring African-American representation into that body.”<sup>217</sup>

115. As successive legislative reapportionment plans increased the number of legislators from urban areas and decreased the number from rural areas, Black Belt whites relied more and more on Governor Wallace to defend their historical interests.<sup>218</sup> George and Lurleen Wallace responded by appointing Black Belt representatives and their allies to the most powerful leadership positions.<sup>219</sup> The Alabama Farm Bureau enjoyed some of its most powerful influence during the Wallace years.<sup>220</sup>

116. Indeed, when he addressed the Regular Session of the Legislature on May 4, 1971, George Wallace expressly linked opposition to tax increases with opposition to federal intervention in affairs of the state:

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

Additionally, white hostility toward court-ordered busing was at a peak in 1971, the year of *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 91

S.Ct. 1267, 28 L.Ed.2d 554 (1971), and *Davis v. Board of School Comm'rs of Mobile County*, 402 U.S. 33, 91 S.Ct. 1289, 28 L.Ed.2d 577 (1971).<sup>221</sup>

117. The *Weissinger* decision came down on June 29, 1971, and the Regular Session adjourned without passing either a General Fund or an Education Fund budget. The dissension caused by the issues of legislative redistricting and court-ordered ad valorem tax reform made constructive legislation during the closing days and hours impossible, thus necessitating additional special sessions. An education budget finally was adopted in a second special session in November 1971.<sup>222</sup>

118. At the same time that the property tax issues were being debated in the Legislature, Governor Wallace made almost daily news urging school boards throughout Alabama to disobey federal court school desegregation orders<sup>223</sup> and ordering schools to admit white students that had been reassigned by the courts.<sup>224</sup>

119. On August 25, 1971, Governor Wallace appeared before the House and asked them to pass a school choice bill that would “prohibit school boards from busing pupils if their parents believe it hurts the ‘health, lives, safety and education’ of their child or ward.”<sup>225</sup> The Wallace school choice bill passed the House 92-7 on September 2,<sup>226</sup> and the Senate approved it 26-0 on September 16. Governor Wallace wasted no time urging all Alabama school officials to obey his

anti-busing act.<sup>227</sup>

120. As the Regular Session of the Legislature wound down in August and September 1971, the Farm Bureau was able get its classification bill passed by the House, but it died in a Senate filibuster by urban legislators.<sup>228</sup> With the federal court one-year deadline threatening to raise all property assessments to 60% of fair market value, even supporters of the Farm Bureau classification bill were considering support of an across-the-board 25% assessment ratio being proposed by urban legislators.<sup>229</sup> Then Governor Wallace in a strongly worded 11th hour statement asked the Legislature to pass the classification property tax bill to avoid a “catastrophic” burden on homeowners.

A group in the Senate seems to be committed to push for the legislation which benefits the utility companies and special interest groups at the expense of the average citizen. I am calling for the Legislature to present to the voters of this state a proposed amendment to the Constitution which would bring about a classified system of property assessment. I feel that this should be offered to the voters to take the place of any across-the-board percentage figures that might be passed. It is simply impossible under current law to provide a percentage factor which would **retain the current level of revenue** from the special interest groups and at the same time refrain from increasing property taxes for homeowners. **I have often said, and I repeat again, that I am opposed to any measure of legislation that would have the effect of increasing property taxes on our homeowners in Alabama.**<sup>230</sup>

121. On the same day Wallace forcefully entered the property tax fray, he signed into law his school choice bill.<sup>231</sup> Sen. George Lewis Bailes of Jefferson

County, who was leading the opposition to the Farm Bureau classification plan, told the Young Men's Business Club that the "anti-busing" bill is "not worth the paper it is written on" and that the Farm Bureau classification plan was unfair.<sup>232</sup> Bailes said Wallace was maneuvering for a special session.<sup>233</sup> (It should be noted that Governor Wallace could not veto a bill proposing a constitutional amendment, but he could veto a statutory bill setting an across-the-board assessment ratio.) The Regular Session of the 1971 Legislature adjourned without passing the general fund or education budgets and leaving other issues, like redistricting and property taxes, unresolved. A special session would be necessary.<sup>234</sup> Wallace Floor Leader in the Senate, Pierre Pelham, blamed George Lewis Bailes for defeat of property tax bill, saying, "he is the best example of a reconstruction legislator I know of."<sup>235</sup>

122. Immediately after the Regular Session adjourned, the plaintiffs asked the three-judge federal court in Montgomery to ask the parties to present proposed legislative redistricting plans since the Legislature had failed to pass a reapportionment act.<sup>236</sup>

123. Governor Wallace flew off to New York for a fundraiser, leaving the state in financial turmoil.<sup>237</sup> But he took time to join Sen. Jim Allen in blasting Judge Sam Pointer for ordering Pleasant Grove back into the Jefferson County school system. Wallace said there will be "a political revolution at the ballot box.

... This kind of government existed in Nazi Germany and exists behind the Iron Curtain.....”<sup>238</sup> Whites in Pleasant Grove felt betrayed after voting for a 7.5 mill property tax hike in 1969 to build a new school that was almost completed.<sup>239</sup> The anti-busing bill that did pass the Regular Session opened up a new front in Wallace’s war with the federal courts that would rage throughout the period leading up to and including passage of Amendment 325.<sup>240</sup>

124. On October 20, 1971, Revenue Commissioner Boswell requested that the 67 county tax assessors begin reappraising. The effect of the request was unclear. Based on past performance, many tax assessors either had been unwilling to reappraise taxable property or have not had the financial resources to do it. Boswell’s letter told the assessors that “Governor Wallace is very much concerned that compliance with the court order will increase the tax burden on homeowners and small businesses. He is especially unalterably opposed to any increase in the taxes on small businesses.”<sup>241</sup>

125. While waiting for Wallace to call a special session, members of the Senate came close to working out a compromise property tax plan that, among other things, would have made determination of property assessment ratios up to each county.<sup>242</sup> But, as Wallace met with the leadership of the House and Senate to plan for special sessions, these talks ended in stalemate.<sup>243</sup>

126. On October 24, Governor Wallace vowed to veto any fix for the property tax dilemma that involved any new “direct” taxes. The Farm Bureau supported a classification system of 15% for farmland, 25% for commercial, industrial and residential property, and 30% for utilities. Wallace said he might also include in the special session an amendment to the anti-busing law that includes penalties for noncompliance by local school officials.<sup>244</sup>

127. Having delayed as long as he could in operating the state without legal appropriations, Governor Wallace announced on November 3 that he would summon the legislature into the first of three special sessions on Nov. 15 to deal with appropriations for education and the general fund.<sup>245</sup> At the same time, Wallace asked state television stations to make available public air time for 6:30 on November 15 for the governor to address the lawmakers. “I will say this,” Wallace said. “There will be no new direct or indirect taxes. The only way new taxes will be passed is if the Legislature overrides my veto.” Wallace said a second special session would be called to consider ad valorem taxes. “There could be an increase of \$300 million on land and property tax unless we take action this year,” he said.<sup>246</sup>

128. On November 15, 1971, the AEA published this editorial in the Alabama School Journal:

The US District Court June 29 decision has shocked powerful and conflicting economic powers. .. Taxpayers see red, and justifiably so, when more affluent property owners close to the power structure of the state and local governments, are given special consideration in the form of lower taxes on their properties. Since ad valorem taxes are difficult to administer, difficult to understand, and bitterly resented by tax payers when the entire amount of the tax bill must be coughed up at one time, it is little wonder that the court's ruling is attracting so much attention. ... Education should be careful in its support of proposed classification plans of ad valorem assessments (such as the Alabama Farm Bureau Federation is promoting) since this might mean a loss of revenue especially in light of current assessment practices. If the ad valorem tax were equitably administered and collected, it would offer an important avenue of increased support for public education, particularly at the local level where additional financial support is urgently needed. ... If the classification system were written into the state constitution, this would tend to permanently freeze inequities into the Alabama constitution. ... Supporters of the classification system also perpetrate a myth about the so-called small farmer. In truth, there are not many small farmers left in Alabama. A diminishing number of landowners now control most of Alabama's farmlands. Hundreds of thousands of acres of timberlands are owned by corporations and wealthy landed interests outside the state, who profit from Alabama's 'lowest in the nation' property taxes and also from the many exemptions in taxes on farms and agricultural products raised for consumption in urban areas.<sup>247</sup>

129. On November 15, Governor Wallace addressed the House before a statewide television audience, “[s]ounding more like an old time campaigner than a governor trying to coax his Legislature into his way of thinking.” He renewed his call for a diversion of education revenues to pay for mental health and announced

there would be another special session to deal with property taxes. And Wallace made it clear that he wanted to keep basically the same tax structure Alabama is now under, “but somehow, equalize it....”<sup>248</sup>

130. The Alabama Farm Bureau was holding its 50<sup>th</sup> annual convention at this time, and its leaders expressed confidence that Governor Wallace and the leadership in the Legislature would enact the Farm Bureau property assessment classification plan.<sup>249</sup>

131. Wallace lost his renewed attempt to divert education revenues to mental health when teachers once again swarmed the Legislature to protest. Nevertheless, in anticipation of the property tax issues to be confronted in the next special session, the Alabama Farm Bureau endorsed Wallace’s proposal to divert the education funds.<sup>250</sup> Wallace lost this battle with “independents” in the Legislature, but he retained his political clout to deal with property taxes.<sup>251</sup>

132. A third special session was called to respond to *Weissinger*. Gov. Wallace said the Legislature must satisfy the federal court's order to equalize, but Wallace repeated his request for tax equalization with no increase on property owners.<sup>252</sup>

133. On November 30, 1971, Gov. Wallace opened the special session “with a warning that he would veto any ad valorem tax bill that substantially

increases taxes.” He favored classification plan. The Alabama Farm Bureau “apparently had the necessary votes to win passage barring a filibuster.”<sup>253</sup>

Wallace warned the Legislature under threat of veto not to use this special session called for property tax equalization as an excuse to raise ad valorem taxes.

Equalization should not be a “back door” method of increasing taxes, he told a joint session of the House and Senate. Wallace said Alabama has the lowest rate of taxes on homes and farms of any state in the nation, “and hopefully the action of the legislature will not increase the total take from the people.” Any “substantial increase” in property taxes, he said, would be vetoed. As he has done before, Wallace blamed the federal court for the bind the legislators find themselves in.<sup>254</sup>

134. As the Legislature began its special session on property taxes, the federal court was taking up the issue of redistricting the Alabama Legislature and congressional seats.<sup>255</sup>

135. The Farm Bureau classification plan quickly passed the House, but it was headed for an urban filibuster in the Senate.<sup>256</sup> Legislators managing the competing bills were attempting to negotiate a compromise.<sup>257</sup> But the Farm Bureau, obviously concerned about increasing black voter majorities in the Black Belt, would not agree to any proposal that would leave to each county the determination of what assessment ratio would be applied to each property

classification.<sup>258</sup> Sen. George Lewis Bailes said the Farm Bureau was “just trying to write into law (de jure) what has been the practice (de facto) in Alabama **since reconstruction**. They're simply trying to continue the practice of making the average Alabama wage earner pay the land taxes for the owners of vast tracts of land who have never, and they hope never will, paid any taxes to speak of on their holdings.”<sup>259</sup> It was apparent that a compromise solution to the ad valorem taxation question that had the Legislature deadlocked would have to come from Gov. Wallace.<sup>260</sup>

136. On December 3, 1971, Judge Pointer declared Governor Wallace’s anti-busing law unconstitutional.<sup>261</sup> The Executive Director of the Alabama Private School Association claimed that there were now 315 private schools in Alabama enrolling 51,000 students, of which his member schools were the majority in grades 1-12.<sup>262</sup>

137. At midnight on December 16, the Senate broke down in filibuster over the ad valorem tax problem and adjourned until January 5, 1972. The Senate seemed farther from a solution to the pressing problem of property tax equalization than it did when the special session convened.<sup>263</sup> Wallace angrily denounced the senators.<sup>264</sup>

138. During the Christmas adjournment, Lt. Gov. Beasley stated his support

of the Harris compromise,<sup>265</sup> and Farm Bureau officials and Jefferson County legislators traded accusations.<sup>266</sup>

139. On December 21 the U.S. Supreme Court ruled that private, white-only schools established to duck court-ordered integration of public schools were not entitled to tax-exempt status,<sup>267</sup> and the following week Judge Hand enjoined the Mobile County School Board from complying with Gov. Wallace's anti-busing law.<sup>268</sup>

140. On December 28 the three-judge *Weissinger* court granted the State a 30 day extension of time for filing a progress report on action taken to equalize property assessments.<sup>269</sup>

141. On January 2 officials of the Concerned Parents for Public Education announced that Judge Pointer's decision invalidating the state school choice law had been appealed to the Fifth Circuit. Meanwhile, all five of the litigating white children were attending white schools near their homes instead of the black schools they were assigned to by the federal court desegregation decree.<sup>270</sup>

142. Then, two days before the Legislature was to reconvene, the three-judge federal panel ordered the Alabama Legislature reapportioned into 105 House seats and 35 Senate seats, all representing single-member districts. However, the court did not order mid-term elections later in 1972, allowing the

current terms of members to stay in effect until 1974. In approving single-member districts, the court accepted a reapportionment plan submitted by the plaintiffs' attorneys, Morris Dees of Montgomery, David Vann of Birmingham, and others. One effect of the plan ordered by the court would be that more blacks would be elected to the Legislature in 1974 from new districts where the black population is predominant.<sup>271</sup>

143. On January 4, Rep. Thomas Reed and the NAACP filed a federal court action seeking the hiring of black state troopers.<sup>272</sup>

144. When the Legislature reconvened on January 5, 1972, Governor Wallace sent a message to the Senate saying “the blame for this (reapportionment) rests squarely upon the Legislature,” and warned the Senate that “it will be a sad day for all Alabamians if you abdicate your responsibility and allow the federal courts to pre-empt the field of state taxation.” In the same message, Wallace renewed his call for passage of his bill providing funds for 100 additional state troopers to patrol public schools.<sup>273</sup>

145. On Thursday, January 6, the Senate reached a compromise. Both factions were stung by Wallace's message: “The theatrics and clowning of the ‘minority group’ in this body is an invitation to the federal courts to again interfere in the internal affairs of a sovereign state,” the Wallace message said.<sup>274</sup> But on

Friday, January 7, the rural bloc began filibustering again.<sup>275</sup>

146. “With the help of a fast gavel wielded by Lt. Gov. Jere Beasley, the Alabama Farm Bureau’s forces in the Alabama Senate rammed through the bureau’s classification-of-property plan on ad valorem taxation late Saturday night after shutting off debate with a cloture motion.”<sup>276</sup>

147. On Sunday, January 9, 1972, the powerful farm bloc rammed through a classification formula for property taxes in an historic Sunday session, but the final plan was expected to be drawn in a joint Senate-House conference committee.<sup>277</sup> “Several amendments were passed without any explanation, simply a reading by the reading clerk. As a result, not many members knew just what the bills they passed Sunday morning did, in detail.”<sup>278</sup>

148. According to State Senator Robert Edington, “Race was not mentioned openly, nor was it ever discussed on the floor of the Senate and probably not on the floor of the House. However, everyone understood that race was the underlying issue. By that time, most of the public schools in the rural areas of Alabama had become almost totally African American, with very few whites attending. Therefore, the rural counties would be paying for the education of the African Americans, and the white citizens of those blackbelt counties with children would be paying out of their own pockets for tuition at one the local basically all white

academies.”<sup>279</sup>

149. On Wednesday, January 12, 1972, the House concurred in Senate property tax bills and send them to Wallace for signature. With McCorquodale at the microphone the House took but 45 minutes to all three of the Senate substitute bills, with the promise that relief legislation will be passed in this session regarding local jurisdictions' adoption of their own assessment ratios.<sup>280</sup>

150. The next day, Governor Wallace announced his intentions to enter the Florida Democratic primary as a presidential candidate during a meeting with politicians and supporters in the Senate chamber of Florida's state capitol.<sup>281</sup>

151. The special session in which Amendment 325 passed was an exercise in the raw power of Governor George Wallace, his Farm Bureau constituents, and Black Belt legislators to ram through a complicated tax measure that very few legislators even understood.<sup>282</sup>

152. Amendment 325 was ratified by the voters on May 30, 1972.<sup>283</sup>

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

Wallace, in the Fall, August, of '71, threatens to close some schools. This gave him a very powerful issue looking toward the 1972 presidential election, and in that context, when he called for a series of special sessions of the legislature to deal with, he said,

reapportionment--they had to act on reapportionment at this exact same time--he called for an anti-busing piece of legislation, which was passed and of course was declared unconstitutional. The same night he called for that, he calls for a lid bill to cap property taxes in Alabama in the context of burgeoning private schools and massive exit from public schools in Alabama because of busing. He says, "we're going-we're going to cap property taxes, make sure that no federal judge"--now, he's talking ... about his old colleague, college mate, law school mate, Frank Johnson, the man who ... during *Lee versus Macon*, the ... original desegregation case throughout Alabama, he'd said ... Judge Johnson, needed a barbed wire enema. Well, you know, that kind of baiting of federal judges, ... is applied then to Pointer in Birmingham, to Pittman in Mobile. It's clearly the kind of racial code messages that Wallace has perfected already at this point he applies in Alabama in the fall of 1971 in calling for a shoring up of the caps on property tax which became the Lid Bill.

...

Wallace "embraced the Alabama Farm Bureau Federation's plan for a graded system. He said he didn't want to get into the details. He just wanted to remind everybody that they shouldn't have to pay any more taxes. his was ... a mandate of a federal judge or three federal judges, and people shouldn't have to do it in the climate where ... these same judges are making their children ride hundreds of miles a day on buses."<sup>284</sup>

154. The Chairman of the Senate Finance and Taxation Committee when the Amendment 325 bill passed was Walter Givhan of Dallas County, who was at that time head of the White Citizens Council.<sup>285</sup> The result of Amendment 325 was to legalize the de facto classifications in effect when *Weissinger* was filed in 1969. The reappraisal period was stretched over seven years. The "local option" Amendment 325 authorized counties to vary their assessment ratios and tax rates in a manner carefully constrained to maintaining the status quo. Bill Sellers, political

commentator for the Mobile Press Register, explained:

Various technical, legal or constitutional reasons were voiced for the opposition to local option, but some observers feel that the main objection stems from the fact that in a growing number of Alabama counties, blacks are gaining control of county governments. Senators representing some of these counties are considered fearful that the black political leaders, who also enjoy voting majorities, will exercise local options and set property taxes at the highest rates possible in order to raise additional funds for their governmental operations. These taxes will be paid by the property owners, considered by the senators to be white owners of large farms and corporate interests with large timberland holdings.<sup>286</sup>

155. The convergence in one year, 1971, of four federal mandates requiring re-enfranchisement of African-Americans, reapportionment of the Alabama Legislature, fair reassessment of all property subject to taxes, and school desegregation, had thus created a “perfect storm” that threatened the historical constitutional scheme whites had designed to shield their property from taxation by officials elected by black voters for the benefit of black students.<sup>287</sup>

156. The provision in Amendment 325 giving the Legislature authority to vary the assessment ratios from county to county, and the laws enacted pursuant to it, Ala.Code § 40-8-1 (1975), were challenged on non-racial equal protection grounds in a separate federal lawsuit filed in Mobile. On April 21, 1978, Judge Hand ruled that the statutory variations of assessment ratios among the counties violated the Equal Protection Clause of the Fourteenth Amendment. *McCarthy v.*

*Jones*, 449 F.Supp. 480, 484 (S.D.Ala.1978). Judge Hand declined, however, to strike down Amendment 325 in its entirety on the theory that it was possible that the Legislature could vary the assessment ratios among counties in a rational way that met equal protection standards. *Id.* at 485.<sup>288</sup>

157. By order entered March 11, 1974, the three-judge court in *Weissinger v. Boswell* extended the deadline for reappraisal of all property statewide to September 17, 1978.<sup>289</sup> By order entered April 8, 1977, the court further ordered that “each county of the State of Alabama shall collect taxes for the tax year commencing on October 1, 1978, based upon appraisal at its fair and reasonable market value, certified by the Commissioner of Revenue as aforesaid.”<sup>290</sup>

158. As court-ordered reappraisals proceeded, it became clear that farm and timber land would be assessed at substantially higher values than they had been for a century. On behalf of the Alabama Farm Bureau, Rep. Rick Manley failed in four regular sessions, including the 1978 regular session, to get the Legislature to pass a bill package amending the 1971 Amendment 325 to lower the assessment ratio for farm and timber land and to have them assessed at their current use value, rather than fair market value.<sup>291</sup> Manley’s bill package was opposed by AEA, the Alabama Association of County Commissioners, the Alabama League of Municipalities, and others because of the negative effect it would have on local

revenues going to schools and local governments. Their main objection was to the current use provision, “which is being pushed strongly by the Alabama Farm Bureau and Manley.”<sup>292</sup> Manley’s Lid Bill passage failed to pass the 1978 regular session, even though “Gov. Wallace ha[d] already told the lawmakers that they will be back in Montgomery in special session this election-year summer if they fail to act on some type lid legislation.”<sup>293</sup> Wallace gained additional leverage for a special session when the education budget also failed to pass the regular session.<sup>294</sup>

159. Even though the 1978 regular session of the Legislature ended on April 24 without an education budget, Governor Wallace delayed calling a special session until July 31, only five weeks before the September 5, 1978, primary elections.<sup>295</sup> He timed this special session strategically to ensure that opponents of the Lid Bill could not filibuster again<sup>296</sup> and that most lawmakers would have to support it or be faced with campaign rhetoric by the Governor in the upcoming election that they had raised property taxes.<sup>297</sup>

160. Wallace took personal charge of getting the new Lid Bill amendment passed. His remarks to the legislators when the special session opened on July 31, 1978, recalled the coded rhetoric he had used to get the 1971 Lid Bill amendment passed, attacking the federal courts,<sup>298</sup> “special interests,”<sup>299</sup> and a “minority”<sup>300</sup> in the Senate.

161. In these circumstances, the AEA<sup>301</sup> and some black House members<sup>302</sup> realized they would be unable to block passage of Wallace's Lid Bill in the special session, so they bargained with the Governor for the best deals they could get on other issues.<sup>303</sup>

162. In August 1978 Governor Wallace's Lid Bill package was passed in the minimum five days required of a special session. The legislators essentially rubber-stamped<sup>304</sup> everything that Wallace asked for. Sen. Joe Fine was quoted saying, "Wallace could have saved money if he had put all of that in an executive order and let the presiding officers of both houses sign the thing."<sup>305</sup>

163. Rep. Alvin Holmes and four other black House members voted yes on final passage of the Lid Bill in the House.<sup>306</sup> Five other black House members voted no.<sup>307</sup> Sen. Clemon was the sole no vote on final passage of the Lid Bill in the Senate, with Sen. Pearson, who had opposed it, not present.<sup>308</sup>

164. Amendment 373 was submitted November 7, 1978, and proclaimed ratified November 20, 1978 (Proclamation Register No. 3, p. 97).

165. In the years between passage of Amendment 325 in 1971 and the *Weissinger* court's 1979 deadline, Governor Wallace made an effort to break the statutory earmarking of the Special Education Trust Fund. He was opposed principally by the Alabama Education Association ("AEA"), which had merged

with the all-black Alabama State Teachers' Association (“ASTA”) and was viewed as a liberal, pro-black lobby. AEA was also one of the opponents of the Lid Bill. As the statewide reassessment program drew to its conclusion and property assessments were going up, again, the Farm Bureau succeeded in getting the Legislature further to amend the state constitution to preserve the status quo of historically low property taxes. In 1978, Governor George Wallace appealed to the legislature to approve new legislation designed to circumvent the effect of *Weissinger v. Boswell* by providing a set of ad valorem tax laws which would produce comparable revenues, both state and local, in the same amounts as those produced before the court mandate. One piece of this package was Amendment 373, an amended Lid Bill, which was adopted in the Second Special Session and ratified in the November 7, 1978, general election by a vote of 313,577 to 205,782. Only five counties, Jefferson, Shelby, Walker, Blount, and Wilcox, voted against the measure.<sup>309</sup>

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

block increases in local property taxes. All of the those events revolved around the rise of black political power: (1) school desegregation, which undermined support for public schools; (2) court challenges to the widespread under-assessment of property for tax purposes, culminating in the 1971 federal court decree in *Weissinger v. Boswell*, which required uniform property assessments statewide; (3) corresponding pushes by the Farm Bureau<sup>310</sup> and forestry interests to obtain additional constitutional protection from legislative or local tax initiatives; (4) legislative reapportionment resulting in an increase in the number of black legislators, which created a corresponding growing concern on the part of white property owners about their property taxes being raised; and (5) passage of the 1965 Voting Rights Act, re-enfranchisement of blacks, and corresponding litigation challenging racially discriminatory election structures.<sup>311</sup>

167. There is a direct line of continuity between the property tax provisions of the 1875 Constitution, the 1901 Constitution, and the amendments up to 1978. “[T]he fact is, that this is a set of assumptions and a set of institutional relationships and a set of social relationships that ... is created by historical events, that is historically created and ... interrelated so that the events feed onto each other and it makes a single understandable whole.” The historical fears of white property owners, particularly those residing in the Black Belt, that black majorities

in their counties would eventually become fully enfranchised and raise their property taxes motivated the property tax provisions in the 1901 Constitution and the amendments to it in 1971 and 1978. (“The limits are always associated with white supremacist intent, and that occurs in 1875, strongly reinforced in 1901, and essentially uninterrupted, unbroken, ... as main public policy commitments of the state through the 1970's.”).<sup>312</sup>

168. Dr. Norrell agreed with another point Dr. Thornton made in his deposition:

[A]ll tax policy made or revised in the 20th century has effectively been made to conform with the commitments of taxation capped by constitutional mandate, reinforced by limits on local control, local authority to tax, and that of course was the result of fears, especially among Black Belt counties, that in the future some re-enfranchised black electorate would raise property taxes, the very fear that Sam Engelhardt acted on starting about 1950. And Thornton then takes us into the more modern period and effectively says, you know, these themes continue right through the important policy decisions made with regard to property taxes in 1971 and shored up to an extent in 1978.

Dr. Norrell summarized his testimony as follows:

[S]tate policies about property taxes were formulated in the context of the racially charged circumstance of Reconstruction and the immediate post Reconstruction years. Those property tax policies were created to maintain the lowest possible taxation because property taxation is associated with funding for education for black children, and ... that's anathema to this very conservative white supremacist group that gains dominance in 1875, that reinforces and sort of strengthens its structure in the 1901 [constitution], the time at which

the vast majority of black voters are taken out of the polity in Alabama, and that those policies of minimal property taxes, of white supremacist control of local government, of minimal support for black education in Alabama are effectively uninterrupted even through the various anxieties and concerns that white supremacists had in Alabama as a result of the coming ... civil rights movement and the reality of the civil rights movement. And even after we think of the modern civil rights movement having succeeded with the Civil Rights Act of '64, the Voting Rights Act of '65, that those same forces are able to further reinforce the historic commitment to minimal property taxation, minimal support for education now because of course it ... means education, desegregated or integrated racial education in Alabama. So, ... it's a story for me and for Thornton of powerful continuities established in 1875 or thereabouts and continuing effectively uninterrupted in the making of policy through 1978, and ... folks in Alabama still live very much under policies that were effectively created in 1875 and continuously reinforced up through the years.

Q. And the 1971 and 1978 lid bills reinforced those same policies?

A. That's right.

Indeed, Black Belt and urban industrial interests successfully used the argument that it is unfair for white property owners to pay for the education of blacks to produce all the state constitutional barriers to property taxes from 1875 to the present, including the 1971 and 1978 Lid Bill amendments.<sup>313</sup>

169. The statute implementing Amendment 373 and passed concurrently with it in the 1978 special session provided for the value of current use property to be determined by the Department of Revenue.<sup>314</sup> As the next statewide reappraisal approached in 1982, Black Belt landowners sued, complaining that the valuation of

farm and timber land at its current use fair market value, rather than at its highest and best use, was still too high, threatening to raise their taxes.<sup>315</sup>

170. In response, in the 1982 regular session, Rep. Manley, on behalf of the Farm Bureau, was able to get the Legislature to amend the enabling act for Amendment 373 and to insert in the statute a strict formula for computing current use value.<sup>316</sup> This statutory formula reduced the average value of farm and timber land to less than \$500 per acre. With the 10% assessment ratio provided by Amendment 373 reducing the assessed value to \$50 per acre, that yields a property tax of 5 cents per mill per acre.<sup>317</sup> The Farm Bureau's use of election year pressure on legislators was successful again.<sup>318</sup>

171. Governor Fob James<sup>319</sup> vetoed this 1982 current use statute, and attached an executive amendment limiting the new formula to tracts of land less than 500 acres,<sup>320</sup> but the Legislature overrode both. All 13 black House members voted no on final passage,<sup>321</sup> as did both black Senators, J. Richmond Pearson and Earl Hilliard.<sup>322</sup> Lt. Gov. George McMillan, who was running for Governor,<sup>323</sup> was one of the prime sponsors of the current use bill.<sup>324</sup>

172. While the 1982 current use statute was winding its way through the regular session, there were unsuccessful attempts in Congress to grant tax exemptions to private schools, even if they were evading court-ordered

desegregation,<sup>325</sup> and to rein in court-ordered busing.<sup>326</sup> The Alabama Legislature passed a statute exempting private “church” schools from regulation by the State Department of Education.<sup>327</sup> A march in support of blacks’ voting rights wound its way from Aliceville to Montgomery.<sup>328</sup>

173. Following the court-ordered mid-term elections in 1983,<sup>329</sup> the number of African Americans in the Senate increased to five,<sup>330</sup> and the number of African Americans in the House increased to nineteen,<sup>331</sup> including Lucius Black representing Choctaw, Greene and Sumter Counties, Jenkins Bryant, Jr., representing Dallas, Hale, and Perry Counties, and James Thomas representing Dallas, Lowndes and Wilcox Counties. Following the state court-ordered redistricting in 1993, see *Rice v. Sinkfield*, 732 So.2d 993 (Ala. 1999), 27 African Americans were elected to the House and 8 African Americans were elected to the Senate.<sup>332</sup>

174. Judge Harold Murphy’s findings of purposeful discrimination in *Knight and Sims v. Alabama*, 458 F.Supp.2d 1273 (N.D. Ala. 2004), *aff’d*, 476 F.3d 1219 (11<sup>th</sup> Cir.), *cert. denied*, 127 S.Ct. 3014 (2007), are supported by the evidence.<sup>333</sup>