

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

INDIA LYNCH, by her parent, SHAWN KING **
LYNCH, et al., individually and on behalf of *
others similarly situated, *

Plaintiffs, *

v. *

Civil Action No.
CV-08-S-0450-NE

THE STATE OF ALABAMA; BOB RILEY, in his *
official capacity as Governor of Alabama; and *
TIM RUSSELL, in his official capacity as *
Commissioner of Revenue, *

Defendants. *

EXHIBIT 4
PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Declaration of Dr. Robert J. Norrell

Declaration of Robert J. Norrell

I, Robert J. Norrell, declare under penalty of perjury pursuant to 28 U.S.C. 1746, as follows:

I am a white citizen of Tennessee and the United States over the age of nineteen years. I reside in Knoxville, Knox County, Tennessee. I am history professor at the University of Tennessee.

I shall respond to the main assertions of the Defendants Motion for Summary Judgment in the Lynch case. I believe that in general the defendants ignore the context in which events surrounding the property-tax decisions between 1969 and 1982 took place. Historians make judgments about motive and cause of events by examining the broad context in which those events happened—what other issues were taking place that may have impinged on or shaped the discussion of contemporaneous occurrences. I disagree with Defendants' contention that historians cannot draw conclusions about possible racial motives unless explicit racial motives were acknowledged amid the property-tax debates between 1969 and 1982. By the time property taxes became a prominent issue in Alabama's political discourse in 1969, public figures were avoiding making explicit references to race because of federal oversight in so many areas of public life. It is clear from the political discourse of the time, however, that racial motives continued to exist in the political discourse in the form of language about "federal interference" and "outside control" which undermined the "Southern way of life."

I shall respond to the main assertions of the Defendants Motion for Summary Judgment in the Lynch case, included in bold letters, as they relate to my research in this case.

A. None of Plaintiffs' history experts define the issue they are addressing. [p. 58]

1. I have made it quite clear in my testimony in both *Knight* and *Lynch* that I am studying *the issue of motivation for the creation of Alabama's property tax structure*. My historical conclusions in both cases all address this issue, to wit paragraphs 2-12 below:

2. Since Alabama's beginnings as a state, there has been a close association of taxation with the presence of African Americans. Originally slaves, blacks were the main source of state revenue, with a head tax on each slave according to age. At the same time blacks in antebellum Alabama received no benefit from state revenue. Starting in 1832, state law made it illegal for blacks to be educated, and therefore being African American and getting educated were mutually exclusive realities until 1865.

3. Tax support for public education in antebellum Alabama was weak, with lowest support for it coming from the Black Belt region of the state where most wealthy whites educated their children privately. Tax on land in Alabama was secondary as a funding source for the state in the antebellum period, with especially strong opposition to land tax coming from whites with modest landownership.

4. White hostility to black education soared in the post-Civil War years in Alabama. The

initiative for black education came from black Alabamians, with assistance from northern philanthropic groups. 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.

5. Only with the dominant authority of the national government under congressional Reconstruction in 1867 and 1868 did Alabama whites capitulate to allowing blacks to become partial beneficiaries of state revenue. The main way that blacks benefitted during the Reconstruction period between 1868 and 1874 was through the creation of segregated but equally funded schools.

6. 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 county and state legislative offices during the late 1860s and 1870s. Blacks were elected county commissioners, judges, tax assessors, and state legislators. When white “Redeemer” Democrats wrested control of the state government with violence and vote fraud in 1874, they convened a constitutional convention in 1875 and wrote a new “Redeemer” constitution. This constitution abolished the State Board of Education, set severe limits on property taxation, and created mechanisms to undermine local taxing and governing authority, including mechanisms to remove authority from local officeholders to a statewide authority like the governor when blacks were elected to local office. The 1875 Constitution thus set the policy of vesting taxation power at the state level and removing it from local control to prevent majority-black counties from raising taxes on whites. A state superintendent of education in the early twentieth century explained this decision: “When the constitution of 1875 was adopted, the people of the state, for their own protection against exploitations by those from without and within who had recently come to exercise the right of suffrage voluntarily surrendered the right of local taxation for schools.”¹

7. The Redeemer government moved to insure that blacks received as little benefit as possible from state revenue. The now-dominant Conservative Democratic element, based heavily in the newly-powerful Black Belt, were unrelenting in their opposition to black education. After 1875, property assessments and collections were in the hands of local whites who practiced a haphazard under-assessment and under-collection of property taxes, especially in the Black Belt.

8. Opposition to black education increased among whites during the economic depression of the 1890s, a time when some urban counties wanted to improved their schools for white children. Still governed by the Reconstruction mandate for equal and segregated schools, whites began to agitate for the separation of school funds by race. A constitutional amendment to separate the school funds by race of taxpayer passed the state legislature in 1893 but failed to get enough votes in the ratification election to make it law.

¹ See Fletcher Harper Swift and John Harold Goldthorpe, *Studies in Public School Finance: The South: Arkansas, Oklahoma, Alabama, Tennessee* (Minneapolis: Univ. of Minn. Press, 1925), p. 102 (quoting Superintendent Feagin, Alabama Dept. of Education Report, 1916, p. 30)

9. But the ability to discriminate by race on the funding of schools had already been facilitated by the 1891 Apportionment Act, which gave local school officials the authority to spend state funds as they deemed fit. The Apportionment Act meant that in the Black Belt, white officials could generously fund schools for white children by taking blacks' fair share of the school funds. Therefore, Black Belt whites enjoyed relatively good schools under the existing arrangement, and they could fight any effort to raise property taxes without their own children suffering. This resulted in a drastic inequality between expenditures on black and white schools, with expenditures for white teachers in one Black Belt county actually 28 times greater per child than on black teachers.

10. In 1901 a state constitutional convention was convened for the express purpose of disfranchising blacks. By prior agreement, the convention was prevented from altering the 1875 Constitution's limits on property taxation, and therefore the limits set in 1875 controlled, though the limits on property taxation instituted in the 1901 Constitution were even lower. Thus the tradition of state-level control over local taxing authority, created in the 1875 constitution, was perfected in the 1901 constitution.

11. The disfranchisement of blacks in 1901 was understood by white Alabamians as a permanent disbarment of blacks from the state's democratic processes. By so intending, and by so largely succeeding far into the twentieth century, white voters ensured that the state's interests were virtually the total domain of whites for more than two generations. For whites over the course of the next 70 years or so, the idea of blacks influencing the outcome of state policy was deemed unthinkable or revolutionary.

12. 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.

13. Paragraphs 2-12 make clear that I have identified the issue that I am addressing in my research—the motivation for creating Alabama's particular form and practice of property taxation.

B. "Prior to their testimony in Knight or this case, none of the historians had written that any of the post-1970 Laws either had a racially discriminatory impact or were enacted with racially discriminatory intent." [p. 58]

14. I have in fact written much that pertains to the issue of motivation for the creation of Alabama's property tax structure. I will note several in the paragraphs that follow.

15. In *Reaping the Whirlwind: The Civil Rights Movement in Tuskegee* [New York, 1985; revised ed. Chapel Hill, 1998], I described the central role of Samuel M. Engelhardt in opposing black voting rights, beginning with his election to the state House of Representatives in 1950 and then to the state senate in 1954. He became state head of the White Citizens' Councils. Engelhardt entered politics because of his concern over property taxes. The first quote in the following passage was made in an interview with me in 1979, after most of the Lid Bill had been enacted.

Behind his [Engelhardt's] concern about black voting lay economic self-interest. "Everybody has an angle when they get in [politics]. I was worried . . . about the tax assessor . . . because of all our holdings," he said later, 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." [p. 80]

16. Engelhardt was representative of many white Alabamians who found the idea of school integration unthinkable. I wrote in *Reaping the Whirlwind*:

Engelhardt's first legislative initiative was an effort to protect segregation in public schools. He submitted a bill in the state legislature that would end public education in Alabama should the United States Supreme Court outlaw segregated schools. The bill was prompted in part by *Briggs v. Elliott*, the NAACP's challenge to segregation in Clarendon County, South Carolina, school system, a case that would become a companion suit to *Brown v. Board of Education*. If the court should strike down segregated schools, "there's nothing left to do but . . . shut off state appropriations for education and establish private schools," Engelhardt told the legislature. "Now is the time to see who wants to stand up for preservation of our segregation policy—who does not," he said, drawing distinction that left no room for debate, at least among the vast majority of white Alabamians. "I do not want to see a single brick removed from the wall of segregation." [pp 80-81]

17. In *Reaping the Whirlwind*, I wrote about the case of *Gomillion v. Lightfoot*, which challenged the state act that re-drew the boundaries of the city of Tuskegee to remove all but a few voters—the notorious Tuskegee gerrymander. This decision undermined the authority of the Alabama state legislature to contrive various electoral structures to dilute the authority of black votes. It demonstrates the waning authority of the Black Belt in the 1960s to dominate Alabama's government.

Gomillion v. Lightfoot was a significant decision in American legal history. Often cited later as an instance when the Court weighed heavily the "inevitable effect" of legislation, the *Gomillion* decision was a departure from the Court's historic

avoidance of the question of legislative motive. Perhaps more important, it set a precedent for the Court's negating a political boundary fixed by a state. In the next four years the Court would make two landmark decisions against malapportioned legislative districts, *Baker v. Carr* [1962] and *Reynolds v. Sims* [1964], which would result in legislative reapportionment that ended the rural dominance of state governments in the South and elsewhere. [124]

18. In *Reaping the Whirlwind*, I relate the events surrounding the attempted desegregation of Tuskegee High School in 1963, which Governor Wallace stopped by sending state troopers to keep students and teachers out of the school on the first day of classes. This explains Wallace's cynicism about using the race issue and the intervention of federal power to advance his political career.

Why had Wallace closed Tuskegee High? He understood that most white Alabamians feared the changes taking place in their society and that they desperately hoped for some means to maintain the status quo. Wallace nurtured those false hopes—and endeared himself to many white Alabamians—by posing as the defender of segregation against an aggressive federal government. For the strategy to succeed fully, he needed to make the federal government use force to desegregate Alabama's public schools. "I'm gonna make 'em bring troops into this state," he reportedly told Richmond Flowers. The image of armed federal troops taking Negroes into white schools would make powerful propaganda for his political campaigns, Wallace clearly believed. He closed Tuskegee High School, then, to try to provoke the Kennedy Administration into using federal power to enforce the desegregation orders. If Tuskegee High had desegregated peacefully, as it apparently was going to, Wallace's strategy might have foundered: He not only would have failed to elicit a show of federal power, but would have had to confront an example of whites' accepting desegregation willingly. The whole posture of defiance would have been undermined. [p.146]

19. In *Reaping the Whirlwind*, I note that Wallace took an active role in starting the private school in Tuskegee in 1963, an indication of the official opposition to public education that arose from public school desegregation. "Governor Wallace solicited contributions from state employees for Macon Academy; in October [1963] they donated more than two thousand dollars." [p 151] At the same time Wallace made the same appeal to the annual meeting of the Alabama Farm Bureau.

20. In *The House I Live In: Race in the American Century* [2005], I analyzed at some length Wallace's 1963 inaugural address, his "Segregation Forever" speech. In it I analyzed the Wallace political strategy that still applied during the time of the property-tax debates of the 1970s.

By the time Wallace made this speech, rational white southerners had recognized that the end of segregation was near, and Wallace was not doubt one who did. But he also knew that most white Alabamians—and many white Americans generally—wanted desperately to hold on to the privileges they enjoyed in a white-supremacist society. He further recognized that the people

would reward leaders who gave hope of maintaining white supremacy, over and against the reason that indicated its inevitable demise. His was a perfect cynicism. [p. 204]

C. “The issue relating to legislative intent on this Motion is not whether the racial turmoil Alabama experienced in the 1950s and 1960s—be it from voting enfranchisement and school desegregation or from redistricting—influenced thought or action in Alabama generally or the Legislature specifically. It is whether the Legislatures in 1971, 1978 and 1982 had any awareness that the property tax provisions might adversely effect [sic] African Americans compared to whites and passed these laws at least in part because of this adverse effect. None of the Plaintiffs’ history experts addresses this issue.”[pp. 58-59]

21. I have in fact addressed this issue. There is abundant evidence to show that race issues dominated the political environment during the times in the 1970s and early 1980s that the property-tax provisions were put in place. The Defendants’ Motion presumes a break of thought and action that did not exist between the “turmoil Alabama experienced in the 1950s and 1960s” and the 1970s when new property tax limits were enacted. One powerful continuity was the demonization of federal courts that Governor George Wallace had perfected when he attacked federal judges like Frank M. Johnson, who made the statewide school desegregation order in *Lee v. Macon*. He connected Judge Johnson to the US Supreme Court that had ruled in the *Brown* decision and to other courts that had enforced equal protection against disfranchisement and segregation in public accommodations in Alabama. The assault on federal judges became a coded message for defense of white supremacy, and it was a message that was delivered by Wallace and others in the 1970s.

22. Another powerful continuity between events in the 1950s and 1960s was the continued presence of many of the state’s leading segregationists in the Alabama legislature. Most important was Senator Walter Givhan of Selma, leader of the White Citizens’ Councils in Alabama in the 1950s, of the Alabama State Sovereignty Commission and the Alabama Farm Bureau Federation in the 1960s and 1970s, and the Rural or Farm Bloc in the 1970s. In 1954, Senator Givhan had told a group of white Alabamians that the real purpose of the campaign of the National Association for the Advancement of Colored People to end segregation in the schools “To open the bedroom doors of our white women to Negro men.” And what will happen if the campaign succeeds? Givhan asked. “The Negroes will see to it that the nation gets a Negro vice president, and after that happens, what would prevent them from assassinating the President and making the Negro President?” [Time, December 20, 1954] Senator Givhan served in the Alabama legislature until 1976 and was a leader of the Farm Bureau/Farm/Rural bloc that effectively updated the historic limits on property taxes in Alabama.

23. Key actors in the passage of property-tax limits in the 1970s acknowledged the continuities. House Speaker Sage Lyons told the Alabama Farm Bureau convention in the fall of 1971 that “the Alabama Legislature today is not a great deal different than the Legislature of 1901, the year our present Constitution was adopted.” Lyons offered the observation in part to call for a full-time legislature. Lyons offered more truth to the Farm Bureau: The legislature had awesome power over people’s incomes, property, health, and safety. The message was clear that Farm

Bureau power in the legislature depended on friends like Sage Lyons, a strong supporter of the Farm Bureau lobby. [*Birmingham News*, 11/16/1971]

24. School desegregation was hardly a settled question after the time that the Civil Rights Act of 1964 and the Voting Rights Act of 1965 were the law of the land. The federal-court-ordered desegregation of Alabama's public schools that began in 1963 accelerated the movement to private schools among white Alabamians. Governor John Patterson had supported the effort in general, but his successor Governor George Wallace made promotion of private, segregation academies a central focus of his political action. Wallace openly solicited support among state employees for the state's first segregation academy, Macon Academy in Tuskegee. Noting what state employees had done, Wallace made a specific appeal at the Alabama Farm Bureau annual meeting in 1963 for its members to give money to support the creation of private schools rather to accept desegregation. A private school was founded in Selma in anticipation of school desegregation in fall of 1965. [*Alabama Journal* 7/27/65] A major sponsor of the Selma private school was State Senator Walter Givhan, a leader in the White Citizens' Councils of Alabama and a longstanding officer in the Alabama Farm Bureau Federation. The Alabama Senate passed a tuition-grant bill for white students who don't want to attend school with blacks. This action reportedly would have taken about \$130,000,000 from public education. The Senate also passed bills reducing the sales and use tax on non-motorized farm machinery from 4 to 1.5 percent, sponsored by Farm Bureau supporters in the Senate, a measure that took funding from public education. "Action by the Senate Friday constituted perhaps the biggest legislative day in Sen. Walter C. Givhan's long career. The Dallas solon, senior member of the legislature, was the sponsor of the tuition grant bills as well as the farm tax exemptions." [*Montgomery Advertiser*, 8/7/65] Senator Givhan remained an un-rehabilitated, and still extremely powerful, segregationist in the 1970s.

25. The Alabama Farm Bureau supported Governor Wallace's campaign to save school segregation. U.S. Department of Health, Education, and Welfare guidelines and stronger court enforcement orders prompted Governor Lurleen Wallace in 1967 to call for massive resistance to school desegregation orders in the state. She and her husband accelerated the demonization of federal judges. In a letter to Governor Lurleen Wallace, the Alabama Farm Bureau president J. D. Hays quoted to her from a resolution passed about her at the recent AFBF annual meeting: "Whereas, the Federal Government continues to infringe on the rights of the states as well as individuals and to rule with absolute control, we do hereby commend Alabama's Governor Lurleen B. Wallace for her efforts to defend our rights and voice the opinions of Southern citizens." [J.D. Hays to Wallace, November 30, 1967, Hays Papers, Auburn University] The Alabama Farm Bureau continued to support the Wallaces' efforts to oppose school desegregation more than a decade after the *Brown* decision but just two years before it began a sustained campaign to keep Alabama's property taxes as low as possible.

26. State Representative Sid McDonald in 1967 declared that Alabama's property tax system was inequitable. "Farm, timber, and rural interests, principally spearheaded by the Black Belt region's disproportionate legislative representation, have intentionally constructed Alabama's tax program, at all levels of government, for their own benefit. This legislative control designed Alabama's tax program to exempt, in effect, their major asset: land." What this meant, McDonald said, was that rural interests have been able to enjoy almost complete freedom from

taxation by forcing urban taxpayers to foot the bill for schools, hospitals, and other local institutions. [*Alabama Journal*, May 29, 1967]

D. No [plaintiff historian] identifies a single legislator who was aware of any racial dimension in any of the property tax provisions. [p. 59]

27. See information regarding Walter C. Givhan in paragraph 22 and 24 above, Sage Lyons in paragraph 23, and Sid McDonald in paragraph 26.

E. [The issue] is whether the Legislatures in 1971, 1978 and 1982 had any awareness that the property tax provisions might adversely effect [sic] African Americans compared to whites and passed these laws at least in part because of this adverse effect. [pp.58-59]

28. On the matter of hostility to public education and promotion of private schools, the *Alabama Journal* reported on August 7, 1965: “Sen. Ed Horton greeted this new, oblique approach to school segregation by saying, ‘as students leave to go to private schools and that the \$185 [per student] with them, there will be a weakening of the public school. . . . You will destroy the public schools.’” In 1966 Wallace and his allies campaigned against and defeated Senator Horton for re-election. On the same day in 1965, Governor George Wallace was working on bills to limit the number of people who could participate in civil rights demonstrations and another bill to ban Communist and Communist sympathizers from Alabama college campuses. [*Alabama Journal*, 8/7/65] In other words, after the Civil Rights Act and Voting Rights Act were law, hostility to civil rights activism remained a strong influence in Alabama politics. Also in August 1965, the *Birmingham News* reported: “Sen. Bob Wilson of Walker said the tuition-grant bills was for the ‘economic and social benefit’ of five or six Black Belt counties which are facing school desegregation this fall.” [*Birmingham News*, 8/7/65]

F. Governor Albert Brewer served as Speaker of the House, Lieutenant Governor, and Governor over the course of sixteen years in Alabama government. Id. He never saw or heard any indication that these property tax provisions might discriminate against African Americans as compared to whites in any way, nor did he observe any indication of a racially discriminatory motive in any property tax bill considered during his sixteen year tenure in Alabama government. [p. 52]

29. Governor Albert Brewer opines to Defendants on the basis of his memory of events forty years ago, and his memory is faulty on this matter. In 1969 Governor Brewer gave an “emotion-rousing” anti-federal court speech to the Alabama Education Association, but then left out the anti-federal-court passage when talking to Alabama State Teachers Association. An editorial in the *Birmingham Post-Herald* reprinted in the *Alabama Journal*, both widely read state newspapers, made clear the connection between taxes and racial inequality. It strains credulity to believe that many legislators or other public officials missed the connection the editorialist made. The editorial criticized Brewer for attacking federal courts while at the same time he has been trying to raise money for education and facing opposition from “special interest groups who insist that education is somebody else’s concern.” “Whether he admits it or not anyone with sufficient understanding of Alabama public affairs to be governor of the state also should understand that recent court decisions on education are the natural outgrowth of policies which,

over a span of several generations, distributed education funds on anything but an equal basis to Alabama youngsters.” The editorial writer continued: “If those governors, those legislators and those educators who have managed the state’s education affairs for the past 75 years had been truly dedicated to the proposition that every child should have an equal chance for equal schooling, Federal judges would have been able to go fishing a great deal more frequently in the past several years. And use of their names very likely would have offered little political advantages to today’s office holders and office seekers. The governor declared that his ‘heart cries out’ for the future of children whose education is affected by decisions of Federal judges. It would take a very sophisticated computer to determine the number of cries torn from the hearts of parents who, over many years, saw their hopes for their children blasted by inequities in distribution of funds for instruction and construction.” [Alabama Journal, 3/17/69]

30. School desegregation was as pressing an issue for Alabamians in 1969 as it had ever been, including during the time of the first token desegregation in 1963. A series of federal court decisions and administrative orders between 1965 and 1969 undermined the “freedom of choice” school desegregation policies that had allowed the tokenism in school desegregation of the mid-1960s. Stronger mandates for real school integration appeared finally to signal the end of segregated public schools. By 1969 busing to implement comprehensive desegregation for the first time had become the main issue. Parents no longer could choose which public school their children would attend. U.S. Senator Jim Allen announced his new constitutional amendment to give states full control over schools, away from federal executive and federal courts. [Alabama Journal, 3/17/69]

31. Legislators continued to act on white-supremacist purpose at the same time they pushed for property-tax limits. Senator Walter Givhan, leader of the Farm Bureau and the “Rural bloc” in 1969 and afterward, asked at state budget hearing for funding for the State Sovereignty Commission, of which he was also a member. In the 1966 election, the Sovereignty Commission distributed Pro-Wallace flyers in white schools. The Sovereignty Commission continued in 1969 to fight civil rights activism, including grants to the Citizens Councils of America. [Alabama Journal, 3/18/69]

32. Another explicitly racial issue that shaped the context of politics in the 1970s was legislative reapportionment. Forty years later, none of Defendants’ depositions yield evidence of this important contextual reality. In 1964 the US Supreme Court ruled in *Reynolds v. Sims* that the malapportioned Alabama legislature violated the one-man, one-vote principle inherent in the US Constitution. This decision meant that the Black Belt’s domination of the state legislature would soon come to an end, because since its last apportionment in 1901, the state’s population had shifted heavily northward and into cities. This structural realignment of electoral power in the state potentially undermined the Black Belt’s anti-property tax policies, because urban interests in the state openly advocated both the equalization of assessments and a raise in tax rates. The promise of a comprehensive legislative reapportionment after the 1970 census meant a big expansion of power for urban, suburban, and black interests in the state and a drastic diminution of Black Belt power. Documents from the Farm Bureau, including its longtime president James Hays, at Auburn University, clearly reveal the preoccupation of the Alabama Farm Bureau with the loss of political influence that would eventually result from reapportionment. The Alabama Farm Bureau’s 1964 annual report stated “the concern with which farmers and other rural

residents must view recent population trends and the federal court's 'one man-one vote' philosophy" had worried the organization over the past year, and bills to reapportion the legislature had not passed. "This will be a serious problem for consideration at the next regular session. In the background looms the court's ruling that both houses of all state legislatures must be elected on a population basis." [President's Report 1964 Annual Meeting, J.D. Hays Papers, Auburn University]

33. The Alabama legislature was ordered "reconstituted" [reapportioned] in 1965 as a result of the *Reynolds* case. "It is well known to anyone with a speaking acquaintance with Alabama politics that the Legislature," the *Alabama Journal* editorialized in March 1969, "when it reconstituted itself four years ago to satisfy the Federal Courts, did so with the view of keeping the law-making body white. The purpose was accomplished primarily in two ways. First, the multi-county districts were drawn in such a manner that counties with heavy black populations were counterbalanced by counties with white majorities. Second, in those counties which were allocated two or more seats in the Legislature, the candidates ran on a county-wide basis rather than from specific districts." The reapportionment plan met strict population equality and the federal courts accepted it with small modification, one of which was to create a single district with a chance of electing a black but "a massive white turnout voting almost exclusively along racial lines defeated that candidate." [*Alabama Journal*, 3/22/69]

34. It was understood in 1971 that the pending reapportionment of the state legislature would reduce drastically the power of the Black Belt and increase the presence of blacks in the legislature. In 1971 there were only two black representatives, and they had just been elected. In January 1972 a federal court ordered that all legislative districts had to be elected on a single-member basis, which meant that a number of districts throughout the state would have black majorities. This pointed to the election of many more black state legislators in 1974 and thereafter, which in fact did eventually yield many more black legislators. The prospect of more black legislators in the years ahead increased the pressure on the Rural/Farm Bureau lobby to get property-tax limits in place soon. The first Lid Bill passed the Alabama legislature just days after single-member districts were ordered for the legislature. By 1975 there would be 15 African Americans in the legislature.

35. White concerns about black political power were rising as the property-tax issue was reaching center stage in 1970 and 1971. The passage of the 1965 Voting Rights Act removed the disfranchising mechanisms used since 1901 to keep most blacks from voting. Hundreds of thousands of black voters registered in the late 1960s. The enfranchisement of black voters only settled the question of whether blacks had the right to vote in Alabama; it did not ease the anxieties among whites about black empowerment. Blacks began to get elected to local offices in Black Belt counties. In 1970 the first two blacks were elected to the state legislature since Reconstruction. Blacks were elected sheriffs of three counties in 1970. Richard Arrington was elected to the Birmingham City Council in 1971, the second African American to serve on the nine-person body. To many whites in Alabama, this was not a sign of progress but a disturbing loss of power.

36. When challenging Albert Brewer for governor in 1970, George Wallace condemned Brewer as a pawn of the "black bloc" in Alabama, which in collaboration with federal judges, were

undermining Alabama's "way of life," another coded message to signal to whites his defense of segregation. Wallace won the election and was thus in office in 1971 when the *Weissinger* case implementation of a statewide equalization of property assessments had to be addressed. Wallace called the 1971 legislature into session to ask for a constitutional amendment to set statewide property tax assessments at a low level and thus end the threat of much higher assessments that existed in the *Weissinger* order. It was well understood among white Alabamians in 1971 that an increase in property taxes would go to fund public education that many of them no longer supported. Long the voice of anti-black and Black Belt white interests, Wallace insisted that there was no need for any higher property taxes in Alabama. He was closely allied in 1971 with the Farm Bureau interests, and in turn Farm Bureau sided with Wallace on his effort to divert funds from the Special Education Trust Fund in 1971.

37. In the fall of 1970, as legislators were considering what to do about the property-tax equalization matter in *Weissinger*, anti-busing emotions reached a high level. Anti-busing legislation was not looking promising because of courts ruling against a New York anti-busing law, but 4,000 people in Mobile marched with placards "Supreme Court Has Outlawed Our Laws" and "We want our schools back." [*Montgomery Advertiser*, 10/2, 5, 6/70] Governor Brewer and state lawyers were fighting for state-run schools, and Brewer talked about the federal government trying to achieve "race mixing," that Mobile was "gerrymandered" by the federal court. [*Montgomery Advertiser*, 10/8/70] The editor of the *Montgomery Advertiser*, commenting on the prospects of Montgomery county voters approving an increase in property taxes [which were the third lowest of any county in the state] noted that people were "angry about federal interference with local control of the schools" attributed part of opposition to tax based on the view that the federal government had taken over the schools. Lt.Gov-elect Jere Beasley, future legislative leader for property-tax limits, said the crisis in public schools and a need to bring back local control were the most important issues facing Alabama voters. [*Montgomery Advertiser*, 10/29/70] An ad in the Montgomery tax election read: "Don't Allocate More Local Tax Money to Schools to be Run by Federal Courts . . . Don't be Brainwashed—There are thousands Fewer Students in Public School This year. More Classrooms Needed? Don't Believe It!" [*Montgomery Advertiser*, 11/2/70] The Montgomery tax increase was voted down by more than three to one. The *Advertiser* editor wrote: "The federalization of the schools was a major factor." [*Montgomery Advertiser*, 11/5/70]

38. A series of federal court decisions, culminating in *Swann v. Charlotte-Mecklinburg* in the spring of 1971, precipitated many busing orders for desegregation in the South, including Alabama's biggest cities. The opposition to Judge Sam Pointer's orders in Jefferson County was vitriolic in August and September of 1971. When Pointer struck down Wallace's anti-busing law, Wallace asked for a federal probe of Pointer's conduct. [Birmingham News, 12/10/1971] More and more private schools sprang up in Alabama in 1969-1971 as whites increasingly abandoned the public schools. In the fall of 1971, as the pressure to act on property tax mounted, opposition to public education grew. Governor Wallace announced that "The school situation is deteriorating." There were violent race conflicts in Anniston over shooting at a high school, and more disorder at schools in Selma. Wallace was then gearing up for the 1972 presidential election, in which he would exploit busing in his campaign. [Birmingham News, 11/1, 2/1971]

39. George Wallace invoked racial code language to push for property-tax limits. In endorsing the Farm Bureau's property tax classification bill for the December 1971 special session, Governor Wallace said, "This might be the most important session of the Legislature I have spoken to in my history as governor. It was brought upon you by the federal courts." The editor of the *Birmingham News* condemned Wallace for saying that federal courts were why the state faced rising property taxes. The state had brought it on by refusing for seventy years to equalize taxes, the editor insisted. [*Birmingham News*, 12/1, 2 /71]

G. No [plaintiffs' historian] has referenced a single article in any periodical or newspaper which indicates any awareness that any of the property tax provisions may have been racially discriminatory. [p. 59]

40. See paragraphs 23-26 and 28-39 above.

H. Though all of the professors have substantial connections in Alabama, none has interviewed a single witness who may have helped them understand the legislative process in 1971, 1978 and 1982 relating to property taxes. [p. 59]

41. Note paragraph 15 above.

I. None identifies a single legislator who was aware of any racial dimension in any of the property tax provisions. [p. 59]

42. See paragraphs about Senators Bob Wilson [28]; Sid McDonald [26]; Sage Lyons [23]; and Ed Horton [28] above.

J. Defendants' MSJ relies on several legislators who "Despite their diversity and differences . . . all agree on one thing: no one believed race was a motivating factor in any of these property tax provisions. No legislator had any indication that these provisions had a racial element; that they might affect racial groups differently; or that race was a factor at all in the legislation." [p. 50]

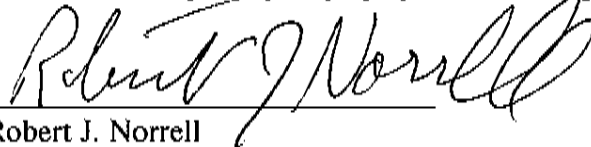
43. Defendants' deponents rely on the memory of events that took place 28 to 40 years ago to answer a loaded question about whether they acted out of racial motivation. A tiny minority of people in American society ever own up to purely racial motivation. It is today socially and morally unacceptable to act on racial motives. If asked, "are you a racist?" a common response is, "No, and I never have been, and I don't tolerate it in others." The social and moral stigma is simply too great according to today's values.

44. Memory tends to operate toward washing away anti-social motivations for our personal behavior. It also tends to clear out the complexity of causation, such as the simultaneous consideration of busing, reapportionment, private-school tuition grants, and black enfranchisement and empowerment with the consideration of property-tax reform in Alabama in the 1970s. None of the legislators deposed were quizzed extensively on their memory of these other matters. A careful examination of the full historical record provides a far more reliable means to discover the truth. That is what I have attempted to do in my work on this case.

45. Defendants' MSJ relies on the memory of a small sample of legislators. Many powerful actors in race and politics in Alabama in the 1960s and 1970s—e.g., Walter Givhan, George Wallace, Sam Engelhardt, Roland Cooper, Pat Lindsey, and David Vann—are deceased. There are others, however, who might well have offered a different view on the subject. Could those who were deposed have recounted the contextual circumstances occurring contemporaneously with the property-tax deliberations in 1969-72—e.g., the full enfranchisement of black voters, the reapportionment of the legislature and the coming rise in the number of black legislators, and the federally enforced desegregation of schools and the corresponding movement of whites to private schools? The record indicates that the legislators who were deposed did not have their memories tested on those matters. That they say they do not remember any racial motive for their action is easily explicable and comprehensible given well-observed habits of human behavior. What should be acknowledged is that failings of memory inevitably create historical reductionism. In my view this mistaken reliance on memory will cause serious errors of understanding about the motives for the passage of property tax limits in the 1970s and early 1980s. In my professional opinion, the value of their testimony is extremely limited.

46. The declaration of J. Richmond Pearson makes clear the ways that racial motivation existed in the property-tax discussions of the 1970s and 1980s but were not openly acknowledged. He explains furthermore how Governor Wallace imposed his will on legislators who were seeking re-election, either to the legislature or to a higher state office. Governor Wallace's appeal to racial motives in the electorate was the most obvious and compelling reality of Alabama politics during the time of his gubernatorial career, 1963 to 1987.

I declare under penalty of perjury that the foregoing is true and correct.



Robert J. Norrell

Executed this the 25th day of March, 2010