



Alabama's method of funding schools challenged in court for racial discrimination

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Gov. Bob Riley says the state's tax system is far from perfect, but he does not expect the federal courts to force changes.

Alabama history is headed before a federal judge in Huntsville, as civil rights attorneys argue that the state's method of funding schools purposefully discriminates based on race.

At stake are the state's property tax rates, the lowest in the nation. Attorney James Blacksher of Birmingham contends that tax structure violates the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment, largely by limiting the ability of rural counties to tax wealthy white landowners.

"Because of the anemic property taxes available to most local school systems, low-income students throughout Alabama, who are disproportionately black, suffer from underfunding," contends the suit.

But the state argues that any forced change in tax rates would decrease all property values, injure all property owners who plan to sell, paralyze the commercial real estate market and cause "widespread havoc in Alabama's government and real estate

markets."

For two years, the state has tried to derail the suit - moving to dismiss, moving for summary judgment, and even appealing to a higher court before the case had been heard. All motions failed.

Last week, U.S. District Judge Lynwood Smith ordered a final conference on Jan. 21 to establish ground rules for testimony and evidence for the coming trial.

"We're headed to trial. There is absolutely nothing left," said Blacksher, attorney for the 10 school children of Lawrence and Sumter counties named in the two-year-old constitutional case known as Lynch v. Alabama.

At its crux, the suit argues that the state tax code prevents local governments in rural areas from taxing timber land and farm land at rates sufficient "to raise funds adequate to support of public education."

"It's really about a centuries-long successful effort by big landowners, primarily whites in the Black Belt counties," Blacksher told The Huntsville Times, "to shield their property from exposure to black voter majorities that might assess their property at its fair market value and raise the millage rates."

Blacksher is asking the court to give the state Legislature one year to rewrite Alabama's property tax laws. If the Legislature should fail to write a new law within a year, state attorneys worry property tax rates could jump by as much as 500 percent in some cases. For example, homeowners and farmers now pay tax on just 10 percent of the assessed value of property. The suit seeks to remove such classifications for different types of property, meaning all property owners would suddenly pay tax on full value.

Such a decision "would constitute one of the most pervasive and disruptive intrusions by a federal court into a state tax system in the history of federal jurisprudence," argued the state's attorney, former state Chief Justice Drayton Nabers Jr.

Gov. Bob Riley, named in the suit along with the state revenue commissioner, said last week that Alabama could raise its property tax rates 128 percent and still have the lowest in the nation. And much of the current tax break, he acknowledged, is flowing to wealthy out-of-state landowners.

"You need lower taxes and it needs to be attractive, but when it helps another bottom line, it ought to be debatable," said Riley, who in 2003 led a failed tax reform initiative known as Amendment One.

Yet, Riley said that he didn't believe that a federal judge was likely to use the Lynch case to force the state to rewrite its tax codes. "If you ever go down that path," he said, "you might as well do away with the legislative branch."

Specifically, the suit challenges the 1901 state Constitution, with particular emphasis on Lid Bill amendments passed in the 1970s under the late Gov. George Wallace.

Those amendments created different classifications of property, allowing forested areas, homes and farms be taxed on 10 percent of the value. Those amendments also allowed for assessment of "current use" value, instead of fair market value, which created a tax break for landowners holding still undeveloped forest or farm acres.

The state, in its numerous court filings, denies "a direct linkage between black disenfranchisement and the avoidance of property taxes." The state also argues that the 10 named school children cannot demonstrate any specific harm from low property tax revenue.

The plaintiffs' "injuries are no different from those that might be suffered by students of any race in any poor or rural school system in Alabama," wrote state attorneys.

The state attorneys, Nabers and David Perry, declined additional comment.

The suit argues that property taxes account for just 5 percent of Alabama's revenue, and that 70 percent of the state property is timber land, but that timber land contributes just 2 percent of all property tax revenue.

The plaintiffs lined up a slate of state historians and public officials to testify.

For instance, in submitted testimony, historian Wayne Flynt of Auburn University wrote: "Historians have concluded that the 1901 Constitution brilliantly achieved its purposes, disenfranchising virtually all black voters, many poor

whites, and protecting property from all but minimal taxation."

But the state claims that the civil rights attorneys, also including Edward Still and Robert Segall, intend "to hold the Alabama Legislature and the Alabama voters hostage to the threat of an enormous tax increase."

"Where then is the particularized injury? It simply does not exist," wrote state attorneys in the failed appeal in August to the 11th Circuit Court of Appeals, adding a few sentences later: "They simply want more tax revenues and higher school expenditures."

The plaintiffs, building on a history of similar legal attempts, argue instead that: "The racially motivated property tax restrictions in the Alabama Constitution continue to have their intended discriminatory effects, namely, inadequate revenues currently collected from local property taxes, the resulting underfunding of the state's K-12 public school system, particularly rural and majority-black schools."

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