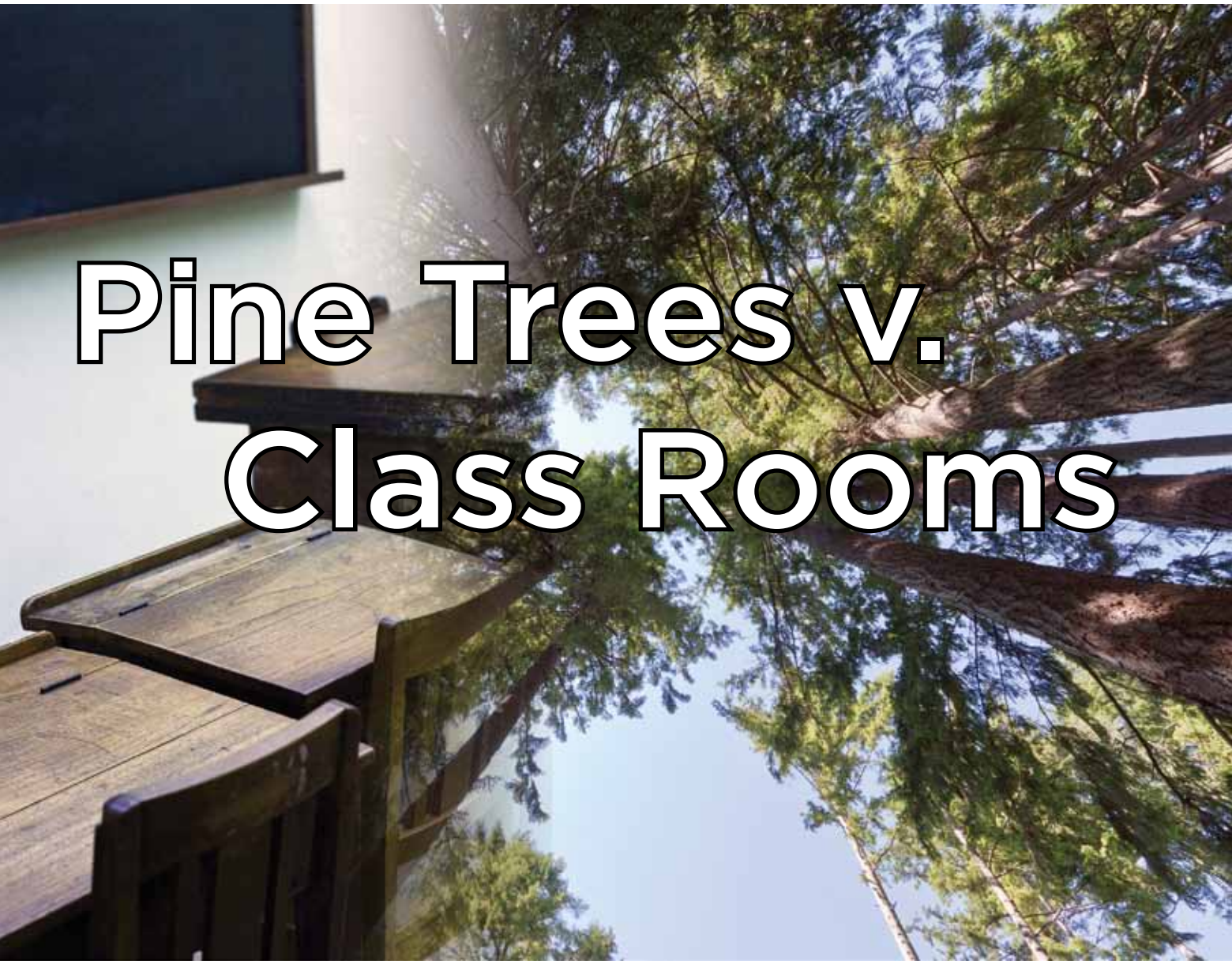


Pine Trees v. Class Rooms

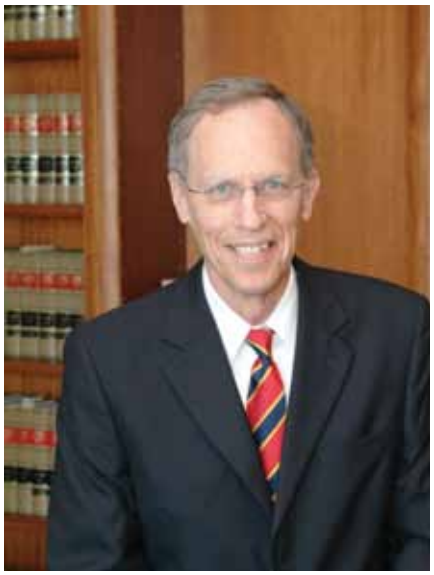
A federal judge is expected to rule any day now on a Civil Rights suit that could bring Alabama's tax laws crashing down. Plaintiffs argued forcefully that the state's property taxes—and especially low timberland assessments—are designed to underfund rural, majority-black schools.

By Kelli M. Dugan / Photos by Steve Gates

The eyes of education advocates and business interests alike remain fixed on a Huntsville courtroom as both groups await a ruling on the constitutionality of Alabama's long-challenged property tax structure.

Specifically, U.S. District Judge Charles Lynwood Smith Jr. is expected to rule any day on Lynch v. Alabama, a 3-year-old civil rights suit filed against the state of Alabama in 2008 by the families of 10 black schoolchildren in Lawrence and Sumter counties. The suit claims that Alabama's property tax structure—driven by a state constitution that hinders the levying of local taxes—provides inadequate funds for K-12 education, that rural and predominantly black school systems are hurt the worst and that the discrimination is intentional.

"Because of the anemic property taxes available to most local school systems, low-income students throughout Alabama, who are disproportionately black, suffer from underfunding.... The racially motivated property tax restrictions in the Ala-



Drayton Nabers Jr., representing the state, argued that the plaintiffs failed to prove their case because it lacked documentation of underlying racial motives in drafting either the taxation or education articles of the state's constitution.

bama 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," the suit states.

The plaintiffs want Smith to order a legislative overhaul of the system and have asked that a one-year deadline be placed on the ruling, but the state has argued the stress created by such an edict would wreak havoc on Alabama's already strained revenue system.

Drayton Nabers Jr., former chief justice of the Alabama Supreme Court, represented the state in Lynch and argued when Smith took the case under advisement in March that the plaintiffs failed to prove their case because it lacked documentation of underlying racial motives in drafting either the taxation or education articles of the state's 1875 and 1901 constitutions.

Both Nabers and Birmingham attorney James Blacksher, representing Lynch's plaintiffs, declined to comment on the case pending Smith's ruling. Blacksher has argued the existing system violates both the Civil Rights Act of 1964 and the Equal Protection Clause of 14th Amendment.

The case is a follow-up to the 2004 Knight and Sims v. Alabama, alleging similar effects on the state's higher education system. In that case, U.S. District Judge Harold Murphy held the facts presented depicted the discriminatory intent of the law but failed to show a clear violation of the equal protection clause.

"The judge in Knight handed the plaintiffs a home run on the facts, but they lost on the law," says Susan Pace Hamill, a University of Alabama School of Law professor specializing in Alabama tax and constitutional law.

Hamill served as an expert witness and authored a friend-of-the-court brief for Lynch, and her extensive research on both the inequities of the property tax system and its negative effects on race and poverty became cornerstones of the plaintiffs' case in Knight.

Specifically, Lynch challenges Alabama's property tax caps established in 1875, reaffirmed in the 1901 constitution and strengthened in the 1970s by the introduction of so-called "lid bills," the first of which lowered the percentage of fair-market value at which property was taxed. The other stipulated both farm and timberlands would be taxed not on their actual value but the value of their "current use."

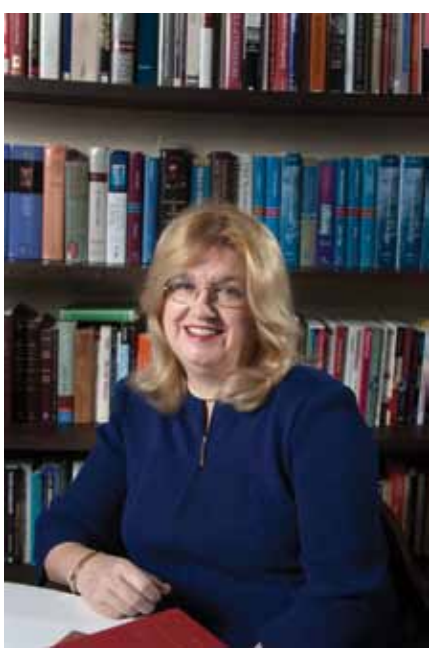
"The only conclusion you can draw when you look at these facts is that if you're a rural county, then your property tax base pretty much is that timber industry, and the lid bill shrinks the value of this class of property to practically nothing," Hamill says.

Currently, the state constitution restricts property taxes to 6.5 mills, with an optional 1-mill county assessment, while the lid bills cap residential and agricultural property assessments at 10 percent of their current use value.

Because the tax code prevents local governments—especially in rural areas—from taxing agricultural and timberland at sufficient rates, Lynch contends the system fosters racial discrimination because Alabama's rural communities are predominantly black.

The system, therefore, forces local school districts to rely almost exclusively on sales tax revenue to fund K-12 education, the suit states, ensuring rural areas dominated by lesser-taxed Class 3 current use lands remain underfunded.

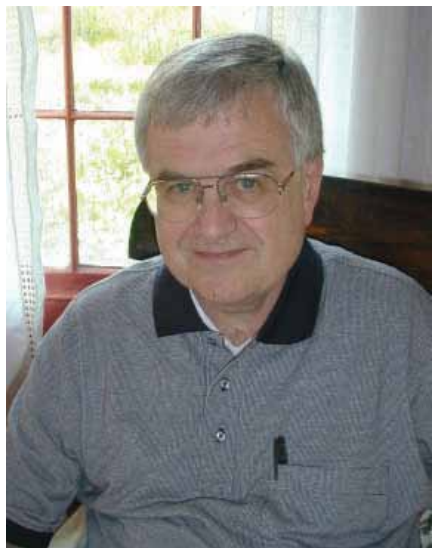
Based on Hamill's research, Lynch argues that 70 percent of Alabama's property is classified as timberland, yet those interests



"It's more difficult to design a fair property tax structure than a fair income tax structure, and you don't want them to do it wrong."

Susan Pace Hamill

James Blacksher, representing the plaintiffs, argued that the existing system violates both the Civil Rights Act of 1964 and the Equal Protection Clause of the 14th Amendment.



contribute only about 2 percent of the state's total annual property tax revenue.

How tough would be the fix?

"Nobody wants to use Alabama's property tax structure to inhibit business development, but the solution to a badly structured system is not another badly structured system," Hamill says, questioning the wisdom of imposing a one-year compliance timetable should Smith rule in favor of the plaintiffs.

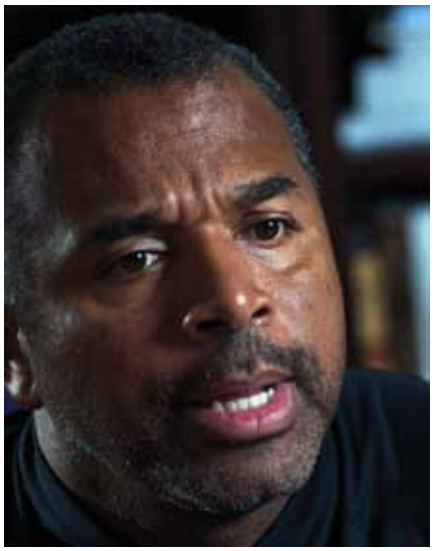
"It's more difficult to design a fair property tax structure than a fair income tax structure, and you don't want them to do it wrong," she says, noting the duration of any timetable falls within Smith's discretion.

"Property taxes can be structured in a reasonable way to raise the revenue that needs to be raised without getting in the way of business," Hamill says.

Consider, for instance, that neighboring Georgia taxes timber and agriculture property at four times Alabama's rate and suspends the current use formula for every acre over 2,000 in order to distinguish between agribusiness and family farms, she says.

"The small farmer really has much less ability to pay than agribusiness, yet in Alabama we treat them the same in terms of property taxes, and that's nuts. It's an unwise policy," Hamill says.

Of course, should the Legislature fail to reform the property tax structure within a given period of time, the state's property tax rates would – by law – revert to pre-lid rates, which state attorneys argued could result in 500 percent increases in some cases.



"I don't think legal reform is ever too hard if the justification for reform is there. We have too much talent, too many resources...for that to be an acceptible answer." Bryan Fair

"Can you imagine the impact on the business community if the average business owner's property taxes rose four times overnight?" Hamill says. "A year is better than nothing, but it's not a lot of time to reach a better understanding on an issue this complex."

If the court strikes down the property tax structure, Hamill suggests lawmakers thoroughly review the successes and missteps of other states that have dealt with their own versions of this issue.

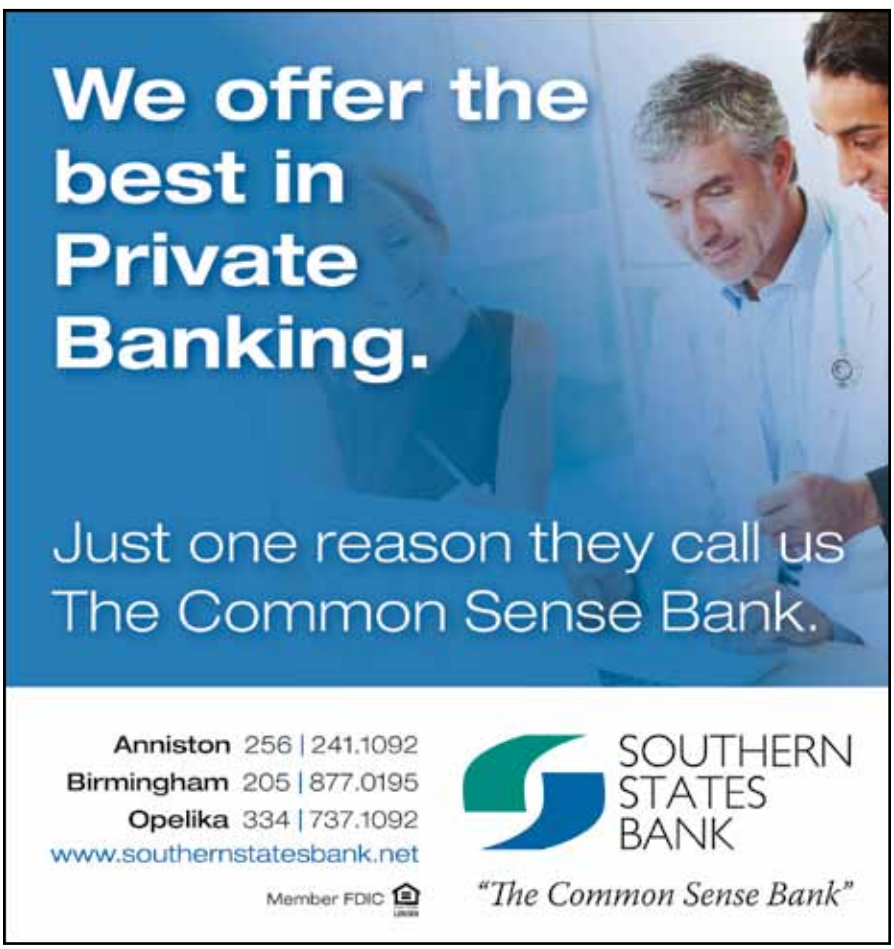
"There's at least one group of states that have overdosed on property taxes and they're killing their middle class," Hamill says, likening tax policy to "high-specialty" medicine as opposed to general practice. "Property tax is sort of like your brain surgery."

Meanwhile, UA School of Law professor Bryan Fair says the defense's two primary arguments in Lynch simply don't stand up to further scrutiny.

Fair specializes in constitutional law, race, racism and the law, gender and the law and the first amendment. He contends Nabers' argument that the plaintiffs' failure to document overt racial motives for drafting the original tax structure shouldn't – on its face – sink their case.

"Even if a law is neutral on its face, it can be struck down by the courts for violating the equal protection clause of the U.S. Constitution if a discriminatory purpose is revealed, and there's ample case law to support an argument like that," Fair says.

For instance, the judge in Gomillion v. Lightfoot ruled in 1960 that redrawing mu-



nicipal district lines in Tuskegee was "inexplicable on any other basis except discrimination."

"The underlying intent in that case to exclude African-America voters was clear in how the law was administered or applied," Fair says.

Meanwhile, the judge in Yick Wo v. Hopkins ruled in 1886 that a San Francisco ordinance outlawing the operation of laundries in wooden structures discriminated against Chinese laundry owners, some 200 of whom were forced out of business.

"There was no question in that case that even though the law itself was race-neutral it was administered in a prejudicial manner and infringed upon the Equal Protection Clause of the 14th Amendment," Fair says.

As for the defense's argument that forcing a rewrite of the state's property tax structure would wreak insurmountable havoc, both legal experts dismiss the claim immediately.

"It's not a legitimate argument to keep a law in place to avoid unpleasantness, and it's illegal to do so if the law violates the equal protection clause," Hamill says.

"The issue that remains is an argument of equal inadequacy, and then it becomes a matter of determining whether there's a disparate impact on African-American students, and Knight already found that to be true," she says, noting black residents account for only one-quarter of Alabama's population but about half of those living in poverty.

Says Fair: "I don't think legal reform is ever too hard if the justification for reform is there. We have too much talent, too many resources – from the attorney general's office to private attorneys – for that to be an acceptable answer. And that applies to any issue, from school funding to landlord-tenant laws and indigent defense to banking. All too often in Alabama the state has been reluctant to make changes until ordered to do so by federal authorities. Then they blame the feds for the action being taken rather than taking the initiative themselves to institute the needed changes."

Kelli Dugan is a freelance writer for Business Alabama. *She lives in Mobile.*