ATTEMPTING TO REFORM THE USE OF LOCAL PROPERTY TAXES TO FINANCE EDUCATION: A STRATEGIC APPROACH

Comment

I said to my children, 'I'm going to work and do everything that I can do to see that you get a good education. I don't ever want you to forget that there are millions of God's children who will not and cannot get a good education, and I don't want you feeling that you are better than they are. For you will never be what you ought to be until they are what they ought to be.'

— Martin Luther King, Jr.[1]

1. UCSB CTR. FOR BLACK STUD. RES., http://www.research.ucsb.edu/cbs/outreach/ (last visited Feb. 11, 2015).

I. INTRODUCTION

Despite the significant strides this country has made since the Civil Rights Era, education is still not available in equal qualities and quantities to all of the country's children.[2] This lack of equality in schooling is largely a result of discrepancies in school funding systems that distribute funds based on local property tax assessment values.[3] How is it that legislators believe it is possible to have equal funding if one school district is comprised mostly of wealthy families with high property values and the other is comprised mostly of disadvantaged families with low property values?[4]

In October of 2014, the Supreme Court of the United States decided not to hear a case brought by parents of school children in Alabama.[5] The case, *Lynch v. Alabama*, challenged Alabama on grounds that its property tax system creates extreme inequalities in the funding of high percentage minority, public schools attended by the plaintiffs' low income children.[6] In the twenty-first century, this issue still has not been resolved, and plaintiffs have not had any luck in their attempt to change the legislation to provide their children a better, and equal, opportunity to learn.[7]

This comment will examine *Lynch v. Alabama* and related history in order to come to a conclusion on possible ways these issues can be approached in the future in order to provide a more equitable outcome.

Part I of this comment will delve into the history and legislation regarding racial disparities in public education. Part II will explore more modern cases brought by plaintiffs attempting to resolve such discrepancies. Part III will analyze the most recent property tax school financing related case, *Lynch v. Alabama*, and Alabama's property tax system. Part IV will offer suggestions of how these issues might be alleged in a manner that provides plaintiffs a better opportunity to prevent

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2. *See generally* Debra L. Ireland, *The Price of Education: What Local Control Is Costing American Children*, 6 SCHOLAR 159 (2003).

3. *Id.* at 170.

4. *Id.*

5. I.L. v. Alabama, 739 F.3d 1273 (11th Cir.), *cert. denied sub nom.* Lynch v. Alabama, 135 S. Ct. 53 (2014). *See also* Brian Lawson, *U.S. Supreme Court Won't Take Up Lawsuit Claiming Alabama Tax Law Discriminates Against Poor Schoolchildren*, AL.COM (Oct. 6, 2014), http://www.al.com/news/huntsville/index.ssf/2014/10/us_supreme_court_wont_hear_law.html.

6. Lawson, *supra* note 5.

7. *See* Ireland, *supra* note 2, at 159.

tax law from encouraging disparities that perpetuate the cycle of poverty among minorities.

II. HISTORY

School financing has long been an area plagued by racial discrepancies.[8] In 1896, the Supreme Court upheld the notion of "separate but equal" in *Plessy v. Ferguson*.[9] During the four decades following *Plessy*, courts relied on the nominal equality standard to analyze discrepancies in school funding and uphold the challenged practices that were responsible for the funding inconsistencies between white and black schools.[10]

In 1940, the Court in *Richmond County Board of Education* stated that the notion of "separate but equal" was deemed to be appropriate in the realm of public education.[11] By this time, the standard of racial neutrality was adopted as the standard to employ when evaluating racial disparities, if the disparities in question were not purposeful.[12] In cases brought under this standard, the courts determined that the disparities among races were acceptable "if the discrimination was not based on racial discrimination."[13]

Cases heard in this era included those focusing on teacher salary disparities between races.[14] During this time, a system for teacher placement and salary determination was created in which an objective, written test was given to teachers.[15] The

8. *See id.* at 171.

9. Preston C. Green, III et al., *Getting Their Hands Dirty: How Alabama's Public Officials May Have Maintained Separate and Unequal Education*, 253 EDUC. L. REP. 503, 504 (2010).

10. *Id.* at 505.

11. *Id.* at 504–05.

12. *Id.* at 505.

13. *Id.*

14. *Id.*

15. Green et al., *supra* note 9, at 505. *See also* Thompson v. Gibbes, 60 F. Supp. 872, 878 (E.D.S.C. 1945).

> Under this provision, commonly referred to as the Certification Plan, and the Regulations of the State Board, the State has adopted a system by which all teachers receiving state aid are to be graded and classified. By this plan the teachers are to be classified, first according to their education: they being grouped into (1) those having a Master's Degree; (2) those having partial graduate training; (3) those having full college training; (4) those having two years college training; and (5) those having less. The next test to be applied is their period of experience in the teaching profession, and in addition, each teacher is required to stand an examination which is prepared and scored by the National Educational Board. The State Board then places each teacher in the proper classification and applying his score in the examination reported by the National Board will determine his place

results of the test were then analyzed to determine the salary level and placement of teachers.[16] Despite many suspicious facts, such as that minority teachers scored in the lower percentile the majority of the time, the courts did not deem the system to be inappropriate because the courts found that it did not appear to be a system created on the premise of racial discrimination.[17]

The 1950s saw another shift, although less widespread amongst the courts, in the standards courts used to evaluate racial disparities.[18] A series of higher education cases during this time focused on black acceptance into graduate and professional schools and led some courts to adopt a standard of "real equality."[19] Under this standard, courts attempted to alleviate substantial inequalities between races.[20] Using the racial equality standard, the court in *State v. Board of Education of City of St. Louis* found that a course offered frequently in a white high school program, but not at all offered in the black plaintiff's high school program, made the programs substantially unequal and ordered the white program to allow the black plaintiff to enroll in its course.[21]

In the 1960s, building upon *Brown v. Board of Education*, civil rights activists began challenging the disparities between rich and poor public schools.[22] In *Brown*, the Supreme Court passionately stated that education is a right which must be "made available to all on equal terms."[23] Thus, activists alleged claims bringing the inequalities to light; however, they did not allege that such inequalities were racially motivated.[24] The courts hearing such cases determined that such disparities did not exist due to racial discrimination and the disparities were determined to be permissive.[25]

> in the table prepared under the act and that will fix the salary which he is to receive.

Id.

16. Green et al., *supra* note 9, at 505.
17. *Id.* at 506. *See also Gibbes*, 60 F. Supp. at 878.
18. Green et al., *supra* note 9, at 506.
19. *Id.*
20. *Id.*
21. *See* State *ex rel.* Brewton v. Bd. of Educ., 233 S.W.2d 697, 699 (Mo. 1950).
22. Green et al., *supra* note 9, at 507.
23. Brown v. Bd. of Educ., 347 U.S. 483, 493 (1954).
24. Green et al., *supra* note 9, at 508.
25. *Id.* at 505. *See* Mills v. Bd. of Educ., 30 F. Supp. 245, 249 (D. Md. 1939).

III. MODERN-DAY CASES AND HOLDINGS

A. San Antonio Independent School District v. Rodriguez

In 1973, the plaintiffs in *San Antonio Independent School District v. Rodriguez* brought action challenging the Texas school financing system's reliance on local property taxes.[26] These plaintiffs were Mexican-American parents of children in the Edgewood School District, of which the majority of citizens were poor families with low property valuations.[27]

In 1947, the Texas Minimum Foundation School Program was created in Texas to fund teacher salaries, transportation costs, and operating expenses using both state and local contributions.[28] The Local Fund assignment (comprised of the local contributions) was distributed to school districts by using a formula which first divided funds based on several factors, including each county's relative share of payrolls in the state, and then distributed according to each districts' taxpaying ability.[29]

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26. San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 3 (1973).

27. *Id.* at 4. The defendants in this case included the State Board of Education, the Commissioner of Education, the State Attorney General, and the Bexar County Board of Trustees. *Id.* at 5.

28. *Id.* at 9.

29. *Id.* at 9–13. The disparities created by this system are demonstrated by the court's analysis of the poor district of Edgewood (the district that is the subject of the case at bar) and the wealthy district of Alamo Heights:

> Edgewood is one of seven public school districts in the metropolitan area. Approximately 22,000 students are enrolled in its 25 elementary and secondary schools. The district is are [sic] enrolled in its 25 elementary situated in the core-city sector of San Antonio in a residential neighborhood that has little commercial or industrial property. The residents are predominantly of Mexican-American descent: approximately 90% of the student population is Mexican-American and over 6% is Negro. The average assessed property value per pupil is $5,960—the lowest in the metropolitan area—and the median family income ($4,686) is also the lowest. At an equalized tax rate of $1.05 per $100 of assessed property—the highest in the metropolitan area—the district contributed $26 to the education of each child for the 1967–1968 school year above its Local Fund Assignment for the Minimum Foundation Program. The Foundation Program contributed $222 per pupil for a state-local total of $248. Federal funds added another $108 for a total of $356 per pupil.
>
> Alamo Heights is the most affluent school district in San Antonio. Its six schools, housing approximately 5,000 students, are situated in a residential community quite unlike the Edgewood District. The school population is predominantly 'Anglo,' having only 18% Mexican-

When evaluating matters that concern equal protection, courts use one of three tests: rational basis test, strict scrutiny, or intermediate scrutiny.[30] Strict scrutiny is reserved for cases which involve the analysis of discrimination against members of traditionally suspect classes.[31] In order for an argument to succeed under strict scrutiny, the plaintiffs must show that the classification is not "necessarily related to a compelling state interest."[32]

At the other end of the spectrum, using the rational basis test, "courts presume that a statutory classification is constitutional and does not violate equal protection principles unless the challenging party proves beyond a reasonable doubt that the classification does not bear a rational relationship to a legitimate legislative purpose or government objective, or the classification is unreasonable, arbitrary, or capricious."[33]

Plaintiffs argued that the school financing system that led to great disparities in public school funding should be subject to strict scrutiny because the plaintiffs were "members of a suspect classification based on wealth" and "because education [is] a fundamental interest under the Constitution."[34]

Although *Rodriguez* focuses on wealth as the discriminatory factor, the case illustrates the Court's rejection of the equality standard in this arena.[35] In its place, the Court employed the racial neutrality standard, also known as the rational basis standard, which deems a classification to be constitutional "as long as it was rationally related to a legitimate purpose."[36] The Court reasoned that the use of local tax dollars was rationally related:

> Americans and less than 1% Negroes. The assessed property value per pupil exceeds $49,000, and the median family income is $8,001. In 1967—1968 the local tax rate of $.85 per $100 of valuation yielded $333 per pupil over and above its contribution to the Foundation Program. Coupled with the $225 provided from that Program, the district was able to supply $558 per student. Supplemented by a $36 per-pupil grant from federal sources, Alamo Heights spent $594 per pupil.

Id. at 1285–86.

30. 18 COLO. PRAC., *Appellate Law & Practice* § 18.13, Westlaw (database updated June 2015).

31. *Id.*

32. *Id.*

33. *Id.*

34. Green et al., *supra* note 9, at 509.

35. *Id.* at 510.

36. *Id.* at 511.

> [B]y becoming involved in educational decisions at the local level, community members demonstrated their depth of commitment to public education. Local control also provided each locality with the means for participating 'in the decision making process of determining how local tax dollars will be spent.' Moreover, local control enabled school districts 'to tailor local plans for local needs' and encouraged 'experimentation, innovation, and a healthy competition for educational excellence.'[37]

The Court concluded that the system does not disadvantage any suspect class and that education is not a fundamental interest under the Constitution.[38] Following this conclusion, the Court rejected the use of strict scrutiny and held that the disparities in funding that resulted from Texas' property tax system were not a violation of the Equal Protection Clause.[39]

B. Hunter v. Underwood

In 1985, the Court in *Hunter v. Underwood* evaluated an Alabama constitutional provision, which was racially neutral on its face, that disqualified persons from voting if convicted of crimes of moral turpitude.[40]

The plaintiffs, one black man and one white man, were both disenfranchised in accordance to Article VII Section 182 of the Alabama Constitution of 1901.[41] The plaintiffs' crime of moral turpitude which led to their disenfranchisement and a misdemeanor charge was the presenting of a worthless check.[42]

In analyzing the allegations, the Court stated that "a facially neutral state law will not be struck down as unconstitutional 'because it results in a racially disproportionate impact. . . . Proof of racially discriminatory intent or purpose is required.'"[43]

At the conclusion of the case, the Court held that the Alabama constitutional provision in question violated the Equal Protection Clause because, although racially neutral, it was

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37. *Id.* at 510 (quoting San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 51 (1973)).

38. *Rodriguez*, 411 U.S. at 16.

39. Green et al., *supra* note 9 at 509.

40. *Id.* at 516.

41. Hunter v. Underwood, 471 U.S. 222, 224 (1985).

42. *Id.*

43. I.L. v. Alabama, 739 F.3d 1273, 1277 (11th Cir. 2014) (quoting *Hunter*, 471 U.S. 227–28).

motivated by discriminatory intentions and had a discriminatory effect.[44] The Court stated that the amendment's "original enactment was motivated by a desire to discriminate against blacks on account of race and the section continues to this day to have that effect. As such, it violates equal protection."[45]

C. Knight v. Alabama

In 2004, the plaintiffs in *Knight v. Alabama* attempted to show that Alabama's ad valorem tax system was crafted to preserve racial segregation in public education and to "thwart and deny blacks an equal opportunity to obtain the benefits of public higher education in Alabama."[46]

The plaintiffs purported, among several other claims, that Alabama's property tax system violated the Equal Protection Clause of the United States Constitution.[47]

> The plaintiffs alleged that the state's constitutionally-prescribed low property taxes compelled the state to apportion a greater percentage of the ETF to K–12 relative to higher education, compounding the funding challenges for implementing remedial action in higher education in the state. According to the plaintiffs, this funding structure resulted in higher tuition costs, significantly restricting higher education access for blacks.[48]

In an attempt to show a discriminatory intent, the plaintiffs highlighted several instances in Alabama's history.[49] First, plaintiffs brought to light Alabama's passing of the Apportionment Act of 1876 which had the effect of diverting

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44. *Hunter*, 471 U.S. at 223.

> The evidence of legislative intent available to the courts below consisted of the proceedings of the convention, several historical studies, and the testimony of two expert historians. Having reviewed this evidence, we are persuaded that the Court of Appeals was correct in its assessment. That court's opinion presents a thorough analysis of the evidence and demonstrates conclusively that § 182 was enacted with the intent of disenfranchising blacks.

Id. at 229.

45. *Id.*

46. Knight v. Alabama, 458 F. Supp. 2d 1273, 1278 (N.D. Ala. 2004), *aff'd*, 476 F.3d 1219 (11th Cir. 2007).

47. Green et al., *supra* note 9, at 514.

48. *Id.*

49. *Id.* at 511–13.

funding from black schools to white schools.[50] Second, plaintiffs discussed a 1901 amendment to Alabama's state constitution which "prevented blacks from raising revenue for schools by disfranchising them and placing restrictions on property taxation."[51] Third, the plaintiffs uncovered Alabama's plans to do away with the state's public education system in an attempt to avoid the desegregation order for public schools following *Brown v. Board of Education*.[52]

Finally, when the legislature changed the maximum property tax assessment tax rate from 60% to 30%, the district court ruled that the rate must be lowered back down to 30%, opining that "[v]esting such wide discretion in the hands of tax officers, no matter how good their motives, necessarily will result in an arbitrary and discriminatory system of taxation."[53] Alabama's governor was not keen on this ruling and took the entire seven-year grace period to delay reverting back to the 30% maximum.[54]

Additionally, during this grace period, the governor took the opportunity to ratify Amendment 325 of the Alabama Constitution, which created separate property classes for tax purposes.[55] The effect of this property class system was to put a ceiling on total ad valorem taxes, decreasing funding to poor black public schools even more.[56] Plaintiffs also found it suspicious that the state's senate finance and taxation committee chairman during the time this amendment was enacted, Sam Engelhardt, was the leader of the White Citizens Council, a white supremacist group.[57]

Although the federal district court held for the plaintiffs, on appeal, the Eleventh Circuit found that "'even if underfunding of Alabama's K–12 schools were related to segregation in its colleges and universities, this relationship [wa]s too attenuated and rest[ed] on too many unpredictable premises to entitle [the] plaintiffs to relief under [*United States v. Fordice,* 505 U.S. 717 (1992)].'"[58]

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50. *Id.* at 511.
51. *Id.* at 512.
52. *Id.*
53. Weissinger v. Boswell, 330 F. Supp. 615, 625 (M.D. Ala. 1971).
54. Green et al., *supra* note 9, at 512–513.
55. *Id.* at 513.
56. *Id.*
57. *See id.*; *also* Knight v. Alabama, 458 F. Supp. 2d 1273, 1289 (N.D. Ala. 2004).
58. I.L. v. Alabama, 739 F.3d 1273, 1277 (11th Cir. 2014) (citing Knight v. Alabama, 476 F.3d 1219, 1282 (11th Cir. 2007)) (alteration in original).

The ultimate holding in favor of the defendants in *Knight v. Alabama* was due not to the court being unable to find discriminatory intent, but due to the tax challenges being alleged not governing higher education.[59] Indeed, the district court found that the "state's ad valorem tax system was a vestige of discrimination"[60] and conceded that "the current property tax system in Alabama has a crippling effect on the ability of local and state government to raise revenue adequately to fund K–12 schools."[61]

IV. *LYNCH V. ALABAMA*

In March of 2008, parents of low-income, minority students brought suit to address their belief that Alabama's ad valorem tax creates disparities in the funding of public schools, which negatively impacts minority school districts.[62]

A. *There Are Two Main Areas Of The Alabama Constitution That Contain The Property Tax Provisions At Issue.*

The first provisions of the Alabama Constitution at issue set millage caps in sections 214, 215, and 216.[63] These caps limit the tax rate government entities can impose on property.[64] The state constitution also limits the rate counties can levy in ad valorem taxes for use in funding education in section 269 of article XIV.[65] Increases in the millage rate require legislative and voter approval.[66] The voters in the counties where the plaintiffs reside, Lawrence and Sumter Counties, had previously rejected proposals to increase such property taxes.[67]

The second provision at issue was section 217 article XI of Alabama's Constitution, which was previously amended by amendments 325 and 373 to establish a property classification system.[68] The system creates three classes of property with three

59. *Knight*, 476 F.3d at 1314.

60. Green et al., *supra* note 9, at 515.

61. *Knight*, 458 F. Supp. 2d at 1311–12.

62. *See* Green et al., *supra* note 9 at 515–16; *I.L.*, 739 F.3d at 1273; *also* Complaint, Lynch *ex rel.* Lynch v. Alabama, 568 F. Supp. 2d 1329 (N.D. Ala. 2008) (No. 08-S-450-NE), 2008 WL 7242459.

63. *I.L.*, 739 F.3d at 1279.

64. *Id.*

65. *Id.* at 1280.

66. *Id.*

67. *Id.* at 1281.

68. *Id.*

separate ratios for taxation.[69] Most of the land in the counties in question is considered Class III property and taxed at the lowest rate of 10%.[70] In addition to causing lower tax rates, leading to less tax funding for schools, the classification of property as Class III decreases the value of the property subject to millage rates.[71]

Only a small percentage of the properties in the counties in question are taxed, and the portions that are taxed are taxed at a much lower rate than most other counties of Alabama.[72] In addition, Alabama has the lowest property tax rates in the country, so even the Class I properties are not being taxed at the same level as properties in other states.[73]

B. *The Petitioners Felt That The State Constitution Provisions At Issue Are Unconstitutional.*

The plaintiffs brought a Fourteenth Amendment claim against the ad valorem tax system established in Alabama's constitution.[74] The plaintiffs claimed that the under-valuation of farm and timber land in their counties, along with Alabama's constitutional limitations on millage rates, led to a grossly underfunded area of schools in Alabama.[75]

The lawsuit alleged that "Alabama's property tax system, which collects the lowest taxes in the country per capita, was set up to ensure wealthy landowners would be able to pay low rates and effectively ensure limited funding for public schools attended by minority children in Alabama's rural black belt."[76] The lawsuit also claimed that the "state's tax laws are rooted in the racist 1901 state constitution and the updated laws were passed in the wake of court decisions ordering desegregation of Alabama's public schools."[77]

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69. I.L. v. Alabama, 739 F.3d 1273, 1282 (11th Cir. 2014). Additionally, Class III property owners may have their property assessed at "current use" value rather than fair market value. *Id.*

70. *See id.*

71. *Id.*

72. *Id.*

73. *See* Brian Lawson, *Federal Judge Rails Against Alabama Education System, But Leaves Current Law Intact*, AL.COM (Oct. 21, 2011), http://blog.al.com/breaking/2011/10/federal_judge_rails_against_al.html.

74. *I.L.*, 739 F.3d at 1276.

75. *Id.* at 1277.

76. Lawson, *supra* note 5.

77. *Id.*

C. *Alabama Did Not Feel That The ad valorem Tax System Is Unconstitutional.*

Generally, the state of Alabama claimed that the tax was not discriminatory.[78] In support of its position, the state cited the ability of voters to raise tax rates as well as data showing there was not a deficiency in funding for schools with large minority student populations.[79] A more in depth analysis of Alabama's argument is provided in the section below.

D. *District Court And Court Of Appeals Decisions.*

Plaintiffs wishing to prevail under an Equal Protection Clause claim must show that the disparities in funding are the result of intentionally discriminatory practices.[80] The district court held a bench trial in which the court determined that the plaintiffs failed to show the provisions being challenged were unconstitutional.[81] The court found that although there were discrepancies in funding, the discrepancies were due to tax provisions intended to benefit landowners, not intended to discriminate.[82]

The Eleventh Circuit of the United States Court of Appeals granted review of the case.[83] Alabama argued three separate matters on its behalf. First, Alabama argued that the plaintiffs did not meet the proper standing requirements of Article III.[84] These requirements include a demonstration by the plaintiffs of an injury in fact, causation, and redressability.[85] Second, Alabama argued that the district court did not have jurisdiction over the case due to the Tax Injunction Act and, further, that the exercise of federal jurisdiction was precluded by the principles of comity.[86] Finally, Alabama argued that the plaintiffs were unable

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78. *Id.*

79. *Id.*

80. Green et al., *supra* note 9, at 503. *See also* Kimberly Jenkins Robinson, *The Constitutional Future of Race–Neutral Efforts to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools*, 50 B.C.L. REV. 277, 316 (2009).

81. I.L. v. Alabama, 739 F.3d 1273, 1277 (11th Cir. 2014).

82. Lawson, *supra* note 5.

83. *See id.*; *also I.L.*, 739 F.3d at 1273.

84. *I.L.*, 739 F.3d at 1278.

85. *Id. See, e.g.*, DiMaio v. Democratic Nat'l Comm., 520 F.3d 1299, 1301–02 (11th Cir. 2008).

86. *See I.L.*, 739 F.3d at 1282. *See also* Appellees/Cross-Appellants' Principal Brief at 29, I.L. v. Alabama, 739 F.3d 1273 (11th Cir. 2011) (No. 11–15464), 2012 WL 690535.

to prove that the assessment ration amendments were created with a discriminatory intent.[87]

The appellate court ultimately ruled as follows: (1) The students did allege an injury resulting from lack of public education funding; (2) The students' injuries would not be resolved by removing the constitutional mileage cap provisions; (3) The students' injuries could likely be resolved by removing amendments to the state's constitution establishing assessment ratios; (4) The students' challenge to constitutional amendments creating assessment rations was not barred by the Tax Injunction Act; and (5) The district court appropriately determined that the assessment ratio amendments did not have a discriminatory intent.[88]

E. *The Supreme Court Decided Not To Hear* Lynch v. Alabama.

On October 6, 2014 the Supreme Court denied certiorari.[89] This decision by the Supreme Court effectively ended the case in favor of the state of Alabama.[90]

A petition for writ of certiorari is discretionary, rather than a right to which the petitioner is entitled.[91] The Supreme Court receives hundreds of petitions for the Court to issue a writ of certiorari, but only grants about ten percent of received petitions.[92] The petitions the Supreme Court does agree to review are those involving exceptional circumstances, not those that can be resolved in a lower court.[93]

The Supreme Court's decision not to hear *Lynch v. Alabama* shows the court most likely felt the case was better handled at the lower level and that the circumstances presented did not provide an exceptional circumstance to be addressed by the highest court.[94]

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87. *I.L.*, 739 F.3d at 1286.

88. *Id.* at 1273.

89. Lynch v. Alabama, 135 S. Ct. 53, 53 (2014).

90. *See* Lawson, *supra* note 5; *also U.S. Supreme Court Rules in Favor of the State of Alabama in Lynch Case,* ALABAMA FORESTRY ASSOCIATION (Oct. 6, 2014), http://www.alaforestrygovtaffairs.org/u-s-supreme-court-rules-in-favor-of-the-state-of-alabama-in-lynch-case/.

91. 16 S.C. JUR. *APPEAL AND ERROR* § 151, Westlaw (database updated Sept. 2015).

92. 18 COLO. PRAC., *Appellate Law & Practice* § 2.7 (2d ed.), Westlaw (database updated June 2015).

93. 16 S.C. JUR., *supra* note 91.

94. *See id.*; *Lynch*, 135 S. Ct. at 53.

V. CONCLUSION

A. *The Eleventh Circuit Had Several Issues With The Defendants' Position In* Lynch v. Alabama.

When the Eleventh Circuit reviewed *Lynch v. Alabama*, the court determined that the only way the case could "proceed [is] if the plaintiffs have shown that the requested injunctive relief would likely resolve their inability to adequately raise revenue for public education."[95] The plaintiffs were seeking to invalidate the millage cap and property valuation sections of Alabama's Constitution that "inhibit adequate funding of public education."[96]

Millage cap rates can be revised through further legislative action, yet history has shown that voters in the counties in which the plaintiffs reside have rejected proposals to increase property taxes.[97]

The Eleventh Circuit found that this remedy would not solve the issues present in the public school system's funding.[98] Thus, the court determined that removal of the millage caps in Alabama's Constitution may or may not lead to higher millage rates and the plaintiffs' challenges on these provisions were dismissed without prejudice.[99]

The court did, however, find that addressing the property classification system used for valuation would be more likely to redress the plaintiffs' concerns because it would result in an increase in tax revenue, some of which could be used in the public school system.[100] Although this remedy did not fail as the previous remedy did, it was similarly disallowed and dismissed

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95. I.L. v. Alabama, 739 F.39 1273, 1279 (11th Cir. 2014).

96. *Id.*

97. *Id.* at 1280–81. The court stated that,

> 'Alabama has authorized all local school systems to levy up to an aggregate of 15.0 mills in *ad valorem* property taxes for educational purposes, in a combination of county and school tax district taxes.' Yet Lawrence and Sumter Counties are both below the maximum permissible rate. Lawrence County levies property taxes at 10 mills, and Sumter County levies them at 13.8 mills. Given that neither municipality has levied the maximum generally authorized taxes for education, we conclude that an injunction prohibiting enforcement of the millage caps will not likely redress the plaintiffs' injury.

Id. at 1281 (citation omitted).

98. *Id.* at 1280.

99. *Id.* at 1288.

100. *Id.* at 1282.

because there was no clear evidence of a discriminatory intent when enacting the property valuation provision in Alabama's Constitution.[101]

B. *There Are Two Alternative Approaches, Which May Provide More Equitable Results In Future Cases Challenging The Discrepancies Inherent In School Financing That Relies On Local Tax Systems.*

1. Wealth Disparity Focus

Approaching this issue focusing on the disparities between rich and poor school districts, rather than focusing on the disparities between races, may provide fewer obstacles to plaintiffs.

In the 1970s, plaintiffs in *Serrano v. Priest* received a ruling from the Supreme Court of California determining that California's public education financing system, which relied on local property taxes, was unconstitutional.[102] Similar to *Lynch v. Alabama*,[103] the United States Supreme Court refused to grant certiorari, so the ruling of the Supreme Court of California was final.[104]

The major source of public school funding in California was local property taxes.[105] This meant that the funds raised to support the local schools largely relied on the assessed valuation of real property in each locality.[106] Although a maximum tax rate was in place, residents were able to override the maximum through a vote and agree on a higher tax rate in order to increase funding.[107] When the California legislature realized this system would likely be found to be in violation of equal protection provisions, it made changes that left the system similarly flawed.[108]

This new system essentially guaranteed a specific dollar amount to be spent per pupil, with additional funds to be raised by the district.[109] Changes to the system included a substantially higher minimum per pupil guarantee and the ability of districts

101. *Id.* at 1288.
102. Serrano v. Priest, 557 P.2d 929, 932, 935 (Cal. 1976).
103. Lynch v. Alabama, 135 S. Ct. 53, 53 (2014).
104. Clowes v. Serrano, 432 U.S. 907 (1977).
105. *Priest*, 557 P.2d at 932.
106. *Id.*
107. *Id.* at 933.
108. *Id.* at 934–35.
109. *Id.* at 935.

to vote on a maximum amount to be spent per pupil.[110] However, the underlying issue remained: despite the base amount spent on students being equal, the "additional funds" still varied with the differing assessments of property values amongst school districts and continued to result in disparities between school districts.[111]

The court decided that strict scrutiny was the proper standard to be applied.[112] "Under this standard the presumption of constitutionality normally attaching to state legislative classifications falls away, and the state must shoulder the burden of establishing that the classification in question is necessary to achieve a compelling state interest."[113] The court held that the state's justification of "local control of fiscal and educational matters" was unrealistic "from the standpoint of those districts which are less favored in terms of taxable wealth per pupil."[114]

It may be tempting for plaintiffs in similar future cases to rely on the court in *Young Apartments, Inc. v. Town of Jupiter*, which stated that:

> [A] law that is neutral on its face violates the Equal Protection Clause if discrimination was a substantial or motivating factor in the government's enactment of the law, and if the government cannot show that the law would have been enacted in the absence of any discriminatory motive. '[U]nless there is a clear pattern that [the law] is impacting one race more than another, impact alone is not determinative.'[115]

However, the court in *Washington v. Davis* explained as follows:

> [V]arious Courts of Appeals have held in several contexts . . . that the substantially disproportionate racial impact of a statute or official practice standing alone and without regard to discriminatory purpose, suffices to prove racial discrimination violating the Equal Protection Clause . . . . [T]o the extent that those cases rested on or expressed the view that proof of

110. *Id.* at 935–36.

111. *Id.* at 937.

112. *Id.* at 952.

113. *Id.*

114. *Id.* at 953.

115. I.L. v. Alabama, 739 F.39 1273, 1278 (11th Cir. 2014) (citing Young Apartments, Inc. v. Jupiter, 529 F.3d 1027, 1043–45 (11th Cir. 2008)) (second alteration in original).

> discriminatory racial purpose is unnecessary in making out an equal protection violation, we are in disagreement.[116]

The Plaintiffs in *Knight v. Alabama* presented convincing arguments suggesting that the property tax system in Alabama was, in fact, created with a discriminatory intent:

> [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.[117]

Nevertheless, the court felt that this argument and the others presented were not enough to prove a discriminatory intent.[118]

When strict scrutiny is applied while evaluating a disparity, the government is charged with the task of determining whether or not the classification is narrowly tailored in order to "satisfy a compelling governmental interest."[119] In order for a court to use strict scrutiny when evaluating a racial disparity, plaintiffs must go a step further to show that the government acted with a discriminatory intent when enacting the classification.[120]

Therefore, it may prove to be a more advantageous position to attack such disparities in educational funding from the wealth inequality perspective using the Due Process Clause of the

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116. Washington v. Davis, 426 U.S. 229, 244–45 (1976).

117. Knight v. Alabama, 458 F. Supp. 2d 1273, 1283 (N.D. Ala. 2004), *aff'd*, 476 F.3d 1219 (11th Cir. 2007).

118. *Id.* at 1314.

119. Green et al., *supra* note 9, at 511.

120. *Id.*

Fourteenth Amendment, leaving plaintiffs with a still significant, but smaller, burden of proof.[121]

2. Adequate Form of Relief

Additionally, a crucial factor when bringing a claim to court is presenting a form of relief that will actually solve the issue at hand; that proved to be a problem for plaintiffs in both *Lynch v. Alabama* and *Knight v. Alabama.* [122]

The *Serrano* court suggested a number of potential solutions aimed at solving the school funding disparities:

> (1) full state funding, with the imposition of a statewide property tax; (2) consolidation of the present . . . school districts into [fewer] districts, with boundary realignments to equalize assessed valuations of real property among all school districts; (3) retention of the present school district boundaries but the removal of commercial and industrial property from local taxation for school purposes and taxation of such property at the state level; (4) school district power equalizing[,] which has as its essential ingredient the concept that school districts could choose to spend at different levels but for each level of expenditure chosen the tax effort would be the same for each school district choosing such level whether it be a high-wealth or a low-wealth district; (5) vouchers; and (6) some combination of two or more of the above.[123]

As mentioned, the court in *Lynch v. Alabama* did not determine the plaintiffs' proposed relief to be suitable.[124] When cases containing similar issues are brought in the future, perhaps the potential forms of relief listed by the court in *Serrano v. Priest* would be more effective, not only in persuading the court, but also in crafting a solution to effectively solve vast discrepancies in funding.[125]

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121. *Id.* at 518–519.

122. *See, e.g.*, I.L. v. Alabama, 739 F.3d 1273, 1277 (11th Cir. 2014) ("We further noted in *Knight* that the plaintiffs' request for so-called 'additional relief'—an injunction requiring the Alabama Legislature to adequately fund K–12 schools—was 'beyond [the] case or controversy' presented in that litigation.") (alteration in original) (citation omitted).

123. Serrano v. Priest, 557 P.2d 929, 938–39 (Cal. 1976).

124. *I.L.*, 739 F.3d at 1277.

125. *See Priest*, 557 P.2d at 938–39.

VI. CLOSING

After reviewing *Lynch v. Alabama* in the district court, Judge Smith

> wrote that state powerbrokers see little interest in a quality statewide education system, since the children of their most powerful constituents 'are generally enrolled in exclusive suburban school systems, with large local tax bases, or in private schools. The children of the rural poor, whether black or white, are left to struggle as best as they can in underfunded, dilapidated schools . . . . Their resulting lack of an adequate education not only deprives those students of a fair opportunity to prepare themselves to compete in a global economy, but also deprives the state of fully participating, well-educated adult citizens.'[126]

The disparities in the public education system have damaging effects and will continue to exist without legislative solutions that focus either on reforming the property tax school financing system or on a completely different method of creating a more equal distribution of public school funding.[127]

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126. Lawson, *supra* note 75.

127. The American dream dictates that any child can grow up and become a lawyer, an engineer, a teacher, or a doctor. Historically, education has been the great equalizer that provides opportunities for all, or at least it is often characterized that way. Yet, throughout the years, a disparity in education funding has remained in many parts of the nation. A public education does not give all children an equal opportunity to succeed.

Paula Moore, *Robin Hood: To Not Be or How to Be, That Is the Question-an Analysis of the Problems with Texas School Financing Today and A Proposal for A Better Tomorrow*, 38 TEX. TECH L. REV. 455, 456 (2006).