



# Door Still Closed

## *Alabama plaintiffs lose federal school finance challenge*

by JOSHUA DUNN and MARTHA DERTHICK

The federal courthouse door has been closed to school finance litigation since 1973, when the Supreme Court ruled in *San Antonio v. Rodriguez* that unequal spending grounded in unequal distribution of taxable real property does not violate the Constitution. That makes a recent federal case, *Lynch v. Alabama*,

important for seeking an alternative entrance. To the plaintiffs' disappointment, *Rodriguez* still blocked the way.

Filing in 2008, the plaintiffs in *Lynch* alleged that Alabama underfunds education in violation of Title VI of the Civil Rights Act, which forbids racial discrimination in federally assisted programs, and the Fourteenth Amendment's Equal Protection Clause. Essentially putting Alabama's history on trial, the suit maintained that racist motivations color every aspect of the state's school-funding system. While most litigants contend that school finance relies too much on local property taxes, the plaintiffs in *Lynch* argued that localities should be able to rely more on property taxes. Alabama raises only 5 percent of its school revenue from property taxes, with the rest coming from income and sales taxes.

According to the plaintiffs, Alabama's constitution of 1901, and amendments in the 1970s and 1980s, placed racially motivated limits on property taxes that prevent poor, primarily black communities from raising sufficient revenue to adequately fund education. In addition to capping the millage rate, the state created differential assessments for different categories of property. This meant, for example, that forested land, which comprises 70 percent of the state, was taxed at a significantly lower rate than other property. The plaintiffs asked the court to eliminate all limitations on property tax rates and all differential assessments.

The state contended that its constitution, as amended in the era of civil rights, is not racially motivated and that the current tax regime does not unfairly burden black students. It also argued that if granted, the plaintiffs' remedy would all but destroy the real estate market and lead to economic "calamity." Alabama's forest industry, taking a keen interest in the case, said that taxes on forested land would increase 1,000 percent without differential assessments.

After a trial in 2011, district court judge Lynwood Smith issued a sprawling 854-page opinion that agreed that Alabama inadequately funds education but nevertheless concluded that "like it or not," because of Supreme Court precedent,

### **The plaintiffs asked the court to eliminate all limitations on property tax rates.**

Alabama's property-tax system is constitutional. In *Rodriguez*, Smith said, the Court "faced similar facts" and found no constitutional violation. Even though the 1901 constitution was a "misbegotten spawn" obviously "perverted by a virulent, racially discriminatory intent," he concluded that amendments from the 1970s and 1980s modifying the offend-

ing portions of the constitution were not obviously motivated by racial animus. Smith also asserted that the funding system does not have a racially discriminatory effect, pointing out that "Alabama's black students actually fare better in terms of yield per-mill per-student than do white students." As a result, the plaintiffs had proved only that there are disparities but not "along racial lines."

Smith went out of his way to show displeasure at having to rule against the plaintiffs. Alabama's education system, he said, is hamstrung by "two unfortunate realities": "mankind's self-serving nature" and "Supreme Court jurisprudence." Because of the first, a majority of the state's voters are unwilling to vote for services that do not directly benefit them, leaving rural black and white students to suffer. As to the second, he argued that the "Court's rulings on education since the 1970s mirror its decisions [such as *Plessy v. Ferguson*] from the late nineteenth century" and have "allowed unequal and inadequate school funding to evolve."

Such tendentious moralizing aside, Smith's opinion indicates that *Rodriguez* poses a high, but perhaps not insurmountable, hurdle for school-finance advocates in lower federal courts. A less-conflicted judge confronting similar facts might find a way to side with the plaintiffs. But the Supreme Court, which has expressed increasing skepticism about the desirability of judicial oversight of schools, seems unlikely to overturn well-established precedent and thrust lower courts into the quagmire of school funding and tax policy.

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