

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

**INDIA LYNCH, by her parent,)
SHAWN KING LYNCH; WENDELL)
PRIDE, JR., by his parent,)
WENDELL PRIDE; IVY ROSE)
BALL, by her parent, MIRANDA)
BALL; SLADE BERRYMAN and)
CANNON BERRYMAN, by their)
parent, TYLER BERRYMAN;)
ROCHESTER ANDERSON and)
CEZANNE ANDERSON, by their)
parent, STELLA ANDERSON;)
SHARNAY BROOKS, by her parent,)
MICHAEL BROOKS; ZEKEIAH)
ORMOND, by his parent, BARBARA)
L. ORMOND; ADRIAN WIDEMON,)
by his parent, ADA WIDEMON)
JONES, individually and on behalf of)
others similarly situated,)**

Plaintiffs,

v.

**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.

**CIVIL ACTION NO.
CV-08-S-0450-NE**

ORAL ARGUMENT REQUESTED

MOTION TO DISMISS PLAINTIFFS' COMPLAINT

COME NOW Defendants State of Alabama and Commissioner Tim Russell
(collectively referred to as "Defendants") and hereby respectfully move this Court

to dismiss Plaintiffs' Complaint ("Complaint") pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.¹ In support of their motion, Defendants state as follows:

RELEVANT BACKGROUND

1. Plaintiffs seek a declaratory judgment that a number of provisions of the Alabama Constitution, comprising the essential structure and content of the state property tax system, violate the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000d *et seq.* (*See Compl.*, p. 25). In addition, Plaintiffs request an injunction prohibiting further enforcement of these constitutional provisions, as well as all statutes and regulations implementing them. (*See id.* at 26).

2. The challenged provisions of the Alabama Constitution are integral parts of the State property tax, and invalidating those provisions would throw the entire Alabama tax structure into disarray. Seeking to mitigate the massive disruption such a ruling would cause, Plaintiffs ask that this Court stay the issuance of any prohibitory injunction "for a period of one year to give the Governor and Legislature an opportunity to adopt appropriate relief." (*Id.* at 26).

¹ In filing this motion, Defendants hereby expressly preserve and do not waive any applicable defense under Fed. R. Civ. P. 12(b), including lack of subject matter jurisdiction, improper venue, failure to state a claim upon which relief can be granted, and failure to join a party under Rule 19.

3. There are a number of bars to this Court's subject matter jurisdiction to entertain this action.

THIS ACTION IS NOT AN ARTICLE III "CASE OR CONTROVERSY"

4. A rudimentary analysis of Plaintiffs' Complaint demonstrates that Plaintiffs lack the standing required to assert their claims. To have standing, a party must show injury, causation and redressability. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). To satisfy the injury requirement, the alleged harm to the plaintiff must be actual, concrete and particularized. *Id.* at 560. A particularized injury "must be concrete in both a qualitative and temporal sense. The complainant must allege an injury to himself that is 'distinct and palpable,' as opposed to merely '[a]bstract,' and the alleged harm must be actual or imminent, not 'conjectural or 'hypothetical.'" *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990) (citations omitted). Thus, a plaintiff must allege "specific concrete facts demonstrating that the challenged practices harm him, and that he personally would benefit in a tangible way from the court's intervention." *Warth v. Seldin*, 422 U.S. 490, 508 (1975).

5. Plaintiffs' allegations do not even remotely suggest an actual, concrete or particularized injury in this case. Plaintiffs, through their parents, allege that they are injured by the property tax restrictions in the Alabama Constitution because those restrictions "impede the ability of [Plaintiffs'] elected

representatives to raise state and local revenues adequately to fund the public services they need, including public education.” (See Compl. at ¶¶ 7-9). Such an alleged injury is wholly conjectural and hypothetical.

6. Plaintiffs’ Complaint similarly fails to satisfy the causation and redressability requirements of standing. The causation prong requires that a plaintiff’s alleged harm be “fairly traceable to the defendant’s allegedly unlawful conduct.” *Allen v. Wright*, 468 U.S. 737, 751 (1984). In this case, it is nothing more than speculation to allege that restrictions on the *ability* of elected officials to raise revenues are directly responsible for Plaintiffs’ alleged injury, which seems to stem from the State’s allegedly underfunded public education system. See *Warth*, 422 U.S. at 505-506 (holding that plaintiffs lacked standing because they could not demonstrate that the challenged restrictions in a zoning ordinance were responsible for the lack of appropriate housing of which plaintiffs complained); see also *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26 (1976) (holding that plaintiffs lacked standing because they could not show that an IRS policy revision affecting the amount of free medical care required from tax-exempt hospitals was responsible for the denial of medical care to plaintiffs). Simply put, the chain of causation in Plaintiffs’ Complaint is not sufficient to support standing under the requirements of Article III.

7. The Supreme Court has held that the redressability prong is not met where plaintiffs ultimately depend on *potential* subsequent action by state authorities to remedy the alleged violation. See *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332 (2006) (holding that speculation as to what the state legislature may or may not do in response to an injunction prohibiting enforcement of a state tax law will not suffice to support standing).

8. Plaintiffs in this action rely on far greater hypothetical and speculative government action than was fatal to the claims in *Cuno*. If the challenged provisions of the Alabama Constitution are struck down, there is no guarantee (or even likelihood) that the Legislature will come up with whatever solution Plaintiffs seek. Similarly, there is no guarantee (or even likelihood) that local governments would increase property taxes, or if they did, that they would use the tax revenues in such a way as to address Plaintiffs' alleged injuries. In short, more than in *Cuno*, Plaintiffs depend on at least three layers of hypothetical and speculative subsequent action and policy decisions by governmental authorities to remedy their alleged injuries. They have no standing to draw the Defendants and this Court into such speculation.

**THIS ACTION SEEKS TO DRAW THIS COURT INTO STATE
GOVERNMENT LEGISLATIVE FUNCTIONS BEYOND ITS
AUTHORITY**

9. Plaintiffs' requested remedies fall squarely within the purview of the Tax Injunction Act, which provides that "District Courts shall not enjoin, suspend, or restrain the assessment, levy, or collection of any tax under State law where a plain, speedy, and efficient remedy may be had in the courts of such State." 28 U.S.C. §1341.

10. The principal purpose of the Act, which reflects the "fundamental principle of comity between federal courts and state governments that is essential to 'Our Federalism,'" is to "limit drastically federal district court jurisdiction to interfere with so important a local concern as the collection of taxes." *California v. Grace Brethren Church*, 457 U.S. 393, 408-09, 413 (1982) (internal citations omitted). Because a declaratory judgment action invalidating a state tax law could "in every practical sense operate to suspend collection of the state taxes until the litigation is ended," the Supreme Court has explicitly held that, in addition to barring injunctive relief, the Act "also prohibits a federal district court from issuing a declaratory judgment holding state tax laws unconstitutional." *Id.* at 408.

THIS ACTION IS BARRED BY THE PRINCIPLE OF FEDERAL COMITY

11. Independent of the Tax Injunction Act, the entire set of remedies sought by Plaintiffs is barred by the broader principle of federal comity. *See Fair*

Assessment in Real Estate Assn., Inc. v. McNary, 454 U.S. 100, 102 (1981) (emphasizing “the important and sensitive nature of state tax systems and the need for federal-court restraint when deciding cases that affect such systems”); *see also* *DirectTV v. Tolson*, 513 F.3d 119 (4th Cir. 2008) (“the comity principle underlying the [Tax Injunction Act] is broader than the Act itself” ... “We hold that principles of comity prevent the federal courts from ordering North Carolina to restore taxing authority to its political subdivisions that it has seen fit to revoke.”); *Rosewell v. Lasalle Nat’l Bank*, 450 U.S. 503, 525-26 n.33 (1980) (“even where the Tax Injunction Act would not bar federal-court interference with state tax administration, principles of federal equity may nevertheless counsel the withholding of relief”).

CONCLUSION

12. The broad-sweeping remedies requested by Plaintiffs’ Complaint 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. The longstanding principles of standing and federal comity, and the explicit jurisdictional bar provided by the Tax Injunction Act, require that this Court dismiss Plaintiffs’ Complaint in its entirety.²

² Defendants are also contemporaneously moving for a 14-day extension of time to file a memorandum of law in support of this motion to dismiss.

WHEREFORE, Defendants respectfully request that this Court dismiss Plaintiffs' Complaint pursuant to Rule 12(b)(1) and/or 12(b)(6), as well as provide any other relief this Court deems appropriate.

Due to the complexity and gravity of the jurisdictional issues, Defendants also respectfully request oral argument on this motion.

Respectfully submitted this 24th day of April, 2008.

/s Drayton Nabers, Jr.

Drayton Nabers, Jr.

One of the Attorneys for the State of
Alabama and Commissioner Tim
Russell

ORAL ARGUMENT REQUESTED

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of April, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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