

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

JOHN F. KNIGHT, JR., *etc., et al.,*

Plaintiffs and Plaintiffs-Intervenors,

UNITED STATES OF AMERICA,

v.

THE STATE OF ALABAMA, *et al.,*

Defendants.

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**Civil action number:
CV 83-M-1676-S**

**RESPONSE OF THE STATE DEFENDANTS TO
KNIGHT-SIMS PLAINTIFFS' MOTION FOR ADDITIONAL RELIEF
WITH RESPECT TO STATE FUNDING OF
PUBLIC HIGHER EDUCATION**

Come now the State Defendants, asking the Court to overrule the Knight-Sims Plaintiffs' Motion for Additional Relief ("Motion")¹ and to deny the relief requested therein, and as grounds therefor, say as follows:

1.

SUMMARY OF ARGUMENT

In order to gain relief beyond that already awarded by this Court, Plaintiffs face the impossible burden of showing either (i) that the Defendants have failed to comply with the existing decrees or (ii) that full compliance with the existing decrees has failed to eradicate, to the extent practicable, the vestiges identified in those decrees. Plaintiffs have chosen the wrong

¹ Plaintiffs' Brief filed in support of said Motion will be referenced herein as "Brief."

procedural vehicle for the former, as the appropriate remedy would be to seek a contempt citation.

To the extent Plaintiffs seek relief on the basis of the latter, or even based upon this Court's retained jurisdiction to modify its decrees, Plaintiffs fall short on both the facts and the law.

At the outset, it should be remembered that the factual basis of Plaintiffs' claim, that the Constitution of 1901 was born of prejudice, already has been presented to this Court. Plaintiffs presented all manner of testimony on this point, through witnesses such as Mills Thornton. After hearing that testimony, the Court identified certain vestiges and imposed orders designed to eradicate those vestiges. The findings were appealed, reversed in part, and retried. Now, a decade later, Plaintiffs say "You missed one." Too late. The law of the case mandates Plaintiffs' Motion must be overruled.

Plaintiffs have failed to show any change of fact or law that warrants additional relief under the existing decrees. The facts alleged, even if true, fall short of the standard necessary to grant additional relief, as they focus on trying to declare a new vestige to exist, rather than showing that old vestiges cannot be eradicated without new relief.

Plaintiffs' attack on the Alabama Constitution of 1901, the new "vestige" they seek to recognize, reaches provisions that have nothing to do with funding of higher education (§§ 215, 216, and 269), as they relate only to local taxes. Those provisions, those taxes, and those revenues have nothing to do with this case. Plaintiffs completely ignore the fact that the Constitution is a "living" document that is a product of will of today's citizens more so than that of the citizens over a century past. The Constitution has been amended over 700 times and the specific provisions attacked have been amended or enacted after the period of *de jure*

segregation. A recent effort to drastically alter Alabama's tax structure, bringing many changes Plaintiffs seek in this Motion, was defeated by vote of the citizens of Alabama. Our present tax structure is at least as much a result of this vote as it is of those who enacted the Constitution of 1901.

Finally, the relief requested by Plaintiffs exceeds the scope of this Court's remedial powers and presents nonjusticiable political questions.

II.

ARGUMENT

A. Plaintiffs' Remedy, if any, is to Enforce the Injunction Already Issued by this Court, not to Obtain Additional, Different, Relief.

At this point in this litigation, the Plaintiffs are afforded additional relief only if (i) the Defendants have failed to comply with the existing decrees or (ii) if full compliance with the existing decrees fails to eradicate the identified vestiges to the extent practicable. Plaintiffs have not alleged the former and, at best, only suggest the latter. If Plaintiffs' claims can be stretched to fall within the first category, Plaintiffs have chosen the wrong procedural vehicle, as additional relief is afforded only through enforcement of the existing decrees, through contempt sanctions.

In the Eleventh Circuit, as elsewhere, the proper procedure for enforcing an injunction, such as this and other remedial decrees, is through the use of the court's civil contempt power. In *Reynolds v. Roberts*, 207 F.3d 1288 (11th Cir. 2000) ("*Reynolds II*"), *cert. denied*, 533 U.S. 941 (2001), the Eleventh Circuit Court of Appeals reiterated its long-held view of the proper procedure for enforcing an injunction:

[W]e think it appropriate to reiterate what we have said in the past as to how injunctions, including consent decrees, are to be enforced. They are enforced through the trial court's civil contempt power. *See In re Grand Jury Proceedings*,

142 F.3d 1416, 1424 (11th Cir.1998) (injunction); *Newman [v. Alabama]*, 683 F.2d [1312,] at 1317–19 [11th Cir. 1982] (consent decree). If the plaintiff (the party obtaining the writ) believes that the defendant (the enjoined party) is failing to comply with the decree's mandate, the plaintiff moves the court to issue an order to show cause why the defendant should not be adjudged in civil contempt and sanctioned. See *Newman*, 683 F.2d at 1318; see also *Thomason v. Russell Corp.*, 132 F.3d 632, 634 n.4 (11th Cir.1998); *Wyatt v. Rogers*, 92 F.3d 1074, 1078 n.8 (11th Cir.1996). The plaintiff's motion cites the injunctive provision at issue and alleges that the defendant has refused to obey its mandate. See *Wyatt*, 92 F.3d at 1078 n.8. If satisfied that the plaintiff's motion states a case of non-compliance, the court orders the defendant to show cause why he should not be held in contempt and schedules a hearing for that purpose. At the hearing, if the plaintiff proves what he has alleged in his motion for an order to show cause, the court hears from the defendant. At the end of the day, the court determines whether the defendant has complied with the injunctive provision at issue and, if not, the sanction(s) necessary to ensure compliance. See *Newman*, 683 F.2d at 1318.

Reynolds II, 207 F.3d at 1298 (internal footnote omitted). The Court also noted that the district "court's show cause order may instruct the defendant to file a response; depending on what the defendant says in his response, a hearing may be unnecessary." *Id.* at 1298 n.19 (emphasis added).

The Eleventh Circuit explained in *Newman v. Alabama* why additional injunctive relief is unavailable in this case. "To be entitled to injunctive relief from a constitutional violation, a plaintiff must first establish the fact of the violation." *Newman*, 683 F.2d at 1319 (citing *Rizzo v. Goode*, 423 U.S. 362, 377 (1976)). The plaintiff "must then demonstrate the presence of two elements: continuing irreparable injury if the injunction does not issue, and the lack of an adequate remedy at law." *Id.* (citing *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 506 (1959)). Because a plaintiff who has already obtained an injunction has an adequate legal remedy through the use of the traditional procedures for civil contempt to enforce that injunction, additional injunctive relief is unavailable. As the Eleventh Circuit put it in *Newman*, "[T]he law provide[s] the plaintiffs a procedure for obtaining full compliance with that decree in the event the State refuse[s] to abide by its terms: a civil contempt proceeding and coercive sanctions.

Thus, the plaintiffs possess[] all the legal relief they could have expected: a consent decree containing a remedy for the constitutional violation and the means for realizing that remedy.” *Id.*

The Plaintiffs in this case have made no showing that the traditional civil contempt power of this Court would be “ineffectual,” nor could they do so until that power had at least been tried. *See id.* at 1319–20 & n.18 (“It could be argued that a conclusion that the court’s contempt power is ineffectual cannot be drawn until the court first exercises that power and sanctions fail to produce compliance with the underlying injunctive order.”). Because Plaintiffs have not and cannot show that civil contempt sanctions would fail to afford them the relief to which they allege they are entitled, their motion for additional relief should be summarily denied.

B. Plaintiffs’ Motion Is Barred by the Law of the Case Doctrine.

Perhaps Plaintiffs elected to pursue the wrong procedural vehicle for enforcing this Court’s injunction because they realized their request is barred by the law of the case doctrine. They already have presented their case on these issues to this Court, and this Court already has ruled.

The Eleventh Circuit “delineated the general contours of law of the case doctrine” in *Wheeler v. City of Pleasant Grove*, 746 F.2d 1437 (11th Cir. 1984). *See Riley v. Camp*, 130 F.3d 958, 981 n.3 (11th Cir. 1997). As held in *Wheeler*:

In *United States v. Robinson*, we stated:

Under the law of the case doctrine, both the district court and the court of appeals generally are bound by findings of fact and conclusions of law made by the court of appeals in a prior appeal of the same case.... However, the law of the case doctrine does not apply to bar reconsideration of an issue when (1) a subsequent trial produces substantially different evidence, (2) controlling authority has since made a contrary decision of law applicable to the issue, or (3) the prior decision was clearly erroneous and would work manifest injustice.

Further, while the doctrine encompasses only those issues previously determined, the law is clear that it “comprehends things decided by necessary implication as well as those decided explicitly.” The doctrine’s purpose is to bring an end to litigation. It also “protects against the agitation of settled issues and assures obedience of lower courts to the decisions of appellate courts.”

Wheeler, 746 F.2d at 1440 (quoting *United States v. Robinson*, 690 F.2d 869, 872 (11th Cir. 1982) and *United States v. Williams*, 728 F.2d 1402, 1406 (11th Cir. 1984)).

Plaintiffs in this case are attempting to prolong this litigation rather than end it. Their motion is plainly directed at “the agitation of settled issues” that were raised and decided either explicitly or “by necessary implication.” The testimony elicited by Plaintiffs at trial in this action went to many of the same issues now argued.² They had more than sufficient opportunity to challenge the provisions they now attack. Those earlier challenges were ruled upon, and the appropriate injunctive relief fashioned, appealed, and affirmed. By necessary implication, the enormously intrusive relief Plaintiffs now seek was rejected. This Court and the court of appeals decided on the proper measure of relief, and that judgment is now final. Those decisions are binding on Plaintiffs, and the Court should not allow Plaintiffs an opportunity to re-litigate them after nearly a decade. See *United States v. McMahon*, 715 F.2d 498, 500–01 (11th Cir. 1983).

C. Modification of this Court’s Decree Is Inappropriate, because the Plaintiffs Have Not Alleged a Significant Change in Circumstance or Law to Warrant Additional Relief.

In its prior decrees this Court has identified the vestiges of *de jure* segregation that existed in higher education in Alabama. That determination is in the form of a final judgment. *Wheeler* would permit reconsideration of the Court’s prior findings upon proof of a change in the facts or a change in the law.³ These parallel the requirements for modification of a decree under

² Recall, for example, the extensive testimony of Plaintiffs’ Expert Mills Thornton, who described, in great detail, the origins of the Alabama Constitution of 1901 and its restrictions on taxation.

³ Since the time for appeal of the rulings of this Court has expired, the third basis for reconsideration recognized in *Wheeler* – that the decision was clearly erroneous – is not available to the litigants.

Federal Rule of Civil Procedure 60(b). Admittedly, this Court has retained jurisdiction to modify its decrees under appropriate circumstances. *Knight v. State of Alabama*, 900 F. Supp. 272, at 374 (N.D. Ala. 1995). But whether travelling under *Wheeler*, Rule 60(b), or the power retained by this Court, Plaintiffs have not alleged a change in law or fact sufficient to warrant modification of this Court's prior decrees.

The Supreme Court explained the framework for modifying an injunction in *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1992). Under *Rufo*, a party seeking to modify a consent decree or injunction must first "establish that a significant change in circumstances warrants revision of the decree." *Id.* at 383. If the party meets that burden, "the court should consider whether the proposed modification is suitably tailored to the changed circumstance." *Id.*

In *Jacksonville Branch, NAACP v. Duval County School Board*, 978 F.2d 1574 (11th Cir. 1992), the Eleventh Circuit elaborated on the *Rufo* standard. The court of appeals explained,

Modification may be considered when (1) a significant change in facts or law warrants change and the proposed modification is suitably tailored to the change, (2) significant time has passed and the objectives of the original agreement have not been met, (3) continuance is no longer warranted, or (4) a continuation would be inequitable and each side has legitimate interests to be considered.

Id. at 1582 (citing *Rufo* and *Newman v. Graddick*, 740 F.2d 1513, 1520 (11th Cir. 1984)). The second of these justifications for modification—"significant time has passed and the objectives . . . have not been met"—is based on the Supreme Court's decision in *United States v. United Shoe Machinery Corp.*, 391 U.S. 244 (1968). See *Newman*, 740 F.2d at 1520.

United Shoe was an action under section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2, in which the district court entered a final judgment to terminate an illegal monopoly. *Id.* at 245–46. After 10 years, the Government moved to modify the decree, seeking further relief. *Id.* at

247. The Supreme Court observed that “if after 10 years it were shown that the decree had not achieved the adequate relief to which the Government is entitled in a § 2 case, it would have been the duty of the court to modify the decree so as to assure the complete extirpation of the illegal monopoly.” *Id.* at 251. “If the decree has not, after 10 years, achieved its ‘principal objects,’ namely, ‘to extirpate practices that have caused or may hereafter cause monopolization, and to restore workable competition in the market’—the time has come to prescribe other, and if necessary more definitive, means to achieve the result.” *Id.* at 251–52.

In *Sizzler Family Steak Houses v. Western Sizzlin Steak House, Inc.*, 793 F.2d 1529 (11th Cir. 1986), the court of appeals noted that the Former Fifth Circuit decision in *Exxon Corp. v. Texas Motor Exchange*, 628 F.2d 500 (5th Cir.1980), had interpreted *United Shoe* to mean “ ‘that an injunction may be modified to impose more stringent requirements on the defendant when ‘the original purposes of the injunction are not being fulfilled in any material respect.’ ” ” *Sizzler*, 793 F.2d at 1539 (quoting *Exxon*, 628 F.2d at 503, in turn quoting 11 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2961 (1973)).

Indeed, this Court has reserved power “at anytime, [to] modify or amend the terms and conditions of this Decree as needed to guarantee the elimination of any remaining vestiges of discrimination within Alabama’s system and units of public higher education.” *Knight*, 900 F. Supp. 272, 374. Yet Plaintiffs have failed to allege a sufficient change of facts or circumstances to warrant such modification, and have wholly failed to show the existing decree ineffective at eradication of the vestiges identified by the Court. Instead, the Plaintiffs seek to revise those injunctions to achieve the broader purpose of remedying all vestiges of discrimination in the Alabama Constitution of 1901, not just those found to exist in higher education. Such an ambitious revision would, no doubt, ensure that this litigation would never end. This Court

should not yield to that temptation, however, as long as “the original purposes of the injunction” in this case have been and continue to be fulfilled in a “material respect.”

1. No Facts Are Shown to Warrant Additional Relief

Plaintiffs’ request for relief is based upon an unproved premise: There is a “current lack of adequate funds to implement the institutional reform and equal educational opportunity objectives of the remedial decrees.” (Motion, ¶ 3.) Mark Twain observed “There are three kinds of lies: Lies, Damned Lies, and Statistics.” To bolster their claim for relief, Plaintiffs rely on the latter. But even in that, Plaintiffs’ “statistics” are so false and misleading that their claim of an “overall public school funding crisis” rings hollow.

For example,

- Plaintiffs imply that Education Trust Fund (ETF) allocations to higher education have decreased over the past decade, asserting, “In 1991 higher education was appropriated 34% of the ETF. In 2001-02 higher education received only 28% of the ETF.” (Motion, ¶ 6.) The implication is false: ETF funding for higher education operation and maintenance has **increased substantially** since the 1992-93 school year, from \$564,097,269 to \$841,510,267. State of Alabama, Exhibit A.
- Plaintiffs assert, “A year ago ASU was forced to increase tuition by 15%,” and also that in February 2003 “ASU’s Board increased tuition another 24%.” (Motion, ¶ 7.) No mention is made, however, that ASU had no tuition increase (0%) for the 2002-03 school year. State of Alabama, Exhibit B.
- Plaintiffs assert that the 24% tuition increase by ASU for its 2003-04 school year - up to \$3,600 a year for its resident undergraduates - is “\$100 over the state average.” (Motion, ¶ 7.) That statement is wrong. In fact, after raising its resident undergraduate tuition by 24% to \$3,600 a year for 2003-04, ASU still fell \$242 **below** the state median tuition of \$3,842, or \$365 below the average of the tuitions charged by all institutions, \$3,965. State of Alabama, Exhibit C.
- Plaintiffs’ assertion that AAMU increased its tuition by 28.6% in 2001-02 is, likewise, erroneous. (Motion, ¶ 7.) That number is twice the actual increase of 14.3%. State of Alabama, Exhibit D.
- Plaintiffs assert, “Tuition increased again at all the state universities in 2002-03.” (Brief, p.6.) That statement is incorrect, as suggested by the quote following the sentence in the

Brief, and should read, "Tuition increased again at all the state universities in 2002-03, **except at ASU.**" State of Alabama, Exhibit B.

In citing these "statistics," Plaintiffs seem to lose sight of the fact that Alabama's efforts in higher education, and the efforts of this Court in seeking to remove identified vestiges of *de jure* segregation, is to *educate*. If we want to focus on statistics, shouldn't the focus be on the results of those efforts? Those results show that in 2001-02 Alabama was doing quite well at providing an education for those African-American students who sought baccalaureate degrees here. The June 5, 2003, issue of *Black Issues in Higher Education*, at page 35, reports on the top 100 institutions awarding baccalaureate degrees to African-Americans. (State of Alabama, Exhibit E):

- The Alabama institutions reported show that the percentages of their degree awards that go to African Americans compare favorably with institutions in the South and elsewhere:

University of Alabama – Birmingham	23%
Troy State University – Main Campus	23%
University of South Carolina	16%
Mississippi State University	14%
University of Alabama	12%
University of Texas	11%
University of North Carolina	10%
North Carolina State University	9%
University of Virginia	9%
Louisiana State University	8%
University of Michigan	7%
University of Florida	6%
Ohio State University	6%
University of Illinois	6%
University of Georgia	5%

- Similarly, in raw numbers of degrees granted the Alabama institutions reported compare favorably to many schools:

University of Michigan	375
University of Alabama at Birmingham	368
University of North Carolina	355
North Carolina State University	343
Louisiana State University	331

University of Alabama	327
University of Texas	307
University of Virginia	298
Troy State University – Main Campus	290
University of Georgia	280

The State Defendants cite these figures not to suggest that the statistics paint a complete picture or that they would be dispositive, even if they did. Among other things, there are many factors unrelated to vestiges of *de jure* segregation that impact the degrees awarded, both for Alabama institutions and for the others. Instead, the State Defendants simply wish to emphasize that the focus of this Court should not be on select statistics, but rather should be on the vestiges of *de jure* segregation and whether they have been eradicated, to the extent practicable.

The Plaintiffs argue that a public school funding crisis has been caused by a *newly identified* vestige of discrimination. Apparently they choose to forget months of testimony *they* presented to this Court in 1990 where the issues of funding and the origins of funding policies and restrictions were covered at length! The entire Alabama Constitution of 1901 is again under attack in the Plaintiffs' wide-ranging motion for relief. Plaintiffs' argument misses the mark, however, and fails to recognize that the prior remedial decrees of this Court define the vestiges of discrimination that are relevant to this case. And the same remedial decrees set forth the steps the Defendants must take to eradicate those vestiges. Nothing alleged in Plaintiffs' Motion suggests those steps have not been taken by the Defendants or that they have been ineffective. Instead, Plaintiffs are saying this Court, and the Appellate Court, failed to catch one vestige in their first 15 years of consideration of this case, and need to go back and try again.

2. No Change of Law Is Shown to Warrant Additional Relief.

Initially, it should be noted Plaintiffs concede *United States v. Fordice*, 505 U.S. 717 (1992) continues to provide "the constitutional standard governing this higher education

desegregation action . . .” (Brief, p.11.) Plaintiffs apparently contend dismissal of *Ex parte James*, 836 So.2d 813 (Ala. 2002), by the Alabama Supreme Court constitutes a change of law sufficient to warrant modification of the Court’s remedial decrees. But *Ex parte James* involved the funding of Alabama’s system of K-12 schools, not higher education, and has neither a past nor a present effect on this litigation. Education funding is relevant to this litigation only as it relates to higher education and only to the extent it prevents the Defendants’ implementation of the decrees of this Court. Irrespective of what has gone on elsewhere in public school funding in Alabama, the Plaintiffs cannot show that the Defendants have failed to take the steps that this Court has ordered them to take.

D. The Plaintiffs’ Challenge to the State Constitutional Provisions Is Without Merit.

Plaintiffs claim that certain provisions of Alabama’s state constitution violate the Thirteenth, Fourteenth, and Fifteenth Amendments of the United States Constitution. (Motion, ¶¶ 13-14.) Specifically, Plaintiffs argue that the tax limits allegedly provided in Sections 214, 215, 216, and 269, as amended; Amendment 325, as amended; and Amendment 373 to the Constitution of 1901, are “traceable to a legislative intent to preserve racial segregation throughout Alabama’s system of public education and to deny African Americans an equal opportunity to obtain the benefits of public higher education in Alabama.” (*Id.* at ¶ 13.) According to Plaintiffs, these provisions are “vestiges of *de jure* discrimination against African Americans” that allegedly prevent the adequate funding of public institutions of higher education. (*Id.* At ¶¶ 13-14; Brief, pp. 78-79.) Plaintiffs request that this Court declare these provisions unenforceable and, then, implement a tax reform plan that “eliminates the[se] vestiges of *de jure* racial discrimination in public school funding.” (Motion, pp. 7-8.)

Plaintiffs' request is improper for several reasons. First, Sections 215, 216, and 269 relate only to *local* taxes, not state funding for higher education. Second, Sections 214, 215, and 216 were amended by Amendment Nos. 325 and 373—amendments that were ratified *after* the period of *de jure* segregation ended and have survived prior constitutional attacks, thereby making it impossible for these provisions to be vestiges of racial discrimination. Similarly, any attack on Section 40-8-1 of the Code of Alabama fails because it, too, was enacted *after de jure* segregation ended. Plaintiffs' argument regarding the constitutionality of Section 269 suffers the same fate because it was amended *after* the end of the *de jure* segregation period. Thus, Plaintiffs' claim that these provisions are "vestiges" fails.

The citizens of Alabama have not been reluctant to amend the state's constitution – they have done it over 700 times. At some point, the provisions of the constitution become the product of the current will of the people, rather than a vestige of things thought and done more than a century ago. It is as if we had a house more than 100 years old, and Plaintiffs were complaining that it was painted white. They say it is white because it was painted that color over 100 years ago. But it has been painted more than 700 times since then. If the last of the painters chose to paint it white, it is white today because of that decision, and not because of the decision made over a century ago.

Counsel for the State Defendants realizes that in using this analogy, he is lobbing a softball up for Counsel for the Plaintiffs to drive over the fence. No doubt we will hear that, indeed, the "Big House" is still "white." But the point must be made – there comes a time when today's actions create the conditions in which we live, and they can no longer be blamed on things past. Indeed, the Alabama Legislature proposed sweeping reform to Alabama's tax structure this year, reforms that would have addressed and amended many of the features

Plaintiffs ask this Court to alter. See Act of June 11, 2003, No. 119, § 3, 2003 Ala. Sess. Law. Serv. (West). That attempt failed when the voters rejected the package. And if Plaintiffs' Motion raises issues to be heard at an evidentiary hearing, perhaps we can show, as the polls suggest, that the outcome of that election was determined by the votes of the Plaintiffs! How can they now complain? How can they blame the present tax structure on people long dead? The present tax structure in Alabama reflects the will of its current citizens, not the will (or prejudices) of the citizens of 1901.

Moreover, Plaintiffs' conclusion that this Court's abolition of the tax limitations provided in the challenged provisions would resolve any alleged vestige problem with public education funding is flawed. Because the State has no constitutional obligation to impose any property tax whatsoever, no educational interests would be served by declaring the existing provisions unenforceable. If this Court indeed declared these provisions unenforceable, the Legislature and the Governor would still have to work together to enact laws to impose new taxes. This process could have occurred, with the consent of the electorate, after the period of *de jure* segregation, as evidenced by the adoption of Amendments Nos. 325 and 373.⁴

1. Sections 215, 216, and 269 relate only to local taxes.

Sections 215 and 216 impose limitations on the *ad valorem* taxes that counties and municipalities may impose, and Section 269 establishes the authority for counties to levy special school taxes. Those sections do not pertain to state funding for higher education. Thus, an order by this Court holding those provisions to be unconstitutional is unrelated to the enforcement of this Court's remedial decrees. Section 269 establishes the authority for counties to levy special school taxes. See Ala. Const. of 1901, art. XIV, § 269, *amended by amend. 111 (1956)* and

⁴ And about 400 other amendments!

amend. 202 (1962). Sections 214, 215, and 216 address, respectively, the power of the Legislature, the counties, and municipalities to levy *ad valorem* taxes. More particularly, Section 214 provides that “[t]he legislature shall not have the power to levy in any one year a greater rate of taxation than *sixty-five one-hundredths of one per centum* [.65%] on the value of the taxable property within this state.” Ala. Const. of 1901, art. XI, § 214 (emphasis added).⁵ Section 215, as amended, states that the counties can levy *ad valorem* taxes at a rate no greater than “*one-half of one per centum*” [.5%] of the value of the taxable property. *Id.* at § 215 (emphasis added).⁶ Similarly, subject to limitations that are not pertinent, Section 216 sets the limit of the *ad valorem* tax rate that municipalities can levy at no rate greater than “*one-half of one per centum*” [.5%] of the value of the taxable property. *Id.* at § 216 (emphasis added).

Because none of these sections affect state funding for higher education, a constitutional challenge to those provisions within the context of this litigation is inappropriate, especially at the end of the remedial phase of this case.

2. Amendment Nos. 325 and 373, which were ratified after the period of *de jure* segregation, have survived constitutional attack.

Amendment Nos. 323 and 373 were ratified by the voters of the State of Alabama in the years 1972 and 1978, respectively. Both amendments were ratified after the end of the period of *de jure* segregation. Thus, it is impossible for these amendments to be considered vestiges of such segregation as they did not exist during that period.

Furthermore, both amendments have withstood previous constitutional attacks. In *McCarthy v. Jones*, 449 F. Supp. 480 (S.D. Ala. 1978), the plaintiff class challenged Amendment

⁵ In their Motion, Plaintiffs challenge Section 214, “as amended.” A review of the legislative history of Section 214 indicates that no subsequent legislation specifically amended this section. Therefore, Defendants can address only those amendments that indirectly amended Section 214.

⁶ Amendment 208, which specifically amended Section 215, did not change the *ad valorem* tax rate. See Ala. Const. of 1901, art. XI, § 215, *amended by* Ala. Const. of 1901, amend. 208 (1962).

No. 325(c), contending that it violated the equal protection clause of the Fourteenth Amendment to the United States Constitution. The United States District Court for the Southern District of Alabama held that the existing statutory scheme based on Amendment No. 325, violated the Fourteenth Amendment because that scheme lacked a rational basis for its distinctions between the assessment ratios of *ad valorem* taxes in various counties. 449 F. Supp. at 484. The court, however, refused to hold that the constitutional amendment that enabled the Legislature to address *ad valorem* rates—Amendment No. 325—violated the Fourteenth Amendment because “the Amendment itself permits the adoption of valid legislation” that is based on a legitimate and rational state interest. 449 F. Supp. at 484-85. Thus, despite a previous constitutional attack, Amendment No. 325 remains sound law.

Amendment No. 373, likewise, still stands. In *Weissinger v. White*, 733 F.2d 802 (11th Cir. 1984), the Eleventh Circuit reviewed the two different methods for computation of the four types of Class III property provided in Amendment No. 373(j), in the context of an Equal Protection challenge. The court upheld the amendment stating that the disparate tax treatment that resulted from the classifications was “justified by a legitimate state purpose and [is] rationally related to effectuating that valid purpose.” 733 F.2d at 806.

Therefore, because Amendment Nos. 325 and 373 were ratified after the end of the *de jure* segregation period and cannot be traced to an intent to discriminate, they cannot serve as vestiges that Plaintiffs can use as a basis for another bite at the remedy apple.

3. Section 40-8-1 of the Code of Alabama was enacted after the end of the *de jure* segregation period.

To the extent that Plaintiffs challenge Section 40-8-1 of the Code of Alabama as a “vestige” of discrimination, this section was ratified after the end of the *de jure* segregation period. Section 40-8-1, which establishes *ad valorem* taxes according to class of the property,

was enacted in 1978, at time period clearly past the end of *de jure* segregation in Alabama. Ala. Code § 40-8-1 (1998). Furthermore, the Legislature has amended this statute on numerous occasions, including an amendment in 1999. *See* Act 99-399, p. 663, § 1.⁷ Therefore, this section is not a remnant of the *de jure* segregation period.

4. Section 269 has been amended twice after the *de jure* segregation period.

Section 269, which establishes the authority for counties to levy special school taxes, has been amended numerous times. It was specifically amended in 1956 by Amendment No. 111. *See* Ala. Const. of 1901, art. XIV, § 269, *amended by* amend. 111 (1956). Amendment No. 202, which was ratified in 1962, provided for an additional *ad valorem* tax for county educational purposes. *Id.*, amend. 202 (1962). Separate and apart from Amendment No. 111, which is of challenged provenance, and Amendment No. 202, Section 269 was also amended indirectly by one amendment that was ratified after the period of *de jure* segregation ended. Amendment No. 382, which was ratified in 1980, provided for an additional special district school tax. *Id.*, amend. 392 (1980).

5. An order from this Court declaring Sections 214, 215, 216, and 269 to be unenforceable would not further the purposes of this Court's remedial decrees.

Plaintiffs request that this Court declare Sections 214, 215, 216, and 269 unconstitutional and unenforceable. (Motion, ¶¶ 13-14 and pp. 7-8.) If this Court granted that declaratory judgment, legislation would need to be enacted to provide for a new tax system, a process acknowledged by Plaintiffs. (*Id.* at p. 8) The Legislature and the Governor would then have the responsibility to propose new tax laws, that the voters of the State of Alabama would then need

⁷ The Legislature attempted to amend Section 40-8-1 again in 2003, effective only after approval by the Governor and ratification by the voters of the State of Alabama. *See* Act of June 11, 2003, No. 119, § 3, 2003 Ala. Sess. Law. Serv. (West). That attempt failed when the voters rejected the package.

to approve. This process could have occurred earlier, with the consent of the people, after the period of *de jure* segregation, as evidenced by the adoption of Amendment Nos. 325 and 373.

Ultimately, however, there is no constitutionally enforceable mandate that the State or its political subdivisions levy *ad valorem* taxes. A declaration by this Court that the challenged provisions are unenforceable would not enhance the State's ability to comply with this Court's remedial decrees, since the State would have no legally enforceable obligation to enact a replacement tax plan. On the contrary, such a declaration by this Court would frustrate the State's ability to comply with the remedial orders by reducing state revenues.

E. The Plaintiffs' Request For Relief Exceeds The Scope Of This Court's Remedial Powers And Presents Nonjusticiable Political Questions.

The Plaintiffs' request that this Court set a one-year deadline for the State to enact a tax reform plan and, absent the enactment of such a plan, "order as a temporary measure that all State and local *ad valorem* millage rates shall not be reduced and shall be applied uniformly to all taxable property assessed at no less than 60% of fair market value." (Motion, at 8.) They complain that the property tax system in Alabama is racially discriminatory and forces state and local governments to rely on income, sales, and other types of taxes to fund public education. (Motion, at 8.) The Plaintiffs' request that this Court modify Alabama's tax structure should be rejected because it asks this Court to exceed the scope of its remedial powers, presents nonjusticiable political questions, and raises serious federalism concerns.

In *Milliken v. Bradley*, 433 U.S. 267 (1977), the United States Supreme Court held that, among other things, a remedial decree must be related to the condition that has been alleged, and, in this case, found, to violate the Constitution. The Court noted that the "principle that the nature and scope of the remedy are to be determined by the violation means simply that federal-court decrees must directly address and relate to the constitutional violation itself." *Id.* at 281-82. In

this regard, the Court has identified "student assignments,...faculty, staff, transportation, extracurricular activities and facilities' as the most important indicia of a racially segregated school system." *Missouri v. Jenkins*, 515 U.S. 70, 85 (1995) (quoting *Board of Ed. of Oklahoma City Public Schools v. Dowell*, 498 U.S. 237, 250 (1990)). More generally,

One vehicle can carry only a limited amount of baggage. It would not serve the important objective of *Brown [v. Board of Education]*, 347 U.S. 483 (1954)] to seek to use school desegregation cases for purposes beyond their scope, although desegregation of schools ultimately will have impact on other forms of discrimination.

Swann v. Charlotte-Mecklenburg Bd. of Ed., 402 U.S. 1, 22-23 (1971).

In its remedial decrees, this Court has sought to remedy the unconstitutional conditions in the State's system of higher education and their vestiges. To the extent that it focused on funding, however, this Court confronted a system of inequitable distribution of the funds available. See *Knight v. State of Alabama*, 900 F. Supp. 272, 307 (N.D. Ala. 1995) (finding "discriminatory underfunding when compared with HWU's"). It directed that funding be made more equitable and that the State pay more to Alabama State University and Alabama A&M University to make up for past inequity. As shown in its Annual Reports to this Court and otherwise, the State has complied with this Court's orders.

The Plaintiffs' present requests take this Court beyond redressing inequities in the distribution of funds to the amount of funds. Just as in *Milliken v. Bradley*, 418 U.S. 717 (1984), the Court held that a District Court had exceeded its remedial authority by directing interdistrict relief to remedy intradistrict segregation, the Plaintiffs ask this Court to overreach. If this Court did not find the tax system to be racially discriminatory in the earlier proceedings in this case, it lacks the power to grant the relief the Plaintiffs seek. Not only that, the Plaintiffs' request runs afoul of *Milliken II's* third principle, "[T]he federal courts in devising a remedy must take into

account the interest of state and local authorities in managing their own affairs, consistent with the Constitution.” 433 U.S. at 280-81.

In that regard, the Plaintiffs ask this Court to address nonjusticiable political questions. In *Missouri v. Jenkins*, the United States Supreme Court held that a District Court exceeded its remedial powers when it sought to make an urban school district comparable to a suburban district by focusing on “desegregative attractiveness” in conjunction with “suburban comparability.” *Id.*; at 94 (“The District Court’s pursuit of ‘desegregative attractiveness’ is beyond the scope of its broad remedial authority.”) The Court observed that there were no objective limits to the amount of money that the District Court could direct the school district to put into its schools nor was there any limit to the duration of the District Court’s involvement. For those reasons, the Court found that the increases in salaries for instructional and noninstructional staff and in funding for quality education programs directed by the District Court exceeded its authority. Accordingly, the Supreme Court reversed, advising the District Court that, on remand, it was to

bear in mind that its end purpose is not only “to remedy the violation” to the extent practicable, but also “to restore state and local authorities to the control of a school system that is operating in compliance with the Constitution.”

Id. , at 102 (quoting *Freeman v. Pitts*, 503 U.S. 467, 489 (1992)).

In pointing to the District Court’s overreaching, the Court also noted the presence of extraneous, independent factors. It explained:

Just as demographic changes independent of *de jure* segregation will affect the racial composition of student assignments, so too will numerous external factors beyond the control of the KCMSD and the State affect minority student achievement. So long as these external factors are not the result of segregation, they do not figure in the remedial calculus. Insistence upon academic goals unrelated to the effects of legal segregation unwarrantably postpones the day when the KCMSD will be able to operate on its own.

Id., at 102 (interior citations omitted). In the same way, the Plaintiffs' requests for restructuring of the tax system ask this Court to address external forces and political questions. In particular, they ask this Court to exercise control over the Alabama Legislature and the voters, neither of which are appropriate subjects of its control.

Two cases involving the funding of Pennsylvania's court system illustrate the limits of the judicial power. In *County of Allegheny v. Commonwealth of Pennsylvania*, 534 A. 2d 760 (1987), the Supreme Court of Pennsylvania invalidated the statutory funding scheme for the judicial system holding that the funding scheme "is in conflict with the intent clearly expressed in the constitution that the judicial system be unified." *Id.*, at 75-76. The court stayed its judgment "to afford the General Assembly an opportunity to enact appropriate funding legislation consistent with this holding. Until this is done, the prior system of county funding shall remain in place." *Id.*, at 76 (footnotes omitted). Subsequently, several counties filed a motion seeking to enforce the judgment, asking for an order directing that the 1987 level of funding be restored. The Supreme Court of Pennsylvania denied the motion stating:

Our 1987 order had nothing to do with *levels* of funding, but only with the method of funding. Because the instant petition is couched in terms of levels of funding, rather than the method of funding, the question of whether the legislature has violated our order is not squarely before us, for the system of funding is now the same as it was in 1987: the legislature now, as then, may choose or not choose to make contributions to fund county courts.

County of Allegheny v. Commonwealth of Pennsylvania, 626 A. 2d 492 (1993) (emphasis in original). In dissent, Chief Justice Nix expressed the view that the 1987 order should be vacated, noting, "The tragedy of the present situation is that the majority's order in *County of Allegheny* is unenforceable, and unenforceable orders like this breed contempt for the orders of this Court." *Id.*, at 493 (Nix, C. J. dissenting).

Like the County of Allegheny and the other counties, the Plaintiffs ask this Court to enter an unenforceable order. This Court cannot make the Alabama Legislature pass the legislation that the Plaintiffs want. Indeed, Plaintiff John Knight has more to say about the result in his capacity as a member of the Alabama House of Representatives than this Court does speaking *ex cathedra*. Mr. Knight is the Chair of the House Ways and Means Committee and a member of a black caucus that is an important part of the majority position held by the Democratic Party. The Black Caucus cannot enact legislation by itself, but it can block legislation it dislikes and influence other litigation. The result that the Knight Plaintiffs seek should be the result of the legislative process, not this Court's direction.

The Plaintiffs also ask this Court to try to direct the political choices of the people of Alabama. On September 9, 2003, the people of Alabama voted on a referendum that included race-neutral tax reform amendments and defeated it by an overwhelming margin. Imposition of a uniform 60% "assessment ratio" (which would be mathematically equivalent to a massive increase in the millage rate of state and local property taxes) purely by judicial fiat would be inconsistent with the will of the voters.

On the other hand, the Constitution of 1901 has been amended more than 700 times, and the Legislature has changed statutory law on numerous occasions. The amendment process shows that the voters are amenable to changing the Constitution when they believe the change to be appropriate.

Finally, granting the Plaintiffs' requests for relief would raise serious federalism concerns. Directing the Legislature to act, imposing a remedial tax structure, or both, by federal judicial fiat is difficult to square with the ultimate goal of this litigation. As the Supreme Court stated in *Milliken II*, "[T]he federal courts in devising a remedy must take into account the

interests of state and local authorities in managing their own affairs, consistent with the Constitution.” 433 U.S. at 281-82. Similarly, in *Missouri v. Jenkins*, when the Court addressed *Hills v. Gautreaux*, 425 U.S. 284 (1976), it noted that *Gautreaux* “involved the imposition of a remedy upon a federal agency.” 515 U.S. at 98. The Court explained, “[*Gautreaux*] did not raise the same federalism concerns that are implicated when a federal court issues a remedial order against a State.” *Id.*

The Plaintiffs urge this Court to invalidate the State’s current tax scheme and then to take on the task of devising and implementing a tax reform plan that “eliminates the[se] vestiges of *de jure* racial discrimination in public school funding.” (Motion, pp. 7-8.) As the Supreme Court of the United States has observed, however, federal courts are ill-equipped to devise and implement tax reform measures. In rejecting an Equal Protection challenge to the means chosen by the Texas legislature to raise and disburse state and local tax revenues for education, the Supreme Court cautioned

We are asked to condemn the State’s judgment in conferring on political subdivisions the power to tax local property to supply revenues for local interests. In so doing, appellecs would have the Court intrude in an area in which it has traditionally deferred to state legislatures... This Court has often admonished against such interferences with the State’s fiscal policies under the Equal Protection Clause:

The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized. . . . (T)he passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. . . . It has . . . been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. . . .’

... Thus, we stand on familiar grounds when we continue to acknowledge that the Justices of this Court lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues. Yet, we are urged to direct the States either to alter drastically the present system or to throw out the property tax altogether in favor of some other form of taxation. No scheme of taxation, whether the tax is imposed on property, income, or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the Court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection Clause.

San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 40-41 (1973) (quoting *Madden v. Kentucky*, 309 U.S. 83, 87-88 (1940) (citations and footnotes omitted).

III.

CONCLUSION

For each of the reasons stated above, the relief requested by the Plaintiffs is due to be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing document was served upon the following counsel of record on this 30th day of SEPTEMBER, 2003, by first class mail.

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SUMMARY OF ETF APPROPRIATIONS FOR ALABAMA PUBLIC INSTITUTIONS
1992-93 - 2002-2003

	1992-93*	1993-94*	1994-95*	1995-96*	1996-97**	1997-98**	1998-99**	1999-00**	2000-01** Proxied 6.20%	2001-02**	2002-03**
INSITUCTION:											
AAM	19,688,108	20,601,657	24,607,757	22,893,757	24,880,676	26,459,425	27,722,870	29,988,874	29,789,889	30,695,471	31,848,863
AU	132,597,253	138,973,390	156,584,944	144,304,832	157,527,789	158,408,877	166,008,595	176,493,691	174,847,287	180,589,618	187,658,137
UA	85,209,083	89,217,859	98,705,562	92,180,692	102,380,856	103,300,983	108,233,633	114,724,061	114,247,053	117,797,971	120,984,465
JAR	135,547,800	141,858,020	180,750,021	148,692,963	178,457,284	179,686,929	188,266,988	203,160,287	202,245,735	208,837,590	214,198,718
UAH	28,017,156	29,131,453	33,401,450	30,880,561	34,488,495	34,803,804	36,616,801	38,239,100	34,886,606	36,043,683	36,339,561
UA SYSTEM	248,774,039	290,397,332	293,858,033	271,655,156	315,304,645	317,790,816	333,115,422	353,143,448	351,379,394	382,679,234	372,122,714
USA	50,833,810	53,059,481	60,295,724	56,652,606	69,127,698	69,789,375	73,244,600	79,677,852	78,336,585	80,995,077	82,966,519
Total Doctoral	451,893,211	473,044,860	535,436,458	494,448,351	566,840,808	572,420,297	600,091,487	639,303,765	634,353,136	654,969,400	672,627,428
ASC	19,826,349	20,149,334	25,382,537	23,468,855	25,429,592	25,821,470	27,100,453	29,041,112	28,225,902	28,889,497	30,230,107
ASC	4,634,001	5,149,732	6,322,485	5,845,312	7,267,586	7,313,690	7,895,731	8,358,614	8,361,069	8,647,818	8,951,794
AUM	13,262,889	14,266,813	15,961,675	14,757,008	16,432,851	16,364,634	17,357,545	18,416,022	18,416,022	18,705,634	19,171,396
JSU	20,567,957	21,515,001	24,188,962	22,369,380	24,575,277	24,712,389	25,992,413	27,901,086	27,901,086	28,091,967	28,091,967
TSU	15,466,222	16,184,599	18,216,833	16,841,964	18,850,762	19,595,045	20,517,867	21,699,260	21,622,859	22,341,926	22,901,402
TSU:	2,991,462	3,081,122	4,010,860	3,707,889	4,149,817	4,459,378	5,385,403	5,602,352	5,583,656	5,769,340	5,913,879
TSUM	2,940,081	3,127,181	4,271,014	3,948,689	4,419,640	4,348,828	5,880,583	6,233,233	6,212,431	6,419,025	6,578,785
TSU SYSTEM	21,397,765	22,392,902	26,498,207	24,498,322	27,420,319	28,343,311	31,763,863	33,930,845	33,418,946	34,530,291	36,395,075
UM	10,883,438	11,180,786	12,556,328	11,783,872	13,473,577	13,075,681	14,521,597	14,921,597	14,308,982	14,795,279	15,156,565
UMA	15,220,878	15,929,253	17,806,624	16,352,808	18,279,587	18,431,574	19,311,687	20,489,748	20,252,809	20,922,239	21,437,197
UWA	6,421,201	0,720,134	7,908,158	7,311,310	8,029,620	8,074,419	8,459,976	8,967,295	8,880,402	9,172,283	9,454,393
Total Non-Doctoral	112,204,058	117,903,955	138,424,996	126,378,668	140,808,419	142,337,068	151,846,716	161,206,329	158,770,925	163,744,808	168,883,009
TOTAL	564,097,269	590,948,815	673,861,454	620,825,019	707,649,227	714,757,365	751,938,203	800,510,094	793,124,061	818,714,208	841,510,267

* Includes FICA ** Includes Retirement, FICA, and PERSHP

PERCENT CHANGE IN ETF APPROPRIATIONS FOR ALABAMA PUBLIC INSTITUTIONS
1992-93 - 2002-2003

INSTITUTION	1992-93*	1993-94*	1994-95*	1995-96*	1996-97**	1997-98**	1998-99**	1999-00**	2000-01** Prorated	2001-02**	2002-03**
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
AAM	4.66%	19.86%	-7.55%	8.96%	6.35%	4.78%	8.17%	-0.66%	3.04%	3.76%	
AU	4.81%	12.67%	-7.84%	9.16%	0.56%	4.80%	6.32%	-0.93%	3.29%	2.87%	
UA	4.70%	11.76%	-7.55%	11.04%	0.92%	4.78%	6.00%	-0.42%	3.11%	2.71%	
UAB	4.66%	13.32%	-7.56%	20.10%	0.69%	4.78%	7.92%	-0.46%	3.26%	2.57%	
UAH	4.66%	13.91%	-7.55%	11.68%	0.92%	5.21%	-3.78%	-1.00%	3.32%	2.49%	
UA SYSTEM	4.67%	12.85%	-7.56%	16.07%	0.79%	4.82%	6.01%	-0.50%	3.22%	2.60%	
USA	4.40%	13.62%	-7.70%	24.21%	0.92%	4.99%	8.78%	-1.68%	3.39%	2.43%	
Total Ducorial	4.88%	13.19%	-7.68%	14.64%	0.98%	4.83%	6.53%	-0.77%	3.25%	2.70%	
ASU	4.66%	22.33%	-7.55%	8.36%	1.54%	4.95%	7.16%	-2.81%	2.35%	4.57%	
ASC	11.13%	22.77%	-7.55%	24.33%	0.63%	7.82%	6.00%	0.03%	3.43%	3.52%	
AUM	7.57%	11.88%	-7.55%	11.36%	0.80%	4.79%	6.10%	-1.55%	3.17%	2.49%	
JSU	4.66%	12.43%	-7.55%	9.89%	0.56%	5.18%	7.34%	-2.94%	3.31%	3.37%	
TSU	4.64%	12.58%	-7.56%	11.93%	3.63%	5.03%	5.74%	-0.33%	3.33%	2.50%	
TSUD	4.80%	30.16%	-7.55%	11.93%	7.46%	20.32%	4.42%	-0.33%	3.33%	2.50%	
TSUM	4.84%	36.58%	-7.55%	11.93%	-1.60%	35.22%	6.00%	-0.33%	3.33%	2.50%	
TSU SYSTEM	4.85%	18.33%	-7.55%	11.93%	3.37%	12.07%	5.56%	-0.33%	3.33%	2.50%	
UM	2.73%	12.30%	-6.15%	13.49%	-2.23%	5.35%	5.42%	-1.46%	3.33%	2.51%	
UNA	4.66%	10.53%	-7.12%	11.78%	0.83%	4.78%	6.00%	-1.06%	3.31%	2.46%	
UWA	4.66%	17.68%	-7.55%	9.82%	0.56%	4.78%	6.00%	-0.97%	3.29%	2.51%	
Total Nonduc	5.08%	15.71%	-7.35%	11.42%	1.09%	6.54%	6.30%	-1.51%	3.13%	3.14%	
TOTAL	4.76%	13.89%	-7.80%	13.99%	1.00%	5.17%	6.49%	-0.92%	3.23%	2.78%	

* Includes FICA. ** Includes Retirement, FICA, and PEEHIP

Alabama Commission on Higher Education
 2001-2002 - 2002-2003 Annual Tuition and Required Fees - a
 Alabama Public Senior Institutions

Name	Undergraduate				Graduate			
	2001-2002 Percent Change	2001-2002	2002-2003	Percent Change	2001-2002	2002-2003	Percent Change	
AC&I	3.67%	\$6,000	6,820	13.7	\$3,650	4,260	19.5	
ASU	1.90%	5,808	5,808	0.0	3,312	3,312	0.0	
ASU	1.52	5,280	5,940	12.5	N/A	N/A	N/A	
ASU	1.794	9,900	11,084	12.0	3,380	3,784	12.0	
ASU	5.2	9,800	10,400	5.5	3,372	3,464	5.9	
ASU	1.620	5,880	6,480	10.2	2,940	3,440	10.2	
ASU	3.296	6,316	6,752	6.9	3,588	3,840	7.0	
ASU	3.532	6,316	6,752	6.9	3,588	3,840	7.0	
ASU	7.2	6,100	6,510	6.7	3,108	3,182	8.8	
ASU	6.8	6,100	6,510	8.0	3,202	3,556	8.0	
ASU	8.0	8,912	9,624	8.0	3,250	3,562	9.6	
ASU	3.556	6,610	7,310	10.2	3,250	3,562	9.6	
ASU	8.6	6,610	7,310	10.2	3,250	3,562	9.6	
ASU	6.4	7,430	7,940	6.9	4,408	4,714	6.9	
ASU	9.1	7,664	8,384	9.4	3,454	3,746	9.1	
ASU	3.314	5,588	6,236	9.6	3,312	3,596	8.6	
ASU	5.6	6,140	6,500	5.9	3,168	3,360	5.7	
ASU	9.8	5,958	6,540	9.8	3,282	3,648	11.2	
ASU	8.3	56,328	60,752	8.4	33,312	33,596	8.6	

Source: Institutional data supplied in ACHIE Tuition and Fee Schedule

- a Tuition amounts are annualized on undergraduate term load of 10 and graduate of 24, or by term amount supplied by institution. (Other specific surcharges and fees may be required for certain programs)
- b Troy State University-Montgomery, Auburn University, and Auburn University at Montgomery changed from quarter to semester system Fall 2001.
- c Troy State University-Montgomery used flat fee
- d University of Alabama at Birmingham changed from quarter to semester system Fall 2001.

Alabama Commission on Higher Education
 2002-03 - 2003-04 Annual Tuition and Required Fees a
 Alabama Public Senior Institutions

	Undergraduate				Graduate							
	Resident	Non-Resident	Percent Change	Percent Change	Resident	Non-Resident	Percent Change	Percent Change				
AA&M*	\$3,670	\$4,320	17.7	\$6,820	\$7,860	15.2	\$4,360	\$5,110	17.2	\$8,200	\$8,430	15.0
ASU*	2,900	3,600	24.0	5,808	7,200	24.0	3,312	4,128	24.6	6,624	8,256	24.6
AST*	3,090	3,570	15.5	5,940	6,720	13.1	N/A	N/A	N/A	N/A	N/A	N/A
AU*	3,784	4,420	17.0	11,684	12,886	10.3	3,784	4,426	17.0	11,084	12,886	16.3
CU*	3,620	4,130	14.1	10,400	11,930	14.7	3,464	3,944	13.9	9,992	11,432	14.4
FSU - Auburn	3,240	3,500	9.3	6,480	7,080	9.3	3,240	3,540	9.3	6,480	7,080	9.3
FSU - Tall	3,532	3,842	8.8	6,752	7,372	9.2	3,840	4,176	8.7	7,368	8,040	9.1
FSU - U	3,296	3,600	9.4	6,510	7,130	9.5	3,840	4,176	8.7	7,368	8,040	9.1
UA	3,556	4,134	16.1	9,624	11,294	17.4	3,382	3,934	16.3	6,694	7,794	16.5
UA&S	4,880	4,274	10.2	7,810	9,494	21.6	3,562	4,046	13.6	7,258	8,294	14.4
U&H	3,764	4,120	9.6	7,940	8,702	9.6	4,714	5,168	9.6	9,678	10,620	9.7
UM	4,334	4,784	10.4	8,284	9,284	10.7	3,746	4,106	9.6	7,226	7,916	10.0
UNAV	3,314	3,700	11.6	6,276	6,904	10.7	3,596	3,994	11.1	6,836	7,546	10.6
UNV	3,416	3,770	10.6	6,300	7,160	10.2	3,560	3,956	11.1	6,300	7,032	10.8
UNV - H	2,480	2,766	8.8	5,240	5,752	9.4	3,648	4,028	9.9	7,176	7,896	10.0
Non-Ian	\$3,532	\$3,942	8.8	\$6,752	\$7,372	9.2	\$3,596	\$4,126	14.2	\$7,258	\$8,040	10.8

Source: Institutional data supplied on ACHS' Tuition and Fee Schedule.

* Tuition amounts are annualized on undergraduate term load of 30 and graduate of 24, or by term annual supplied by institution (when specific surcharges and fees may be required for certain programs)
 b. AA&M and UNV show Proposed 2002-04 Tuition and Fees.

ANNUAL UNDERGRADUATE TUITION AND REQUIRED FEES COMBINED
Public Four-Year Institutions
1998-99 - 2001-02

Institution	In-State					% Change over	Out-Of-State					% Change over
	1998-99	1999-00	2000-01	2001-02	2000-01		1998-99	1999-00	2000-01	2001-02	2000-01	
Alabama A&M University	\$2,332	\$2,732	\$2,800	\$3,200	14.3	\$4,264	\$4,664	\$5,200	\$6,000	15.4		
Alabama State University	2,090	2,520	2,520	2,904	15.2	3,890	5,040	5,040	5,808	15.2		
Athens State University	2,130	2,250	2,370	2,730	15.2	4,200	4,440	4,620	5,280	14.3		
Auburn University	2,760	2,895	3,050	3,380	10.8	8,280	8,685	9,150	9,900	8.2		
Auburn University at Montgomery	2,412	2,577	3,000	3,440	14.7	7,326	7,731	9,000	9,860	9.6		
Jacksonville State University	2,140	2,440	2,640	2,940	11.4	4,280	4,880	5,280	5,880	11.4		
Troy State University	2,490	2,900	3,126	3,296	5.4	4,740	5,560	5,976	6,316	5.7		
Troy State University Dothan	2,480	2,832	3,084	3,296	6.9	4,860	5,712	6,084	6,316	3.8		
Troy St. University Montgomery	2,280	2,640	3,360	3,080	8.3	4,530	5,250	6,660	6,100	-8.4		
University of Alabama	2,684	2,872	3,014	3,292	9.2	7,216	7,722	8,162	8,942	9.2		
Univ. of Alabama at Birmingham	3,060	3,240	3,363	3,640	8.2	5,870	5,970	6,183	6,610	6.9		
Univ. of Alabama in Huntsville	2,942	3,112	3,284	3,536	7.7	6,166	6,516	6,890	7,430	7.8		
University of Montevallo	3,110	3,290	3,480	3,974	14.2	6,080	6,440	6,810	7,664	12.5		
University of North Alabama	2,256	2,392	2,776	3,024	8.9	4,392	4,624	5,194	5,688	9.5		
University of South Alabama	2,576	2,911	2,911	3,230	11.0	5,151	5,581	5,581	6,140	10.0		
University of West Alabama	2,655	2,694	2,894	3,174	9.7	4,935	4,998	5,398	5,958	10.4		
TOTAL UNDERGRADUATE MEDIAN	\$2,475	\$2,782	\$3,007	\$3,261	8.4	\$4,898	\$5,571	\$6,030	\$6,228	3.3		

SOURCE: Alabama Commission on Higher Education Survey, Annual Tuition and Required Fees Combined, 1998-99 - 2001-02.

NOTES: Tuition amounts are based on undergraduate load of 30 and graduate load of 24. Other specific surcharges and fees may be required for certain programs. All institutions converted from quarter to semester terms.
See notes at end of this publication.
University of West Alabama revised their historical amounts for 1998-99, 1999-00, and 2000-01.



BACCALAUREATE DEGREES, 2001-2002

All Disciplines Combined
AFRICAN AMERICAN BACCALAUREATE — HBCUs vs. TWIs



2002 Rank	Institution	State	2001-02					2002 Rank	Institution	State	2001-02						
			Total	AA	AA %	AA/TWI	AA %				Total	AA	AA %	AA/TWI	AA %		
HBCUs																	
1	FLORIDA A&M UNIVERSITY	Fla.	1239	481	39%	1305	92%	5%	30	CUM LEHMAN COLLEGE	N.Y.	467	117	25%	493	41%	6%
2	HOWARD UNIVERSITY	D.C.	955	333	35%	1067	85%	12%	31	MICHIGAN STATE UNIVERSITY	Mich.	456	109	24%	490	7%	7%
3	SOUTHERN UNIVERSITY AND A&M COLLEGE	La.	1005	332	33%	994	97%	11%	32	STRAYER UNIVERSITY-WASHINGTON CAMPUS	D.C.*	535	158	29%	484	30%	10%
4	KENNESAW STATE UNIVERSITY	Tenn.	865	257	30%	849	82%	-2%	35	FLORIDA ATLANTIC UNIVERSITY-BOCA RATON	Fla.	405	128	32%	481	31%	19%
5	NORTH CAROLINA A&T STATE UNIVERSITY	N.C.	825	326	40%	820	90%	-1%	36	UNIVERSITY OF SOUTHERN MISSISSIPPI	Miss.	437	127	29%	471	18%	8%
6	JACKSON STATE UNIVERSITY	Miss.	699	267	38%	745	96%	7%	37	CALIFORNIA STATE UNIVERSITY-DOMINGUEZ HILLS	Calif.	448	113	25%	465	27%	4%
8	HAUNTON UNIVERSITY	Va.	747	208	28%	726	94%	-3%	38	UNIVERSITY OF FLORIDA	Fla.	435	155	36%	462	6%	6%
11	PRAIRIE VIEW A&M UNIVERSITY	Texas	673	261	39%	654	89%	8%	39	GEORGIA SOUTHERN UNIVERSITY	Ga.	487	149	30%	452	27%	-7%
12	MORGAN STATE UNIVERSITY	Md.	680	232	34%	659	90%	-3%	40	VIRGINIA COMMONWEALTH UNIVERSITY	Va.	452	108	24%	449	20%	-1%
15	NORFOLK STATE UNIVERSITY	Va.	709	206	29%	619	89%	-13%	41	UNIVERSITY OF SOUTH FLORIDA	Fla.	434	122	28%	448	9%	3%
17	SOUTH CAROLINA STATE UNIVERSITY	S.C.	558	236	42%	594	96%	6%	42	OHIO STATE UNIVERSITY-MANH CAMPUS	Ohio*	427	142	33%	431	6%	1%
18	NORTH CAROLINA CENTRAL UNIVERSITY	N.C.	602	373	62%	576	88%	-4%	45	WAYNE STATE UNIVERSITY	Mich.	372	104	28%	425	18%	15%
21	GRAMBLING STATE UNIVERSITY	La.	543	228	42%	551	97%	-13%	46	CUNY JOHN JAY COLLEGE CRIMINAL JUSTICE	N.Y.	429	116	27%	424	32%	-1%
23	BOWEN STATE UNIVERSITY	Md.	440	181	41%	550	86%	25%	47	UNIVERSITY OF HOUSTON UNIVERSITY PARK	Texas	371	110	29%	427	31%	12%
26	VIRGINIA STATE UNIVERSITY	Va.	465	183	39%	512	94%	10%	48	UNIVERSITY OF CENTRAL FLORIDA	Fla.	423	141	33%	413	7%	-2%
32	MOREHOUSE COLLEGE	Ga.	471	484	103%	484	97%	3%	51	RUTGERS UNIVERSITY-NEW BRUNSWICK	N.J.	430	129	30%	397	7%	-8%
34	KANER UNIVERSITY OF LOUISIANA	La.	469	132	28%	483	89%	3%	52	DEVRY UNIVERSITY-GEORGIA	Ga.	295	211	71%	395	66%	34%
42	SPELMAN COLLEGE	Ga.	419	0	0%	439	97%	5%	53	UNIVERSITY OF ILLINOIS AT URBANA-CHAMPAIGN	Ill.	375	123	33%	393	6%	5%
43	ALABAMA A&M UNIVERSITY	Ala.	443	167	38%	437	85%	-1%	57	OLD DOMINION UNIVERSITY	Va.	377	102	27%	386	18%	2%
48	CLARKE ATLANTA UNIVERSITY	Ga.	526	82	16%	413	86%	-21%	58	CUNY BROOKLYN COLLEGE	N.Y.	369	103	28%	383	6%	4%
50	TUSKEGEE UNIVERSITY	Ala.	459	247	54%	412	89%	-10%	59	THE COLLEGE OF NEW ROCHELLE	N.Y.	480	42	9%	381	41%	-21%
54	FRETTEVILLE STATE UNIVERSITY	N.C.	402	128	32%	392	70%	-2%	60	CUNY HUNTER COLLEGE	N.Y.	404	81	20%	380	17%	-6%
56	TEXAS SOUTHERN UNIVERSITY	Texas	412	116	28%	381	89%	-5%	61	ALABAMA STATE UNIVERSITY	Ala.	423	148	35%	377	33%	-11%
57	ALDRIN STATE UNIVERSITY	Miss.	413	140	34%	387	94%	-6%	63	UNIVERSITY OF MICHIGAN-ANN ARBOR	Mich.	389	123	32%	375	7%	-4%
61	MISSISSIPPI STATE UNIVERSITY	Miss.	287	122	43%	377	81%	31%	64	PARK UNIVERSITY	Mo.	347	158	46%	374	46%	18%
65	DORPIS STATE COLLEGE	Md.	359	69	19%	373	95%	-4%	67	UNIVERSITY OF ALABAMA AT BIRMINGHAM	Ala.	377	102	27%	368	27%	-2%
66	UNIVERSITY OF ARKANSAS AT PINE BLUFF	Ark.	307	142	46%	372	93%	21%	68	EAST CAROLINA UNIVERSITY	N.C.	324	100	31%	368	17%	10%
70	WINSTON-SALEM STATE UNIVERSITY	N.C.	377	98	26%	350	70%	-7%	69	UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL	N.C.	328	104	32%	355	10%	8%
75	MISSISSIPPI VALLEY STATE UNIVERSITY	Miss.	269	122	45%	333	90%	24%	71	MERCY COLLEGE-MANH CAMPUS	N.Y.	233	91	39%	347	28%	49%
77	ALBANY STATE UNIVERSITY	Ga.	333	114	34%	339	90%	-1%	72	NORTH CAROLINA STATE UNIVERSITY AT RALEIGH	N.C.	303	91	30%	343	10%	13%
80	CLARKE UNIVERSITY	La.	214	68	32%	324	98%	51%	73	WYLAND BAPTIST UNIVERSITY	Texas	298	148	49%	337	26%	13%
82	SOUTHERN UNIVERSITY AT NEW ORLEANS	La.	392	93	24%	321	82%	-18%	74	UNIVERSITY OF NORTH CAROLINA AT CHARLOTTE	N.C.	305	109	36%	336	14%	10%
84	UNIVERSITY OF MARYLAND-EASTERN SHORE	Md.	365	134	37%	319	77%	-13%	76	LOUISIANA ST. UNIV. & A&M B. HERBERT LAWS CTR.	La.	306	95	31%	331	8%	8%
87	SIEMM UNIVERSITY	N.C.	351	78	22%	310	83%	-12%	78	EASTERN MICHIGAN UNIVERSITY	Mich.	283	104	37%	328	12%	15%
97	DELAWARE STATE UNIVERSITY	Del.	291	103	35%	285	82%	-2%	79	UNIVERSITY OF ALABAMA	Ala.	302	108	36%	327	12%	8%
TWIs																	
7	GEORGIA STATE UNIVERSITY	Ga.	743	178	24%	735	29%	-1%	81	UNIVERSITY OF NORTH TEXAS	Texas	283	104	37%	323	9%	14%
9	TEMPLE UNIVERSITY	Pa.	341	194	57%	711	21%	-4%	82	CALIFORNIA STATE UNIVERSITY-LONG BEACH	Calif.	251	102	41%	321	7%	28%
10	FLORIDA STATE UNIVERSITY	Fla.	578	194	34%	694	12%	20%	84	UNIVERSITY OF CINCINNATI-MANH CAMPUS	Ohio	250	109	44%	319	17%	28%
13	CHICAGO STATE UNIVERSITY	Ill.	705	171	24%	646	89%	-8%	86	UNIVERSITY OF HOUSTON-DOWNTOWN	Texas	329	100	31%	311	14%	-5%
14	UNIVERSITY OF MARYLAND-COLLEGE PARK	Md.	642	218	34%	640	12%	0%	88	THE UNIVERSITY OF TEXAS AT ARLINGTON	Texas	263	92	35%	307	11%	17%
16	SOUTHERN ILLINOIS UNIVERSITY-CARBONDALE	Ill.	613	282	46%	611	12%	0%	89	NATIONAL HOURS UNIVERSITY	Ill.	345	300	87%	306	29%	-11%
19	UNIVERSITY OF MARYLAND-UNIVERSITY COLLEGE	Md.	597	187	31%	572	26%	-4%	90	CALIFORNIA STATE UNIVERSITY-NORTHridge	Calif.	247	118	48%	302	6%	22%
20	FLORIDA INTERNATIONAL UNIVERSITY	Fla.	552	183	33%	564	13%	2%	91	UNIVERSITY OF MICHIGAN-MANH CAMPUS	Va.	282	108	38%	301	1%	2%
22	UNIVERSITY OF MEMPHIS	Tenn.	515	139	27%	503	28%	7%	92	UNIVERSITY OF NORTH CAROLINA AT GREENSBORO	N.C.	307	108	35%	300	1%	2%
24	SAINT LEONARD UNIVERSITY	Pa.	453	206	46%	419	28%	-15%	93	LONG ISLAND UNIVERSITY-BROOKLYN CAMPUS	N.Y.	261	95	36%	297	12%	12%
25	CUNY CITY COLLEGE	N.Y.	445	194	44%	418	10%	16%	94	TROY STATE UNIVERSITY-MANH CAMPUS	Ala.*	304	113	37%	303	1%	5%
27	CUNY YORK COLLEGE	N.Y.	494	114	23%	502	6%	2%	95	RODOLPH COLLEGE	N.Y.	294	102	35%	293	1%	-2%
28	CUM BEARNARD M. BARUCH COLLEGE	N.Y.	494	171	35%	500	20%	1%	96	ROBERT MORRIS COLLEGE	Ill.*	237	81	34%	280	17%	21%
29	UNIVERSITY OF SOUTH CAROLINA AT COLUMBIA	S.C.	544	148	27%	498	16%	-8%	98	UNIVERSITY OF GEORGIA	Ga.	262	88	34%	280	5%	7%
									99	GEORGE MASON UNIVERSITY	Va.	234	78	34%	280	9%	20%
									100	COLUMBIA COLLEGE	Mo.	243	85	35%	279	17%	15%

SOURCE: BLACK ISSUES IN HIGHER EDUCATION ANALYSIS OF U.S. DEPARTMENT OF EDUCATION REPORTS OF DATA SUBMITTED BY INSTITUTIONS. RANKINGS ARE BASED ON THE REVIEW OF 2001-2002 PRELIMINARY DATA.
* Multiple institutions reporting together.



For Total Minority All Disciplines Combined

