

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

JOHN F. KNIGHT, JR., et al.,)
)
Plaintiffs and)
Plaintiff Intervenors,)
)
UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
THE STATE OF ALABAMA, et al.,)
)
Defendants.)
_____)

**CIVIL ACTION NUMBER:
CV 83-M-1676-S**

**NOTICE BY ALABAMA STATE UNIVERSITY OF OBJECTIONS TO
THE TERMINATION OF PROVISIONS OF THE REMEDIAL DECREE**

1. This notice of objections is made by and on behalf of Alabama State University (hereinafter ASU), The Board Of Trustees For Alabama State University (hereinafter Board), and the members of the Board, each in his/her representative capacity as member of the Board. The above named parties and entities shall hereinafter collectively be referred to as ASU defendants.

2. Extension of those provisions of the Remedial Decree hereinafter

requested by ASU Defendants is needed to guarantee the elimination of remaining vestiges of discrimination relative to ASU.

3. In its Remedial Decree, 900 F. Supp. at 374 the Court, in addressing the matter of jurisdiction and term of the Decree stated:

- (a) “The Court shall retain jurisdiction of this action for an initial period of ten years to insure compliance with the Decree terms and objectives. The Decree becomes effective immediately And shall remain effective until July 31, 2005.”
- (b) “On July 31, 2005, this Decree shall terminate automatically and without further formality unless a party to this litigation, by motion filed not less than sixty (60) days preceding the expiration date of this Decree, requests the Court to extend the term of the Decree.”
- (c) ...”The Court may also, at any time,

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.”

4. By Order entered May 18, 2005, the Court ruled that ... “The time for filing objections to termination of the Decree is EXTENDED to July 31, 2005; likewise, the date for the Decree to expire is extended to September 30, 2005.”

5. In an Order entered July 29, 2005, the Court, at the request of the Monitor, granted ... “an additional sixty days from July 31, 2005, for the filing of objections to the termination of the Remedial Decrees. The Court further directed the Monitor... “to inform the Court in writing by August 31, 2005, on the status of the discussions and whether the parties are continuing to make progress.” If the report indicates no progress or that agreement is not possible, the Court stated that it would then set a reasonable schedule for the filing of objections to the termination of the Remedial Decree.

6. By letter dated September 5, 2005, the Monitor advised the Court that the parties were continuing to make progress on settlement discussions, and

requested that the parties have to the end of the month (September) to continue discussions.

7. Thereafter, in an Order filed September 7, 2005, the Court granted the parties the right to continue their settlement discussions through October 31, 2005, with the requirement that the Monitor ... “inform the Court on the status of the discussions at the expiration of the time granted by this Order, or sooner as required by developments.”

8. Acting on the response from Mr. Gonzalez indicating that the parties have been unable to reach an agreement on the terms of the settlement to ultimately conclude this litigation, the Court entered an Order directing that:

- (a) Objections if any to the termination of the Remedial Decree shall be due November 30, 2005.
- (b) Objections shall include a proposed discovery schedule and a brief description of the nature of the discovery to be sought.
- (c) Responses to the objections shall be due January 6, 2006.
- (d) Responses shall also include a section briefly describing the nature of any discovery to be sought and a proposed discovery schedule.

9. ASU Defendants respectfully oppose the termination of the Remedial

Decrees in the following material particulars.

A.

FUNDING FOR TITLE VI PROGRAMS

10. In its 1991 Decree, this Court discussed at length the disparity in funding for the HBCUs over time. *Knight v. State of Alabama* 787 F. Supp 1030, at 1227-1228. There, the Court found that *for more than 100 years* the State of Alabama has made special appropriations for UA, AU and UM; and that (1116) ***“No funds of this sort have ever been appropriated to the HBCUs.”*** (emphasis added).

11. The Court went on to state, with great clarity, that;

(a) 1117: “Inequality in funding over a number of years cannot be made up overnight. The funding level over a period of years affects a school’s mission, program, facilities, and reputation, ***all of which can then change only very slowly.***” (emphasis added)

(b) 1118: “Of the major considerations that can affect raw financial comparisons

— such as economy of scale,
enrollment trends, and historical
patterns — the historical patterns are
the most important. *This is because
historical deficits tend to continue
over a period of time, and become
cumulative, which, of course, means
they cannot be erased overnight.*”

(emphasis added)

- (c) 1119: “Even if the reality could be
changed quickly, the perceptions may
take much, much longer:

*it takes a long, long time to turn
an institution around, not only
in reality, but even in the
perceptions that people have of the
place,...*”

12. In its 1995 Decree,(900 F. Supp. 272, para 273 at p. 308), the Court
made the further finding that...

“At no time in the past or up to the present, however, have any funds been made available to assist ASU... in overcoming the effects of discriminatory low funding so that they may adequately provide services to their students.”

13. Continuing, the Court found that...

“(p. 308) Funding provided by the State for the education of students at ASU and AAMU has not allowed either of these institutions to provide and education to its students in a manner which has overcome the effect of past discriminatory under funding for the operation of HBUs and to provide an education today free from the stigma of past discrimination such as poor physical facilities and the tarnish of a reputation of lack of

quality education.”

14. Consistent with its findings that the Alabama formula produces more income for institutions that offer specialized curricula and graduate courses, the Court awarded ASU high demand programs in Allied Health, a Master of Accountancy degree program and an Ed.D program in Educational Leadership, Policy and Law, each of which has special ACHE funding formula requirements. The Allied Health and Master of Accountancy programs were awarded enhanced funding by the Court through the 07-08 academic year and the Ed.D program was required to be funded at an enhanced level through the 09-10 academic year.

15. Additionally, the library was awarded special funding in order to enable it to provide the necessary materials, equipment, technologies and staff for support of the new Title VI Programs.

16. ASU defendants respectfully submit that these high demand programs, with augmented funding, have contributed substantially to the diversification of the student body at ASU and have had a positive impact on the adverse perceptions generated by years on end of enforced racial discrimination.

17. Nevertheless, ASU defendants respectfully represent and show unto the Court that the enhanced funding for the Allied Health and Master of Accountancy programs through 07-08 only, and the enhanced funding for the Ed.D

program through 09-10 only is insufficient to provide an education *free from the stigma of past discrimination*.

18. It is therefore, respectfully requested that the enhanced funding for the Allied Health and Master of Accountancy Programs be extended beyond 07-08, and the Ed.D Program beyond 09-10; and that continued funding thereafter for each of those Title VI programs be computed using the final funding year as the base year with all subsequent annual funding to be increased by the annual percentage increase of the Alabama Education Trust Fund as determined by the Alabama Legislature.

19. ASU defendants, further respectfully request that the enhanced funding for the library not be terminated, but continued to support the academic growth of the Title VI programs with full awareness that library materials, equipment, facilities, technologies and staff must be adequate to meet accreditation standards and support the overall teaching and learning mission.

20. The future enhanced funding for the library should use as a base the enhanced funding for the current year with all subsequent annual funding to be increased by the annual percentage increase of the Alabama Education Trust Fund as determined by the Alabama Legislature.

B.

**THE PH.D. PROGRAM IN
MICROBIOLOGY**

21. In its 1995 Remedial Decree, this Court approved the development of up to two new Ph.D. or Ed.D programs for ASU. ASU Defendants thus developed proposals for the implementation of an Ed.D program in Educational Leadership, Policy and Law, and for a Ph.D. program in Microbiology.

22. The new doctoral program in Educational Leadership, Policy and Law was approved by the Oversight Committee, by ACHE, and by the Court, and was implemented in 2002.

23. The ASU proposal for the Ph.D in Microbiology was submitted to ACHE on December 23, 2002, and approved by ACHE on December 5, 2003, with ACHE observing that ... *“the program cannot be implemented without Court approval.”*

24. On or about June 1, 2005, the Board filed with the Court its request for approval of the Ph.D program in Microbiology.

25. On November 16, 2005, the Court entered an Order granting the request of Alabama State University to offer a Ph.D in Microbiology.

26. In that Order, the Court also held that ... *“The state shall fund the*

program in the manner outlined on page 15-16 of the ACHE December Report and consistent with Attachment 3 of the December 5, 2003 Report.

27. ASU defendants have carefully reviewed the proposed funding for the Microbiology program, and while the same appears to provide adequate financial support for the program, ASU defendants respectfully request that the issue of support for the program remain open pending its implementation and an opportunity to better forecast the future financial support necessary to reasonably insure the continuing viability of the program.

C.

DIVERSITY SCHOLARSHIPS

28. In its 1995 Decree, this Court made the following findings:

“Other race scholarships... are important to HBIs in reaching the stage of a self-perpetuating critical mass of white students”(para. 372), and ... “increasing the number of white students is important in obtaining an atmosphere in which white students feel comfortable.” (para.373)

29. The Court ordered,(Remedial Decree para. 44) that ...

For a period of up to ten years,
there shall annually be paid to the...
Trustees of Alabama State University
the sum of up to \$1 million to be used
only for scholarships... to assist the
administration... in efforts to diversify
its student body and in accordance with
the requirements of this decree.

30. On or about July 5, 1996, ASU filed its motion for approval of a diversity scholarship program for undergraduate students, and motion to amend the Court's 1995 decree to permit diversity scholarships at the graduate level.

31. On September 6, 1996, the Court entered an order approving the ASU undergraduate diversity scholarship program, and approving graduate diversity scholarships, with the caveat that ... "the funds available for graduate diversity scholarships should not exceed 35% of the scholarship funds annually available."

32. Effective with the beginning of the Fall term 2002, the state began limiting the amount of graduate diversity scholarships recoverable by ASU to 35% of the total diversity scholarships paid out for that academic term.

33. As a proximate consequence and result thereof, the ASU request for reimbursement for graduate diversity scholarships received by graduate students has been reduced to date in the aggregate amount of \$473,999.62

34. On August 9, 2004, ASU filed Motion For Clarification Of Order And Other Affirmative Relief in which it sought an order (1) declaring that the state's interpretation of this Court's order of September 6, 1996, which interpretation has the affect of limiting reimbursement for graduate diversity scholarships to 35% of the diversity scholarships actually awarded for the scholastic year is erroneous, and does not comply with the original intent of the parties or of this Court; (2) declaring that the plain language of the order of September 6, 1996, requires that ASU be reimbursed for graduate diversity scholarships awarded not to exceed \$350,000 annually subject to modification by the Court in the event that the award of such graduate diversity scholarships deny an award to an otherwise qualified undergraduate minority applicant; (3) requiring the State to reimburse ASU for graduate diversity scholarships awarded by ASU and wrongfully withheld by the State for the school terms Fall 2002- Spring 2005 in the amount of \$473,999.62.

35. The ASU Motion For Clarification Of Order And Other Affirmative Relief is still in the breast of the Court.

36. ASU defendants respectfully request that students on diversity

scholarships prior to July 31, 2005, be eligible to continue on those diversity scholarships until they complete their course of study as long as it does not exceed seven (7) years.

37. ASU defendants further petition the Court to extend the diversity scholarship program for at least ten (10) years beyond the July 31, 2005, expiration date. The rationale for this request is twofold:

(1) The administrative nightmare created by the disparate interpretation of the Court Decree regarding the distribution of graduate and undergraduate diversity scholarships has seriously hampered the university's capacity to utilize the scholarships in the manner that ASU defendants believe the Court intended. This difficulty has been outlined in detail in the university's pending petition to the Court to clarify the order, and (2) The Microbiology program was approved by the Court by Order dated November 16, 2005, well after the July 31, 2005 end date of the decree, and it would be grossly unfair for diversity scholarships to be unavailable to minority students enrolling in the PhD. program in Microbiology.

D.

**COURSE AND PROGRAM DUPLICATION BY
PROXIMATE INSTITUTIONS**

(1)

ASU AND AUM

38. In its 1991 Decree, the Court made a finding that both AUM and ASU have extensive programs in business and education which generally duplicate each other, and that the programs are sufficiently similar that it has a negative impact on the ability of ASU to desegregate.

39. In addressing the duplication problem between ASU and AUM, 1160, the Court directed that a Committee On Cooperation be formed in the Montgomery area consisting of representatives of ASU, the Governor's office, ACHE and AUM, and that the Committee be charged with the responsibility of establishing cooperative programs in the areas of education and accounting between ASU and AUM so that each institution might benefit from the proximity of the other.

40. Mandatory cross-enrollment courses were established between ASU and AUM, with AUM students being required to take certain courses at ASU and ASU students being required to take certain courses at AUM.

41. In addition to the mandatory cross-enrollment courses, there was also put in place a voluntary cross-enrollment program which permits an AUM student to register for a course at AUM and at ASU and actually take the course at ASU; and conversely, an ASU student can register for a course at ASU and AUM, and actually take the course at AUM.

42. These cross-enrollment courses and programs have significantly contributed to the diversification of the student bodies of both schools. ASU defendants therefore respectfully request that the Remedial Decree provisions relating to cross-enrollment courses and programs between ASU and AUM not be terminated with the end date of the Remedial Decree.

43. In the Remedial Decree, this Court authorized the development and implementation of an Ed.D program at Alabama State University. Acting pursuant thereto, ASU developed a proposal for the implementation of an Ed.D Program in Educational Leadership, Policy and Law.

44. The Ed.D Program in Educational Leadership, Policy, and Law was approved by the Oversight Committee, by ACHE, and the Court, and was implemented at ASU in 2002.

45. At the time, there was no other doctoral program in Educational Leadership in the Montgomery area.

46. ASU defendants are convinced that an extension of the prohibition against the development of programs by AUM that would duplicate those at ASU is absolutely essential. Although there currently is such a restriction, AUM published in its 2004-2006 Graduate Catalog an announcement that it offers a cooperative doctorate program in Education Leadership with Auburn University. While the immediate impact of this arrangement might not be apparent, there is little doubt that the arrangement will have a negative impact on the continued growth and development of ASU's Educational Leadership, Policy and Law doctoral program. Such an arrangement would negate the rationale used by the Court to determine that certain high demand programs will aid in the attraction of other-race students to ASU.

47. The record is clear that white students are not inclined to enroll in historically black colleges and universities when they can enroll in the same nonprofessional programs at predominantly white universities across town or within a reasonable commuting radius. The presence of a predominantly white university within the same geographic area offering the same courses makes, in the long term, the task of creating and maintaining a "critical mass" of other-race students much more difficult to achieve.

48. ASU defendants therefore respectfully request that the Court order the

termination of the cooperative agreement program in Educational Leadership between Auburn University in Montgomery and Auburn University, and to extend the course prohibition against further duplication in the Montgomery area. Otherwise, much of the progress made over the last nine (9) years would be reversed.

(2)

TROY UNIVERSITY AND ASU

49. In its 1991 Decree, this Court made the following findings:

- (a) 1761: “The issue of duplication between TSUM and ASU has largely been rendered moot by the consent decree executed by TSU and the United States. In the decree, TSUM agrees to discontinue, among other programs, its undergraduate courses in education by September 1, 1994. At the graduate education level, TSUM will no longer offer Early Childhood Education; High School Education; or School Administration. Additionally, undergraduate business

administration courses will be limited by TSUM to offering the required management courses listed for this concentration only at Maxwell/Gunter Air Force Base, and TSUM will not allow more than a 20% civilian enrollment in its business administration courses with management concentration.

- (b) 1762: Moreover, those courses which TSUM now offers only on the Air Force Base shall not be offered at any location in Montgomery other than the base. Finally, under the terms of the consent decree between TSUM and the federal government, TSUM is to develop joint graduate programs with ASU.”

50. The consent decree between the United States and TSU also requires, inter-alia, that:

CD I. p.19 “Within 90 days of the effective date of this decree, TSUM will seek to develop a plan with Alabama State University whereby students in selected majors may be cross-enrolled without academic or financial penalty in their major area of study. This plan will enable students of both institutions to avail themselves of a broader schedule of classes, course offerings and choice of faculty in their area of specialty. Provisions for financial reimbursement between institutions and for transmittal of academic credit earned will be part of the plan.”

51. While it is believed by ASU Defendants that TSUM discontinued those courses required to be discontinued under the terms of the consent decree with the United States, TSUM nevertheless has failed and refused, and continues to fail and

refuse to develop and implement an *effective cross-enrollment program* with ASU.

52. Under the cross-enrollment program designed and implemented by TSUM, there has been a total of sixty-five ASU students cross-enrolled at TSUM and only two TSUM students cross-enrolled at ASU.

53. Troy University erroneously contends that the reason for such a pattern of participation is that most of ASU's curriculum is offered during the daytime hours when TSUM students are working, and that TSUM students have a greater demand for classes during the late afternoon and evening hours. (See TSUM Title VI Report April 15, 2005)

54. The Consent Decree between TSU and the United States also requires (CD, Para. L, pgs. 19-20) that:

“Within 180 days of the entry of this consent decree, the TSU System shall initiate discussions with ASU as to the cost and content of joint graduate degree programs. At least one program shall be instituted in each of the next two academic years (1991-1992 and 1992-1993). The programs shall be mutually agreed upon between ASU and the

TSU System. If ASU is not willing to cooperate voluntarily in the development of these programs, this subparagraph L of the consent decree shall be held in abeyance until such time as ASU agrees to cooperate or such cooperation is mandated by Court Order. Nonetheless, the commitment to offer at least two joint graduate degree programs shall not be diminished by any such lack of initial cooperation by ASU.”

55. While ASU Defendants realize that they are not parties to the consent decree between TSU and the United States, they nevertheless are the intended beneficiaries of key provisions of that decree and thus have standing to seek enforcement of those provisions of the Consent Decree.

56. ASU defendants therefore respectfully request that the provisions of the consent decree between TSU and the United States which restrict courses and programs offered by TSUM; requiring TSUM to develop and implement an effective cross-enrollment program with ASU and requiring TSUM to develop at

least two graduate programs with ASU not be terminated with the end date of the Remedial Decree in this case.

57. TSUM has also expanded its undergraduate course offerings in accounting, the net effect of which qualifies TSUM graduates to sit for the CPA Exam. Such an expansion has adversely impacted the growth and development of the ASU Master of Accountancy program and is in direct conflict with the purpose and intent of the Court in awarding the Master of Accountancy program to ASU. ASU defendants therefore further respectfully request that this Court order the discontinuance of the Accounting courses added to the TSUM program inventory since October 1, 1995.

58. Because of the change in the administrative structure of Troy State University and Troy State University Montgomery, all references to TSU and TSUM are applicable to Troy University and Troy University Montgomery Campus.

E.

**RESTRICTIONS ON THE EXPANSION OF
TWO YEAR AND TECHNICAL COLLEGES**

THE MONTGOMERY AREA

59. Court made the following findings, conclusions and rulings of law in the 1995 Remedial Decree: (Knight @ 229-230)

“Inasmuch as the continued strength and further

desegregation of Alabama State University is dependent upon its ability to recruit students within commuting distance of that school, and for the reason that many other-race students who attend predominately black universities are nontraditional students living within commuting distance from such a campus, it is necessary that Alabama State University be provided a fair opportunity to compete for such students.

For this reason the State School Superintendent, the Chancellor of the Two-year System and the members of the State Board of Education, in their official capacities, and their successors in office ***are enjoined from placing in, creating or operating any community college, junior college, or any division of any such educational operation within Montgomery County, Alabama.***”

(Emphasis added)

60. The Court went on to find and hold that:

“The trade schools currently being operated in

Montgomery County, Alabama may be continued as trade schools by the State School Superintendent, the Chancellor of the Two-year System and the Alabama State Board of Education. ***They are, however, each and all individually in their official capacities further enjoined and restrained from expanding the course offerings or the curriculum at either Trenholm Technical College or Patterson Technical College beyond their present scope as traditional trade schools or in any manner which offers traditional academic courses, for which credit may be obtained toward a Bachelor's Degree at any community college, junior college or senior college in Alabama.***” (Emphasis added)

61. ASU defendants respectfully request that the injunctive relief set out therein not terminate with the end date of the Remedial Decree in this case and that the injunctive relief be made permanent.

62. Alternatively, ASU defendants request that representatives from ASU, Trenholm State Technical College, the State School Superintendent, the Chancellor

of the Two-Year College System and members of the State Board of Education meet and confer to develop and implement an agreement which will determine the future course and program offerings of Trenholm State Technical College, or its successor in interest and which will serve the best interest of both ASU and Trenholm State Technical College, or its successor in interest, and carry out the intentions of the Court's Remedial Decree.

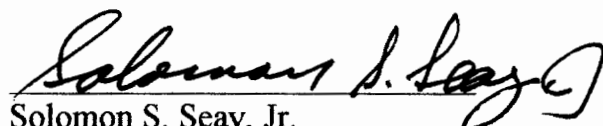
63. The October 31, 2005, Order set November 30, 2005 as the due date for the objections, if any, to the termination of the Remedial Decree, and required that the objections include a proposed discovery schedule and a brief description of the nature of discovery to be sought.

64. There is attached to this Notice as ASU's Attachment 1 a brief description of the nature of the discovery ASU defendants will seek, and a proposed discovery schedule.

SUMMARY

WHEREFORE, ASU Defendants respectfully request that provisions of the Remedial Decree, in the material particulus set forth herein, not be terminated with the regular end date of the Remedial Decree in this case, and that ASU Defendants be granted such other, further and different relief to which they maybe entitled..

Respectfully submitted,



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ASB-7420-E67S

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**A BRIEF DESCRIPTION OF THE NATURE OF THE DISCOVERY
ASU DEFENDANTS WILL SEEK.**

1. Documents, information and depositions from ACHE regarding:
 - (a) The Alabama Education Trust Fund generally, and more specifically the funding for the period October 1, 1995 to date.
 - (b) The program inventories of ASU and proximate institutions.
 - (c) The program approval process.
 - (d) Funding for duplicative programs.
 - (e) Course additions at TSUM since October 1, 1995.
 - (f) Information listed in paragraph four (4) of this Attachment
2. Documents, information and depositions from Auburn University and Auburn University at Montgomery regarding curricula offerings which ASU defendants contend duplicate courses and programs at ASU.
3. Documents, information and depositions from Troy University and the appropriate representatives of the United States regarding the implementation of the Consent Decree between the United States and Troy State University, and the addition of courses and programs at TSUM since October 1, 1995.
4. Documents, information, and depositions of ACHE, the Chancellor of the Two-year College System, and the President of Trenholm State Technical College or his designee, regarding the curricula of Trenholm State Technical College and any proposed expansion of courses and programs.
5. Any other discovery which ASU defendants may deem appropriate as a result of other objections and responses.

PROPOSED DISCOVERY SCHEDULE

ASU defendants propose that they be permitted to file Interrogatories and Request For Production Of Documents within thirty (30) days after the January 6, 2006, deadline for the parties to file responses; and that further written discovery and depositions be completed within 90 days thereafter.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above and foregoing document upon all counsel of record, by placing a copy of the same in the United States Mail first class postage prepaid, properly addressed on this 28th day of November, 2005.

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