

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

**JOHN F. KNIGHT, JR., and ALEASE S. SIMS**, et al., individually and on behalf of others similarly situated, \*

Plaintiffs and Plaintiffs-Intervenors, \*

**UNITED STATES OF AMERICA**, \*

Plaintiff-Intervenor, \*

v. \*

Civil Action No.  
2:83-cv-1676-HLM

**THE STATE OF ALABAMA**, et al., \*

Defendants. \*

**KNIGHT-SIMS PLAINTIFFS' MOTION TO EXTEND THE TERM OF CERTAIN PROVISIONS IN THE REMEDIAL DECREES**

Plaintiffs John F. Knight, Jr., and Alease S. Sims et al., on behalf of themselves and on behalf of the plaintiff class of black citizens and students, faculty, staff and administrators of ASU and AAMU they represent, through undersigned counsel, would show unto the Court as follows:

1. This Court's 1995 Remedial Decree provides as follows:

The Court shall retain jurisdiction of this action for an initial period of ten years to insure compliance with the Decree's terms and objectives. The Decree becomes effective immediately and shall remain effective until July 31, 2005.

The Court specifically reserves the authority to direct the transfer of funds or the payment thereof to and between any party or parties to this case in order to effectuate this Decree, so long as such action by the Court comports with the Constitution of the United States.

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.

The Court may *sua sponte* extend the term of this Decree by entering the appropriate order if it deems that additional time is required to assure compliance and fully accomplish the Decree's objectives. The Court may also, at anytime, 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.

The Court shall retain jurisdiction over the Trusts for Educational Excellence, and payments thereunder, until completion of the last payment required of the State to fund the Trust.

*Knight v. Alabama*, 900 F.Supp. 272, 374 (N.D. Ala. 1995).

2. By order entered July 29, 2005, (Doc. 3354) the Court extended for sixty days the deadline for filing objections to termination of the Remedial Decrees. The deadline was extended until October 31, 2005, by order entered September 7, 2005 (Doc. 3359), and was extended to November 30, 2005, by order entered October 31, 2005, (Doc. 3363). The parties were instructed to include in their objections a proposed discovery schedule and a description of the nature of discovery to be sought. Responses to objections and proposed discovery are due to be filed January 6, 2006.

3. The Knight-Sims plaintiffs request that the term of the Remedial Decrees be extended and that this Court retain jurisdiction to monitor compliance with respect to the following orders and pending issues:

#### **Provisions Continuing Pursuant To Existing Orders**

4. As noted above, the State's obligation to contribute to the endowment trust funds for ASU and AAMU must continue through the 2009-10 school year.

5. Pursuant to the order entered November 3, 1997, (Doc. \_\_) full formula funding, program enhancement and desegregation planning line items for ASU's Allied Health and

Masters of Accountancy programs must continue through the 2007-08 school year.

6. Pursuant to the order entered May 6, 2002, (Doc. 3033) line item funding for ASU's doctoral program in Educational Leadership, Policy and Law must continue through the 2010-11 school year.

7. Pursuant to the order entered November 16, 2005, (Doc. 3371) line item funding for ASU's PhD in Microbiology program must continue for eight years from the beginning of the program.

8. The other-race scholarships which have already been awarded pursuant to the 1995 Remedial Decree, 900 F.Supp. at 357, should continue for the duration of the students' attendance at ASU and AAMU, up to the seven-year maximum.

**Provisions That Should Continue or Should Be Modified  
Pursuant To Pending Objections and Motions**

9. On January 4, 2002, the Knight-Sims plaintiffs and the State defendants filed a joint motion for the appointment of consultants (Doc. \_\_) for the following purposes:

- a. To advise the Court, the Governor, the Boards of Trustees for Alabama State University, Alabama A&M University and such other defendant universities as directed by the Court, and their senior officials regarding their policies and practices as they contribute to or impede compliance with the Remedial Decrees;
- b. To advise the Court, the Governor and other parties on the qualifications that should be sought in candidates for appointment to the Boards of Trustees so as to realize the remedial objectives of this Court's decrees.

The movants requested that said consultants be required to submit a proposed plan to the Court

for accomplishing the aforesaid purposes, and that the parties be given the opportunity to comment on such proposal before it is approved by the Court. The State defendants assented to deposit in the registry of this Court such funds as the Court may deem reasonable and necessary to pay said consultants, which funds shall come from the unallocated balance of funds already appropriated in the then current fiscal year for use in responding to this Court's Remedial Decrees, and shall not exceed \$250,000.00. The movants further requested that, based upon the recommendations of the consultants, the Court will modify the provisions of the Remedial Decrees as it deems necessary to realize its remedial objectives. By order entered February 26, 2002, (Doc. 3011) the Court referred this motion to the Oversight Committee for an assessment and report. By order entered December 10, 2002, (Doc. 3119) the Court accepted the Oversight Committee's recommendation that the issues to be addressed in this motion be held in abeyance pending further orders. This joint motion is still pending.

10. On February 13, 2002, the Knight-Sims plaintiffs responded to this Court's order entered July 9, 2001, by identifying provisions of the Remedial Decrees they contend have not been complied with fully by the defendants. (Doc. 3008.) With the exception of the objections in §§ 48-51 concerning land grant issues, all of plaintiffs' contentions of noncompliance remain outstanding.

11. On July 28, 2003, the Knight-Sims plaintiffs filed a motion for additional relief in the form of a declaratory judgment and an injunction against the racially discriminatory property tax provisions in the Alabama Constitution. (Doc. 3205.) By orders entered October 5, 2004, (Doc. 3294) and February 10, 2005, (Doc. 3320) this Court denied plaintiffs' motion. Plaintiffs appealed these orders, and the appeal is still pending. Should plaintiffs succeed on appeal it may

be necessary for this Court further to amend the Remedial Decrees.

12. On August 22, 2003, the Knight-Sims plaintiffs filed objections to the 2003 annual reports to the Court, a motion for contempt proceedings and a motion to modify or amend the Remedial Decrees (Doc. 3209) to require each of the HWI campuses to consult their advisory committees and African-American faculty members and administrators and, based on their recommendations, to propose to this Court clear numerical goals and timetables for achieving a critical mass of African Americans on their faculties and administrations, including each school or department as deemed appropriate for each particular campus. Plaintiffs further moved that the plaintiffs be given an opportunity to respond to these proposed goals and timetables and that, thereafter, the Court will conduct an evidentiary hearing for the purpose of determining what goals and timetables should be approved by the Court as conditions for termination of the black faculty-administrator provisions of the Remedial Decree. This motion is still pending.

13. On March 8, 2005, the Knight-Sims plaintiffs filed a motion for an order to show cause why defendant Auburn University and its Board of Trustees should not be held in contempt of this Court's orders requiring AU to implement policies and procedures and to spend court-ordered funds in ways that will increase the hiring and retention of African-American faculty and EEO-1 staff. (Doc. 3324.) Plaintiffs further requested that the Court require AU to purge itself of contempt: (1) by calling public attention to its obligations under this Court's remedial decrees and the Constitution and laws of the United States to increase African-American representation on its faculty and administration to levels that demonstrably eradicate the vestiges of *de jure* segregation; (2) by demonstrating that it has genuinely operationalized the desegregation policies and procedures ordered by this Court in its routine employment decision-making; and (3) by

adopting and implementing “An Agenda for Promoting Diversity at Auburn University,” a copy of which was attached to the motion as Exhibit G. This motion is still pending.

**Provisions Which Should Be Amended To Remedy  
Additional Vestiges of Segregation Found By the Court**

14. In the Knight-Sims plaintiffs’ comments on noncompliance with the Remedial Decrees (Doc. 3008), at § 8, plaintiffs contended that the rapidly rising cost of attending state universities and the absence of substantial financial aid are among the current policies and practices that perpetuate vestiges of *de jure* segregation in Alabama’s system of public higher education. In its October 4, 2005, opinion denying plaintiffs’ motion for declaratory and injunctive relief with respect to Alabama’s racially discriminatory property tax system, this Court made findings of fact that the small amount of need-based financial aid provided by the State perpetuates segregation and denies African Americans an equal opportunity to attend and to complete higher education. Among those findings of fact are the following:

92. Lack of state funding has also adversely impacted funding for financial aid, which disproportionately burdens poor, black families. Dr. Richardson testified at his deposition that because poor families do not have the ability to assume large indebtedness, those families are increasingly unable to attend institutions of higher education as financial aid remains stagnant while student indebtedness rises. (Richardson Dep. at 28-31.)

93. Additionally, financial aid for students at Alabama’s colleges comes almost exclusively from federal Pell grants,FN3 which do not cover living expenses; consequently, low income students who receive federal financial assistance must incur substantial debt or find work. (Richardson Dep. at 28-31.)FN4.

FN 3: Pell grants are entirely a need-based program and are the largest federal grant program. The only component of merit to Pell grants is that the student must have graduated from high school or have a GED, and once enrolled in college, the student must maintain satisfactory progress as defined by the institution, which is generally a minimum grade point average. (May 5, 2004, Tr. at 165.)

FN 4: Dr. Carlos Clark, Director of Financial Aid at AAMU, testified that seventy-six percent of the 6,588 students at AAMU receive some sort of financial aid, which includes student loans, grants, scholarships, and work. (May 5, 2004 Tr. at 196.) Last year, as many as eighty-eight percent of AAMU students received financial aid. (Id. at 208.) This year, total student financial aid at AAMU came to \$31 million, compared with \$20 million in the 2000-01 school year. (Id. at 208.)

Dr. Clark also testified that tuition at AAMU rose 12.5% this year, and it has risen 120% since 1996, when it cost only \$920 per semester. (May 5, 2004, Tr. at 209.) Financial aid has failed to offset the increasing tuition and fees. (Id. at 209-10.) For instance, AAMU received only \$25,000 in state financial aid that it can distribute to its students this year, which it awarded to those students who had exceptional need, defined, according to federal methodology, as those students who had an estimated financial contribution, of zero. (May 5, 2004, Tr. at 196-97.) In total, some 100 students received approximately \$200 apiece in state need-based financial aid. (Id.)

Federal assistance, in the form of grants, loans, and work-study programs, is limited as well. The maximum federal Pell grant that can be awarded is \$2,025 per semester, and the average Pell grant for AAMU students this year was \$1,000. (May 5, 2004, Tr. at 197-98.) Three kinds of student loans are available: federally subsidized loans, which are need-based, and unsubsidized student and parent-plus loans, which are credit-based. (Id. at 198-99.) There is a sliding scale for subsidized loans: freshmen can receive \$2,625 per year; sophomores, \$3,500; juniors and seniors can receive \$5,500. (Id.) AAMU received \$461,000 this year from the federal government for campus-based work-study, and it gave \$4,800 each to 108 students. (Id. at 199.)

AAMU this year also used approximately \$4 million of its institutional funds for merit-based scholarships. (May 5, 2004, Tr. at 200.)

AAMU lost 475 students between the Fall and Spring semesters, half of whom gave financial difficulties as their reason for leaving school. (May 5, 2004, at Tr. at 206-07.) Some of these students transfer to a community college that is closer to home and that has substantially lower tuition. (Id.) Students who stop out or drop out of AAMU also adversely affect other students' ability to receive financial assistance because students who drop out of AAMU usually default on their student loans, and those defaults reduce the amount of federally subsidized loans AAMU is allowed

to make in the future. (Id. at 211-12.) Moreover, once a student drops out of AAMU, it is unlikely that he or she will return—only about twenty percent of students who drop out of AAMU ever come back. (Id. at 212.).

...

109. Although the dramatic increase in tuition is certainly not unique to Alabama, the results of the tuition increase are more burdensome in the State because (1) there is not a corresponding increase in need-based scholarship funding to ensure continued access for students from lower income households, and (2) the percent of students in Alabama who would be eligible for such aid (using federal guidelines) is well above average. (May 5, 2004, Tr. at 91-99; Pls.’ Exs. 74, 76 (chart comparing need-based financial aid from state sources for students at public institutions) & 77 (chart indicating Pell grant funding in United States, SREB States, and Alabama from 1990-91 to 2000-01).) Those circumstances place considerably more of the burden of increased tuition on low-income students. (May 5, 2004, Tr. at 92.) That is, compared to the situation in other states, it is becoming relatively easier for wealthy students to attend a state university in Alabama and relatively more difficult for poor students to do so.

...

116. Dr. Heller testified that the underfunding of public education in Alabama, the resulting rising tuition and fees at its public universities, and the declining or disappearing availability of need-based state and institutional financial aid seriously impact black Alabamians in particular, as well as other low and middle income students, making it increasingly more difficult for those students to have access to enrollment in and completion of higher education. (May 5, 2004, Tr. at 161.

117. Dr. Heller testified that a “long and extensive body of research” in the United States has established that two paths exist to ensuring access to higher education for low and middle income students, and that Alabama’s lack of funding is erecting roadblocks to those paths. (May 5, 2004, Tr. at 161-62.) The first path is to offer universally low tuition, which historically is what has been done in most public colleges and universities in the nation. (Id.) The second path, in the absence of low tuition, is to offer need-based financial aid, which acts to lower the cost of education for students who are recipients of that aid. (Id.) As tuition increases, poorer students are less likely to be able to enroll in college; likewise, poor students who are already enrolled face dropping out when tuition increases. (Id. at 162-63.) Need-based financial aid can protect poorer students from the adverse affects of higher prices—*i.e.* as tuition goes up, need-based financial aid is directly related to whether or not poorer students are going to enroll in college and to persist and obtain a baccalaureate degree. (Id.)

118. The research is consistent with respect to those findings, and there is no reason to believe that the situation in Alabama would be any different from that in the rest of the country. (May 5, 2004, Tr. at 163.)

119. Blacks in Alabama have a great deal of financial need in order to be able to attend college, in comparison to white Alabamians and also in comparison to blacks residing in other states. Although students in about half of all families in the country qualify for Pell grants, the rough cutoff being about \$45,000 annually in household income, keeping in mind that other factors related to net wealth and need are taken into account in calculating Pell grant eligibility, in Alabama fifty-eight percent of the white households and about seventy-eight percent of the black households would qualify for federal need-based Pell grants. (May 5, 2004, Tr. at 164-65; Pls.' Ex. 91 (Income Distribution of Alabama Households by Race, 2000 Census).) "So, the message here again is that blacks [in Alabama] are both poorer than whites overall and have higher need for financial aid and assistance to pay for college as well as being poorer than the rest of the nation." (May 5, 2004, Tr. at 165.)

120. Alabama has been increasing tuition at rates very consistent with most of the rest of the country, in the range of five to fifteen percent per year. (May 5, 2004, Tr. at 167; Pls.' Exs. 92 (graph indicating annual change in tuition and fees for comprehensive colleges) & 93 (graph indicating annual change in tuition and fees for flagship universities).) "Unfortunately, over the last dozen years in this country we've greatly increased the cost of public higher education to students, and Alabama is no different than the rest of the country in effect." (May 5, 2004, Tr. at 167; Pls.' Exs. 92 & 93.)

121. The principal difference between Alabama and many other states, however, is that Alabama has decreased its amount of spending on need-based financial aid in the face of skyrocketing tuition costs. (May 5, 2004, Tr. at 169-70; Pls.' Ex. 94 (graph comparing Alabama's state spending on need-based grants per 19-24 year old to other regions of the United States).)

122. Alabama started from a much lower base than did any other part of the country, ranking, in 2001, forty-sixth out of fifty states in spending on need-based aid, and it actually decreased the amount of spending by a little over a third over those eleven years. (May 5, 2004, Tr. at 169-70; Pls.' Ex. 94.)

123. During 2003-04, the State appropriated only about \$800,000 for need-based financial aid. (May 5, 2004, Tr. at 174.) For the period 1991 to 2001, with the exception of one year, 1997, the increase in tuition at Alabama's comprehensive public universities and at the University of Alabama, on a percentage basis, has been higher than the increase in state need-based financial aid. (May 5, 2004, Tr. at 173; Pls.' Ex. 95 (graph entitled Actual Change in Tuition and State Need-Based Grant Spending Per 18-24 Year Old - Alabama).) In fact, there are seven years in which the State actually cut spending on financial aid. (May 5, 2004, Tr. at 173; Pls.' Ex. 95.) In contrast, in all but three of those years, the other Southeastern states increased need-based financial assistance at a greater rate than tuition was increased. (May 5, 2004, Tr. at 174; Pls.' Ex. 96 (graph entitled "Annual Change in Tuition and State Need-Based Grant Spending Per 18-24 Year Old - Other SREB States).)

124. Alabama's lack of funding for need-based student aid has also had an adverse effect on federal funding. Because the state's level of funding has not achieved a certain level, the State of Alabama must turn back matching funds to the federal government. (May 5, 2004, Tr. at 174.) ACHE's 2002-03 annual report confirms this loss of federal assistance:

Because the Alabama Legislature during its Special Session in September, 2003 significantly reduced funding for the state's only need-based student aid program that receives federal matching funds, Alabama must return its \$446,119 share of federal funds for 2003-2004, as the state no longer meets the required maintenance of effort necessary to qualify for the federal monies. *As a result, Alabama will not receive any federal need-based aid funds for 2003-2004 or 2004-2005.*

(Pls. Ex. 15 at 28 (ACHE October 1, 2002-September 30, 2003 annual report) (emphasis in original).)

125. The trend of rapidly increasing tuition and steadily decreasing need-based financial aid in Alabama corresponds with a growing gap between white and black Alabama high school graduates enrolling in the state's public four-year institutions of higher education. (May 5, 2004, Tr. at 176; Pls.' Ex. 97 (graph depicting enrollment rate of Alabama high school graduates in four-year public institutions by race, excluding historically black colleges and universities), 98 (graph depicting enrollment rate of Alabama high school graduates in four-year public institutions by race).)

126. Dr. Heller's analysis of scholarships awarded from 1999 to 2003 from the institutional budgets of Alabama's state universities, including ASU and AAMU, shows that for both white and black students, the average institutional scholarship amount given to white students has been steadily increasing, from about \$500 to about \$722, representing a forty-three percent increase in five years. (May 5, 2004, Tr. at 177-78; Pls.' Ex. 99 (graph depicting institutional scholarships per undergraduate student at Alabama public four-year universities).) Black students, however, received a smaller increase, from \$547 to \$660, a twenty-one percent increase, with the average institutional scholarship for black students actually dropping in the last three years. (May 5, 2004, Tr. at 177-78; Pls.' Ex. 99.) Thus, even though blacks need more financial aid, whites are on average receiving a greater amount. (May 5, 2004, Tr. at 178 ("At least based on the census data, we know that in Alabama blacks are poorer than whites, and yet whites are receiving more institutional aid in effect.")) Despite the financial barriers to attending college, however, the number of black Alabamians attending college continues to grow, even as the gap between whites and blacks increases. (Id. at 180.)

127. Dr. Heller emphasized the importance of financial resources to the ability of students to persist and graduate after they have enrolled in college. "Students who stop out of college are much less likely to ever earn a degree than students who enroll as a freshman and persist through, straight through, to get a

bachelor's degree.” (May 5, 2004, Tr. at 186.) Indeed, research indicates that students who work more than fifteen hours a week are less likely to attain a college degree. (*Id.*) “What happens is: students take a lower course load, they don't put as much time into their studies, they can't get . . . as good grades, can't get the credits they need.” (*Id.* at 187.) As a result, those students also lose eligibility for Pell grants. (*Id.*)

128. According to Dr. Heller, the adverse racial impact of Alabama's revenue and funding policies for higher education perpetuates the state's historical official policies of forcing African Americans into subordinate social and economic roles in the state's civil life:

[T]he big payoff in labor markets today is actually going to college and getting a bachelor's degree. If you go back a generation or two, the big payoff was the difference between dropping out of high school and getting a high school diploma. Back in the days when, you know, we used to quaintly call it a good middle class wage could be earned by a high school graduate, could go out and get a good job often in manufacturing, often in the public sector, earn a good wage without having to go to college. And in those days a generation or two ago, there wasn't as much of what economists call the college wage premium, the difference between a high school graduate, what he or she earns, and a college graduate. Well, in the last two decades, that college wage premium has increased quite a bit, and what we see today the biggest jump is the difference between that high school diploma now and somebody getting a bachelor's degree. . . . There's not much of a premium in terms of earnings between staying in high school and dropping out of high school, but there's a huge premium when somebody goes on to college and gets a bachelor's degree.

(May 5, 2004, Tr. at 179-80.)

Doc. 3294 at 57- 79. Based on the facts already found by this Court, the defendants are violating this Court's permanent injunction prohibiting them from maintaining vestiges of discrimination in the system of public higher education in the State of Alabama, 897 F.Supp. at 1378, and the Remedial Decrees should be amended to require the State to increase its need-based financial aid to levels that would eliminate said vestiges of segregation and purposeful discrimination.

### **Objections of Other Parties**

15. Plaintiffs respectfully reserve the right to take a position on objections to termination

of the Remedial Decrees that may be filed by other parties.

### **Discovery**

16. Plaintiffs request that the Court authorize discovery immediately to begin upon the filing of these objections, to extend for a period of ninety days, including all written, document and deposition discovery. The nature of the discovery plaintiffs seek is governed by the subject matters of the pending motions and requests for additional relief set out above. Plaintiffs' first discovery request with respect to their motion to extend the term of the Remedial Decrees is attached to a motion for leave to commence discovery filed contemporaneously herewith.

WHEREFORE, plaintiffs pray that the Court will extend the term of those provisions of the Remedial Decrees needed to effectuate the remedies already prescribed by outstanding orders, to address the issues presented in pending motions and objections to noncompliance, and to remedy identified vestiges of segregation as set out more particularly above.

Respectfully submitted November 30, 2005,

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**CERTIFICATE OF SERVICE**

I hereby certify that November 30, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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