

past, present and future students, faculty, staff and administrators of Alabama State University and Alabama A&M University;”

The State Defendants; to wit, the State of Alabama, the Governor of Alabama, the State Finance Director, the Alabama Commission on Higher Education (“ACHE”) and its members, and the Alabama Public School and College Authority and its members.

I

Guiding Principles

Removing the vestiges of segregation from Alabama’s system of public higher education is the Pole Star that has guided the Settling Parties for the almost twenty-six years of this litigation. During that period, profound progress in attitudes, organization, and programs has been achieved. The State Defendants have complied with all remedial orders issued by the Court, resulting in the creation of new academic programs,

diversity scholarships and endowment trusts and the construction of new facilities at Alabama State University and Alabama A&M University, the funding of efforts to increase African-American representation on the faculties and administrations of the historically white universities, and the allocation to date of over \$248 million to implement these desegregation measures. The Settling Parties agree that this progress should continue. The Settling Parties further agree that continued progress does not depend on continued federal court supervision. The Settling Parties are prepared to show the nation and the citizens of Alabama that the elimination of discrimination in our society is a goal to which the Settling Parties are dedicated. It is in this spirit that the Settling Parties have reached this Agreement.

Applicable desegregation law requires the Court to determine that vestiges of segregation have been eliminated to the extent practicable and consistent with sound educational practices. By entering into this Agreement, the Knight-Sims

Plaintiffs acknowledge that the State Defendants have satisfied this legal burden. Similarly, by entering into this Agreement, the State Defendants pledge to continue those efforts that, over the course of this litigation, redressed historical discrimination in higher education against African-American citizens of this state. To that end, this Agreement's primary focus is on continuing to improve African American access to and participation in Alabama's system of public higher education.

The Governor, in his capacity as chief executive officer, and the Attorney General, in his capacity as chief legal officer, execute this Agreement on behalf of the State of Alabama and affirm their willingness to seek full implementation of the Agreement. As emphasized in section XIII below, the Agreement is subject to the approval of the District Court.

II

NEED-BASED FINANCIAL AID

1. A major priority of this Agreement is to raise the African-

American entry rates to college, to narrow the gap between the rates at which African-American and white high school graduates enter college, graduate, and pursue graduate and first professional studies, and to increase access to higher education for all citizens of Alabama.

2. To that end, ACHE will alter the maximum grant allowed under the existing Alabama Student Assistance Program (“ASAP”) from \$2,500 per academic year to \$5,000 per academic year, effective beginning Fall 2007 academic term. The term academic year will be as defined by the Administrative Procedures for the Alabama Student Assistance Program of the Alabama Commission on Higher Education.

3. Additionally, immediately upon final approval of this Agreement, the State Finance Director will transfer to the ASAP account \$10,000,000.00 from the funds sequestered by the order entered September 29, 2006, which will be used as follows:

a. ACHE may use an appropriate amount to cover costs

relating to its administration of the ASAP program;

- b. The distribution method of these funds and any other funds in ASAP will be in accord with Chapter 300-4-2, Alabama Student Assistance Program. The parties agree that this requirement does not, however, restrict the power of ACHE to amend this Chapter, through appropriate procedures, during the term of this Agreement.
- c. The use of these funds must follow the normal procedures as established by the Alabama Commission on Higher Education. Institutions wishing to qualify for these funds must submit the required documentation no later than March 31, 2007. Distribution of these funds will start no earlier than the fall 2007 term.
- d. In his budget recommendation to the Legislature, the Governor will request that the Legislature provide that these funds will not revert to the Education Trust Fund

at the end of each fiscal year but shall be carried over in ASAP in subsequent years.

- e. The \$10,000,000 transfer shall be over and above any other funds ACHE currently receives for ASAP.
- f. It is the Plaintiffs' intention through the legislative process to support future appropriations to ASAP with the goal of increasing it beyond \$10 million, in amounts that will continue substantially to reduce the cost of attending Alabama's public institutions of higher education for Alabama residents who qualify for federal need-based financial assistance but who still have unmet financial need. The State defendants support in general the goal of reducing financial barriers to access to higher education. However, they have made no binding commitment to continuing or increasing the financial aid provided herein.
- g. To the extent reimbursements to Alabama State

University and Alabama A&M University for Diversity Scholarships awarded to students “grandfathered” in the Diversity Scholarship program, as provided in Section III, below, for academic years during the term of this agreement fall below \$2,000,000, the amount by which those reimbursements fall below \$2,000,000 shall be transferred from the appropriation for *Knight v. State of Alabama* obligations to ASAP. As the amount of the transfer may not be known until late in the fiscal year, in his budget recommendation to the Legislature, the Governor will ask the Legislature to provide that the funds will not revert to the Education Trust Fund at the end of the fiscal year but shall be carried over in ASAP in the next fiscal year.

4. As and to the extent such information shall become available to ACHE, ACHE shall post on its web-site the following:
 - a. The average cost of attending public universities and

postsecondary institutions in Alabama;

- b. The total amount of Pell grants awarded to students at institutions of higher education in Alabama;
- c. The amount of need-based financial aid awarded to students through the ASAP program, disaggregated by institution and by the number of students receiving ASAP financial aid;
- d. A comparison of state need-based financial aid provided in Alabama with regional and national financial aid data, as available.

III

Diversity Scholarship Programs

Students for whom Alabama State University and Alabama A&M University were reimbursed for Diversity Scholarships awarded in academic year 2004-05 will be “grandfathered” as specified herein. Such reimbursements may continue for the term of this Settlement Agreement to the extent the “grandfathered”

students remain enrolled at the same academic level (i.e., undergraduate, masters, or doctoral) as in academic year 2004-05. To the extent those students are awarded Diversity Scholarships by their institution in future academic years, to the extent those students remain at the same academic level as in 2004-05, and to the extent those scholarship awards would otherwise qualify for reimbursement by the State under the terms of the Remedial Decree, 900 F.Supp. at 356-8, the State shall reimburse the institutions for the scholarships awarded. Any claim by an institution for such reimbursement shall be submitted within 30 days of the completion of the academic term for which reimbursement is sought, with the following exceptions:

A. Claims for reimbursement for scholarships awarded in academic year 2005-06 shall be submitted within 30 days of the court's approval of this Agreement; and,

B. Claims for reimbursement for scholarships awarded during a summer term shall be submitted prior to September 1 of the year in which the scholarships were awarded.

It is anticipated that the State's reimbursements for the Diversity Scholarship programs will be phased out during the term of this Agreement and that the State will have no obligation to reimburse any institution for Diversity Scholarships awarded after the termination of this Agreement, even if students have failed to achieve their degree by that date.

IV

Trusts for Educational Excellence

The State of Alabama will continue to fund the Trusts for Educational Excellence established by the Remedial Decree under the terms and for the duration established by the Decree, 900 F.Supp. at 349-356.

V

Programs Established by the Remedial Decree

To the extent continued funding of programs established at ASU pursuant to the Remedial Decree, 900 F.Supp. at 370-72, is required under existing Court order, the State will continue the separate line items to fund those programs as specified under those orders, for the duration of the period specified by the orders. At the end of the Court-ordered period of funding, those expiring line items for programs listed in the "Knight v. Alabama -- Financial Obligations" section of the Education Trust Fund Act will be rolled into ASU's base O&M appropriation for the fiscal year following the end of court-ordered funding, provided the program meets the post-implementation requirements.

For those funds in the Alabama State University, Board of Trustees section of the Education Trust Fund act identified as Title VI Program Enhancement Funds and Title VI Desegregation Planning funds, (hereinafter "Title VI Funds"), it is the intention of the Governor and the Knight Plaintiffs to support before the Legislature the inclusion of these Title VI Funds in ASU's O&M

base during the fiscal year immediately following the end of the Court-ordered period of funding. The Legislature will retain its discretion to appropriate, or not appropriate, the Title VI Funds as part of ASU's O&M base. The Governor and the Knight Plaintiffs agree, however, that the inclusion of the Title VI Funds in ASU's O&M base will be important to the continued viability of the programs, provided the programs are meeting their post-implementation requirements. If, however, at the time the Court-ordered period of funding ends, a program fails to meet its post-implementation requirements, then there is no obligation to support before the Legislature the inclusion of the Title VI Funds for that program in ASU's O&M base.

The parties acknowledge that the Governor may veto any legislation, for reasons other than its inclusion of an appropriation to satisfy this paragraph, without being in breach of this Agreement. The request and support required of the Governor in this paragraph V is not intended to bind the Legislature in any

respect, as such might violate the separation of powers between the Executive and Legislative branches of government.

VI

Capital Funds for Alabama A&M University

Immediately upon final approval of this Agreement, the State Finance Director will transfer to the Alabama Public School and College Authority, for the benefit of Alabama A&M University, \$7,300,000.00 from the funds sequestered by the order entered September 29, 2006. These funds shall be allocated to AAMU, consistent with APSCA guidelines and procedures, to meet existing capital funding needs of the University. This payment shall be over and above any other capital funds the University might receive, separate and apart from this Agreement or this litigation. These funds shall be spent on facilities that are directly related to instruction activities and/or research related to AAMU's historic mission. Within 45 days of transfer of these funds to APSCA, the University will present to the Plaintiffs, the Governor,

the Finance Director, and ACHE, a plan for how these funds will be spent and a time-line for such expenditures.

VII

Capital funds for Alabama State University

1. Immediately upon final approval of this Agreement, the State Finance Director will transfer \$25,800,000.00 from the funds sequestered by the order entered September 29, 2006, to the Alabama Public School and College Authority, for the benefit of Alabama State University. These funds shall be allocated to ASU, consistent with APSCA guidelines and procedures, to be used to meet capital funding needs specified in this Court's order entered February 8, 2006. This payment shall be over and above any other capital funds the University might otherwise receive, separate and apart from this Agreement or this litigation. Within 45 days of transfer of these funds to APSCA, the University will present to the Plaintiffs, the Governor, the Finance Director, and ACHE, a plan for how these funds will be spent and a time-line for

such expenditures.

VIII

Additional Capital Funds

The Governor has agreed to request and to support in the 2007-08 education budget an appropriation to Alabama State University of an additional \$11,890,380.00 to be used to meet capital funding needs specified in this Court's order entered February 8, 2006, and an appropriation to Alabama A&M University of an additional \$365,000.00 to be used for the purposes set forth in VI, above. If, however, these additional funds are made available through the Legislature authorizing a capital bond issue for education, then the parties agree that the Governor would not be required to request and support in the 2007-08 education budget an appropriation of these funds to satisfy the Court's order of February 8, 2006, or this Agreement. This appropriation or bond money shall be over and above any other capital funds the Universities might otherwise receive,

separate and apart from this Agreement or this litigation. Any funds made available pursuant to this paragraph VIII shall be transferred to APSCA and allocated to the designated institutions consistent with APSCA guidelines and procedures. The parties acknowledge that the Governor may veto any legislation, for reasons other than its inclusion of an appropriation to satisfy this paragraph, without being in breach of this Agreement. The request and support required of the Governor in this paragraph VIII is not intended to bind the Legislature in any respect, as such might violate the separation of powers between the Executive and Legislative branches of government.

IX

Dismissal of Appeal of Order of February 8, 2006

Upon final approval of this Agreement, the Settling Parties shall jointly file with the Court of Appeals a motion to dismiss the pending appeal and cross-appeal from this Court's order entered February 8, 2006.

X

Attorneys' Fees and Litigation Expenses

1. Immediately upon final approval of this Agreement, the State Finance Director will pay plaintiffs' attorneys' fees in the amount of \$1,000,000.00 from the funds sequestered by the order entered September 29, 2006. Payment shall be made to James U. Blacksher, who shall be responsible for distribution of the fees to other plaintiffs' counsel.

2. Immediately upon final approval of this Agreement, the State Finance Director will pay into the registry of this Court \$1,500,000.00 from the funds sequestered by the order entered September 29, 2006, as additional litigation expenses, which shall be disbursed as the Court may order.

3. The payments for attorneys fees and expenses made pursuant to this Section X shall be in complete satisfaction of any and all claims for fees or expenses by counsel for plaintiffs in this action and any appeals therefrom, except for the claims that will

be severed from this action pursuant to Section XI.

XI

The parties have agreed that the issues pending resolution of the Knight-Sims plaintiffs' appeal from this Court's orders of October 5, 2004, and February 10, 2005, should be severed from this action on the following conditions that will pertain in the event said orders are reversed or vacated on appeal and remanded for further action by this Court:

The Knight-Sims plaintiffs have agreed that, to the extent any appellate mandate permits them to do so, they will seek only prospective relief; that is, they will ask the Court only to enjoin future enforcement of sections 214, 215, 216, 269 and amendments 325 and 373 of the Constitution of Alabama and the statutes that implement these constitutional provisions. Plaintiffs will ask the Court to defer entry of said prohibitory injunction for a reasonable period to allow State government the opportunity to enact replacement legislation and/or constitutional provisions.

Plaintiffs will not ask the Court to invalidate any tax enacted prior to the ruling of the Appellate Court or to enjoin the imposition or collection of taxes thereunder.

XII

Matters Excepted from this Agreement

The Settling Parties agree that the following matters are excepted from this agreement and from dismissal of this action, as requested in Section XIII hereof:

Issues relating to African-American staff, faculty, and administration recruitment, hiring, and retention at HWIs. The Knight-Sims Plaintiffs may raise these issues with the Court and all Settling Parties are free to support or contest such issues and any ruling the Court might make; provided, however, that the Settling Parties agree to the following:

- A. Funding to address any such issues should come from funds of the individual institutions, and not from new funds to be provided by the State; and,

- B. ACHE should not be required to conduct any studies, fund any conferences, or publish any materials other than materials provided by the institutions in electronic form, which ACHE may publish on its web-site.

Should a ruling of the Court conflict with the agreements expressed in A or B, above, this Agreement shall become null and void, as provided in Section XIII(E) herein. Otherwise, any ruling of the Court on the issues of this paragraph may be appealed and such appeal will not affect the validity of this Agreement.

XIII

Dismissal of Action and Settlement Implementation

- A. Preliminary Court Approval of Agreement.

Promptly after execution of this Agreement, but in no event later than 10 days after the execution of this Agreement, the parties by joint motion shall submit the Agreement to the District Court requesting that the Court enter an order granting

preliminary approval of the Agreement. The District Court shall be requested to direct the giving of notice to the plaintiff class and to schedule a fairness hearing. In the event the Court declines preliminarily to approve the Agreement, or to find the Agreement provides an adequate basis for issuing notice and scheduling a fairness hearing, then the entire Agreement shall become null and void unless the parties promptly agree in writing to other mutually satisfactory settlement provisions and agree to proceed with the Agreement, subject to approval by the Court.

B. Final Judgment.

At the final hearing on fairness, adequacy, and reasonableness of the settlement as set forth in this Agreement, the parties, and each of them, agree to cooperate in good faith to achieve the expeditious approval of the settlement, and shall request the Court to grant final approval of the Agreement and to enter judgment thereon ("Judgment"). In order to satisfy the requirements of the Agreement, the Judgment must include, by

specific statement or by reference to the Agreement to the extent permitted by law and the rules of court, provisions which:

1. Affirm certification of the proceeding as a class action pursuant to Rule 23 of the Fed. R. Civ. P. with the plaintiff class as previously defined by the Court;
2. Find that the notice given to class members satisfied the requirements of both Rule 23, Fed. R. Civ. P, and due process, and that the Court has jurisdiction over the class;
3. Find that the Agreement is fair, adequate, and reasonable in all respects;
4. Find that the class representatives, and all class members, have released all claims, all as set forth in the Agreement;
5. Order that the State shall implement the Settlement Agreement, including providing the

funding designated in this Agreement;

6. Incorporate the Agreement within the Judgment to enable the District Court to exercise jurisdiction over any subsequent dispute involving the Agreement;
7. Pursuant to Rule 42(b), Fed. R. Civ. P., sever from this action the claims that are pending resolution of the Knight-Sims plaintiffs' appeal from this Court's orders of October 5, 2004, and February 10, 2005, denying plaintiffs' requests for relief based on said claims and those claims specified in Section XI, hereof;
8. Subject only to final resolution of the severed claims pending on appeal, find that on judicial approval of this Agreement, including the commitments contained herein, the State Defendants shall be in full compliance with the

law, and that, therefore, there are no continuing State policies or practices, or remnants, traceable to *de jure* segregation, with present discriminatory effects which can be eliminated, altered or replaced with educationally sound, feasible and practical alternatives or remedial measures; and, further, that this finding shall extend to all facets of the case and to all facets of public higher education in Alabama;

9. Subject only to final resolution of the claims pending on appeal, severed, or specified in Section XI, hereof, dismiss on the merits and with prejudice (i) all claims against the State Defendants set forth in the complaint, as amended, (ii) all claims against the State Defendants set forth in the complaint-in-intervention, and (iii) all claims of racial

discrimination against the State Defendants asserted before the Court throughout the pendency and trials of the action including, without limitation, claims of system or institutional aspects, features, policies and practices alleged to be remnants of the *de jure* system.

C. Finality and Term of Agreement.

This Agreement shall become final upon the occurrence of the following events: (i) approval of the Agreement in all respects by the District Court as required by Rule 23(e) of the Fed. R. Civ. P.; and (ii) entry of the Judgment as provided for above.

Except where longer periods explicitly are prescribed, the term of the provisions of this agreement shall be from the date this Agreement becomes final until September 30, 2011, at which time this Agreement shall terminate. The Agreement shall be binding upon the successors and assigns of the parties and shall inure to their benefit.

D. Enforcement.

Should any dispute arise regarding a party's compliance with this Agreement, the Parties shall mediate that dispute before Carlos Gonzalez in an effort to reach resolution. Should Mr. Gonzalez not be available to mediate such dispute, the Parties shall select a mediator by mutual consent. All costs of mediation shall be shared equally by the Parties to the dispute. If mediation fails to resolve the dispute to the satisfaction of the Parties, the Parties, including all class members, irrevocably submit to the exclusive jurisdiction of the United States District Court for the Northern District of Alabama any suit, action, proceeding or dispute arising out of or relating to the Agreement (including any alleged nonperformance of the Agreement or the Judgment) or to the applicability of the Agreement. All parties agree that the District Court has complete jurisdiction and power to enforce this Agreement. The parties, agree, however, that they waive any right to seek additional funding or relief not provided in this

Agreement. The parties intend by this paragraph to vest the District Court with full jurisdiction for enforcement as contemplated by the case of *Kokkonen v Guardian Life Ins. Co.*, 511 U.S. 375 (1994).

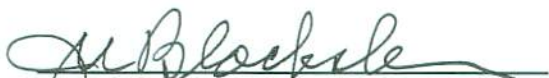
E. Effect of Non-Approval, Cancellation and Termination of Agreement.

If the District Court does not enter an order preliminarily approving settlement, or does not enter the final Judgment contemplated by this Agreement, then the Agreement shall be automatically canceled and terminated unless the parties hereto otherwise agree at such time.

If the Agreement is not approved or is canceled or terminated, or fails to become effective for any reason, then the parties to the Agreement shall each be deemed to have its or their respective status as of the date and time immediately prior to the Agreement, and the parties shall proceed in all respects as if the Agreement and any related orders had never been executed or

entered.

Dated: October 13, 2006,



James U. Blacksher
ASB-2381-S82J
P. O. Box 636
Birmingham, Alabama 35201
Phone: (205) 591-7338
Fax: (866) 845-4395
E-mail:
jblacksher@ns.sympatico.ca

Counsel for the Knight-Sims
plaintiffs



Robert D. Hunter
Ala. Bar Code: ASB-2545-H68R
210 Inverness Center Drive
Birmingham, AL 35242
205-408-8078
Fax: 205-991-9993
E-mail: rob.hunter@altec.com

Counsel for the State defendants