

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

Plaintiffs John F. Knight, Jr., and Alease S. Sims et al., through undersigned counsel, move the Court to provide additional relief with respect to the State's funding of public higher education. In support of their motion, and as is set out more fully in the brief filed contemporaneously herewith, plaintiffs would show as follows:

1. Last year the Alabama Supreme Court dismissed the so-called Equity Funding Cases that were pending when this Court entered its 1991 opinion and remedial decree. *Ex parte James*, 836 So.2d 813 (Ala. 2002). *See Knight v. Alabama*, 787 F.Supp. 1030, 1104 n.24 (N.D. Ala. 1991), *aff'd in relevant part*, 14 F.3d 1534 (11th Cir. 1994) (*citing Alabama Coalition for Equity Inc. v. Guy Hunt, Governor*, No. CV-91-117-R (Cir. Ct. Montgomery County, August 13, 1991)). The Equity Funding Cases had sought to require the State of Alabama to provide the financial and educational resources to ensure that all students in Alabama's K-12 public school system receive an adequate and equal education.
2. The Alabama Supreme Court now has dismissed those cases on the ground that the relief sought impermissibly would inject the state judiciary into legislative functions and would violate the state constitution's separation of powers provisions. Thus the principle of federal deference to state judicial consideration of state law issues, which previously made it premature to raise claims regarding Alabama's school funding system in this action, no longer prevents review by this Court of the impact of state constitutional and statutory restrictions on revenues for funding public higher education and on the remedial objectives of this Court's decrees.
3. The *Ex parte James* ruling comes at a time when Alabama's Education Trust Fund, from

which appropriations are made for both K-12 and higher education, is experiencing one of its worst financial crises in history. Moreover, the fifteen-year term of this Court's remedial decrees is due to expire August 1, 2005. The public school funding crisis jeopardizes the ability of this Court to conclude in 2005 that all vestiges of officially sanctioned racial segregation and discrimination have been eliminated to the extent educationally sound and practicable.

4. This Court has made findings that an educationally sound and practicable remedy for Alabama's historical *de jure* racial discrimination in public higher education cannot be implemented without adequate funding from the State. Complete desegregation cannot be accomplished unless there are substantial additional funds to support the objectives of the 1991 and 1995 Remedial Decrees, including without limitation the following:

a. The recruitment and retention of black faculty members and high ranking administrators at the HWIs. 787 F.Supp. at 1191 ¶ 956.

b. The appropriation of sufficient funds from the Alabama Educational Trust Fund (ETF) to provide ASU and AAMU the resources needed to overcome over a century of underfunding by the State. 787 F.Supp. at 1194 ¶¶ 986, 1197 ¶¶ 1012, 1014, 1209 ¶ 1106, 1227 ¶¶ 1117-18, 1228 ¶¶ 1124-25, 1228-29 ¶¶ 1130-32; 900 F.Supp. at 306-07 ¶ 262, 307 ¶¶ 266-68.

c. The ability of ASU and AAMU to continue using financial aid to attract other-race students after the court-ordered scholarships expire. 900 F.Supp. at 319 ¶¶ 368-69.

d. The development of new, high quality programs at ASU and AAMU, with the capital facilities and faculty needed to operate them.

5. The remedies crafted by this Court to eliminate the vestiges of historical discrimination in Alabama's system of public higher education acknowledged the limited funds available for the entire system, and these remedies depend to some extent on the expectation that there would be

growth in higher education funding. 900 F.Supp. at 349, 366, 368, 372.

6. However, primarily because of the lack of fair and adequate property taxes, an increasing portion of the Educational Trust Fund (ETF) has been allocated to K-12 appropriations. In 1991 higher education was appropriated 34% of the ETF. In 2001-02 higher education received only 28% of the ETF.

7. The deep cuts in state funding for higher education over the past several years have seriously impeded the ability of ASU and AAMU successfully to implement the growth in their academic, research and public service functions contemplated by the Remedial Decrees. A year ago, ASU was forced to increase tuition by 15% and made substantial cuts in its operating budget. On February 7, 2003, ASU's Board increased tuition another 24% to \$3,600, \$100 over the state average. AAMU increased its tuition by 28.6%, the seventh highest tuition increase in 2001-02 among public four-year colleges in the U.S. Rising tuition will further inhibit the ability of ASU and AAMU to attract other-race students and to offer accessible higher education to all Alabama citizens, black and white.

8. Because public higher education is not adequately funded, all state universities have been forced in the last few years to increase tuition dramatically. State financial aid for higher education has been reduced commensurately. Alabama has one of the highest poverty rates and one of the lowest educational levels in the nation. The state's unbalanced tax burden falls disproportionately on Alabama's low income population, which remains predominately black. Consequently, as the end of the term of this Court's Remedial Decrees approaches, new financial barriers are aggravating the lack of equal access to public higher education for African Americans that the Remedial Decrees aimed to eliminate.

9. The racially discriminatory property tax system in Alabama forces state and local

governments to rely disproportionately on income taxes, sales taxes, and other regressive types of taxes to fund public education. Alabama's property taxes are the lowest in the U.S. They would have to be tripled to reach the national average, and would have to be doubled just to reach the level in Mississippi, which ranks 49th. The regressive characteristics of Alabama's tax system have developed as a direct result of nearly two centuries of racial discrimination against African Americans, but all citizens of Alabama are suffering their adverse impact on public education and economic development throughout the state.

10. Alabama's political and educational leaders have acknowledged that reform of the state's racially discriminatory property tax system is practicable, consistent with sound educational practices, and, indeed, necessary for the educational and economic future of all citizens of Alabama. Last year, the State Superintendent of Education unveiled the Department of Education's estimate of what improvements need to be made in the state's K-12 system merely to bring it up to the level of adequacy. These improvements were estimated to cost an additional \$1.6 billion in the state's annual school appropriations. Unless the racially discriminatory property tax system is reformed, these additional funds desperately needed by K-12 schools can only come, if at all, at the cost of further deep cuts in the state's higher education appropriations.

11. The constitutional standard governing this higher education desegregation action is set out in *United States v. Fordice*, 505 U.S. 717, 729-30 (1992): "If policies traceable to the *de jure* system are still in force and have discriminatory effects, those policies too must be reformed to the extent practicable and consistent with sound educational practices." This constitutional obligation of the State extends to all of its policies which impact public higher education, not just familiar desegregation policies like admissions requirements and mission assignments. *Id.* at

733. It is not necessary to prove that a particular policy itself was established or is maintained with racially discriminatory intent. Plaintiffs “need not show such discriminatory intent to establish a constitutional violation for the perpetuation of policies **traceable** to the prior *de jure* segregative regime which have continuing discriminatory effects.” *Id.* at 733 n.8 (bold emphasis added).

12. The severe restrictions on the amount of taxes that can be levied on real property in Alabama, which are embedded in the Constitution and laws of Alabama, are directly traceable to a consistent policy of shielding the property of white landowners from taxes that would benefit the education of blacks, a policy that has persisted from the state’s founding to the present.

13. As detailed in the brief supporting this motion, the following provisions of the Alabama Constitution of 1901, as amended, and the laws, policies and practices enacted pursuant to these constitutional provisions, 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:

a. Ala. Const. § 214, as amended, which limits the rate of ad valorem taxation the Alabama Legislature may place on taxable property;

b. Ala. Const. § 215, as amended, which limits the rate of ad valorem taxation counties may place on taxable property;

c. Ala. Const. § 216, as amended, which limits the rate of ad valorem taxation municipalities may place on taxable property;

d. Ala. Const. § 269, as amended, which limits the rate of ad valorem taxation counties may place on taxable property for the benefit of public education, and which further requires approval of these property taxes by the voters in a referendum election;

e. Ala. Const. Amendment 325, as amended, which establishes separate classes of property for purposes of ad valorem taxation, lowers assessment ratios, requires voter approval of all property tax increases, and establishes a cap or “lid” on total ad valorem taxes;

f. Ala. Const. Amendment 373, which amends the property classes subject to taxation, lowers further the assessment ratios, establishes the current use method of property assessment and establishes lower “lids” on total ad valorem taxes.

14. The foregoing state constitutional provisions and laws enacted pursuant to them continue to have the effect of segregating the races and denying equal opportunity to African Americans, and the public school financing system they support is capable of being reformed in educationally sound and practicable ways to eliminate this racial discrimination.

15. Plaintiffs would further show that some reform of the property tax system is proposed by Act 2003-78, which passed the Legislature in Special Session on June 7, 2003, and which must be approved in a statewide referendum on September 9, 2003. See

<http://www.sos.state.al.us/election/2003/scae/index.cfm>. The Governor, who proposed this tax reform and accountability package, and the members of the Legislature who substantially enacted it, should be recognized for their political courage in making this initial effort to reform Alabama’s unfair and grossly inadequate system for financing public education. Whether it will be ratified by the voters remains to be seen. However, the legal and political constraints imposed on the Governor and the Legislature by the above discriminatory provisions of the 1901 Constitution as amended severely limited the reforms they could consider. Even if the amendments proposed in Act 2003-78 are approved by the voters on September 9, they will not eradicate the vestiges of *de jure* racial discrimination in Alabama’s property tax system; in some respects, they will make more severe and will more deeply entrench the constitutional constraints

on legislative action.

16. Prompt action on this motion for additional relief is necessary if the Court hopes to declare after August 1, 2005, that the vestiges of *de jure* racial segregation and discrimination in Alabama's system of public higher education have been eradicated to the extent practicable and consistent with sound educational practices.

WHEREFORE, plaintiffs pray that the Court will expedite proceedings on this motion, schedule an early hearing to receive evidence on the issues presented herein, and, following such hearing, that it will grant additional relief as follows:

A. Enter a declaratory judgment that the state constitutional policies and practices complained of herein violate the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of the United States; the Civil Rights Act of 1866, 42 U.S.C. §§ 1981 and 1982; and Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq.;

B. Pursuant to authority granted, inter alia, by the Civil Rights Act of 1871, 42 U.S.C. § 1983, enjoin officials of the State of Alabama from enforcing said unconstitutional policies and practices relating to the funding of public education and from failing to reform said policies and practices in educationally sound and practicable ways to remedy the racial discrimination they perpetuate;

C. Set a deadline of no more than one year for the State to implement a tax reform plan that eliminates the vestiges of *de jure* racial discrimination in public school funding and that provides adequate funding for its system of higher education without denying K-12 schools the adequate and equitable funding they need;

D. If the State defaults in these remedial obligations within the time allotted, order as a temporary measure that all current 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 its fair market value. The provisions of Amendments 325 and 373 of the 1901 Constitution regarding current use formulas and varying property classifications and assessment ratios shall be enjoined and shall not be enforced.

E. Granting plaintiffs an award of their attorneys' fees and expenses; and

F. Granting such other and further relief as the Court may deem just and equitable.

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 July 28, 2003, by first class mail or by hand.

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