

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

JOHN F. KNIGHT, JR., et al.

Plaintiffs and Plaintiffs
Intervenors,

v.

THE STATE OF ALABAMA, et al.

Defendants

No. CV 83-M-1676-S

**OPPOSITION OF THE BOARD OF TRUSTEES OF THE UNIVERSITY OF
ALABAMA TO KNIGHT-SIMS PLAINTIFFS' MOTION FOR ADDITIONAL
RELIEF WITH RESPECT TO STATE FUNDING OF PUBLIC HIGHER
EDUCATION**

Comes now The Board of Trustees of The University of Alabama, a defendant in the above-styled causes (hereinafter "UAS"), and files the following opposition to the Knight-Sims Plaintiffs' Motion for Additional Relief with Respect to State Funding of Public Higher Education.

1. UAS adopts and incorporates its previously filed May 30, 2002 objections to the Knight Plaintiffs' February 2002 argument that Alabama's low property taxes are racially motivated and represent an unconstitutional vestige of segregation that needs remedying to provide more funds for the HBCUs. (See pages 21-23 of Response of the Board of Trustees of The University of Alabama to Knight Plaintiffs' and United States' Comments on Compliance with Remedial Decrees, a copy of which is attached as Exhibit A). UAS submits the following additional comments in support of the State's position that the relief the Knight Plaintiffs request (ultimately, more funding for the HBCUs to

achieve the objectives of this Court's decrees) is barred by the law of the case doctrine (discussed in more detail in the State's opposition).

2. What the HBCUs have Already Received. Bottom line, the Knight Plaintiffs contend that this Court's 1991 and 1995 decrees and this Court's numerous subsequent orders are insufficient because the State has apparently not allocated enough money for the two HBCUs to achieve the desegregation objectives of this Court's decrees. The Knight Plaintiffs' motion is silent as to how much money the State has awarded to the HBCUs, and is void of any allegations that the State has failed to provide the funds this Court has required. The State's most recent Title VI report reflects that between 1993 and May of 2003, ASU has had available to it \$73,621,783, and A&M has had available to it \$87,381,026 to meet the goals and objectives of this Court's decrees.¹ Together, ASU and A&M have had available to them \$161 million dollars for capital funding, diversity scholarships, new programs, land grant programs, and trusts for educational excellence.² The State's funding obligations are not yet complete, and ASU in particular has approximately \$16 million additional dollars awarded to it through year 2010 as a result of this Court's May 6, 2002 Order providing funding for ASU's Doctor of Education in Educational Leadership, Policy and Law. Funding for ASU's final graduate level program has not even been proposed to the other parties. Moreover, had A&M and ASU taken full advantage of the diversity scholarship funds and matching funds for their respective trusts, the State would have been required to pay to the HBCUs almost ten million additional dollars. With several years of funding yet to go, and with the State complying with its funding obligations to the HBCUs, it is hard to imagine how

¹ See Attachment 13 to the 2003 State Annual Report, attached as Exhibit B to this Response.

² *Id.*

the Knight Plaintiffs can even suggest that this Court's funding provisions have been inadequate to fulfill the obligations that this Court imposed on ASU and A&M.

3. Law of the Case. Without in any way acknowledging the funds the HBCUs have received, and without in any way explaining how those funds have been spent thus far,³ the Knight Plaintiffs complain that the racially discriminatory Alabama Constitution of 1901 is the real culprit for what they contend is inadequate funding for the HBCUs to meet the objectives of this Court's decrees. They argue that this century-old vestige was something that somehow could not have been resolved until now. Because the Knight Plaintiffs previously litigated the issue of racial discrimination associated with the Constitution of 1901, and, more importantly, because sufficiency of funding for the HBCUs has been fully and fairly litigated through numerous trial and appellate proceedings, the law of the case doctrine procedurally bars this Court from entertaining the issues raised in the Knight Plaintiff's Motion.

3(a). Testimony from Dr. Mills Thornton. The racial motivation underlying the Alabama Constitution of 1901, and specifically the objection of white landowners to paying taxes to support education for blacks, was previously discussed during the earlier

³ The Knight Plaintiffs complained in their February 2002 Comments on Compliance with Remedial Decrees that more information needed to be provided on how Title VI funds were expended by the HBCUs. They complained in particular that the audits filed by the HBCUs "have not provided information in substance and form adequate for the parties and the Court to assess the extent to which the Decree is being complied with." Knight Plaintiffs requested, and UAS agreed, that the financial reporting procedures at the HBCUs be modified "so that it becomes clear exactly what account balances are, what revenues have been received and from what sources, what expenditures have been made for what purposes from the court-ordered revenues, and the extent to which those funds have been co-mingled with the institution's general operating and capital funds." (Knight Comments at p. 65-66). In addition, the Knight Plaintiffs complained that the HBCUs were perceived to not be operated in a financially sound manner and that the governing boards of the HBCUs lacked the leadership and commitment to the desegregation objectives of the decree. If the Knight Plaintiffs insist today that the HBCUs don't have enough funds to comply with the decrees, it would seem that they would first have to prove why the funds given to the HBCUs have not been sufficient under this Court's decrees and orders. Since they are not clear on how the funds have been spent, how can they allege that the Court has not provided enough funds to ASU and A&M to meet the Court's expectations?

trials in this case. Dr. Mills Thornton, the Knight Plaintiffs' historical expert, testified about how in the late 1800s, the Republicans' desire to support the public school system by taxes alienated voters, because they did not want taxes raised, and how white property holders fought property taxes or any tax increases at all to support black education and monies for black colleges. (Thornton, 11/5&7/1990 at pgs.78, 91-93, 183). The 1867 Constitution, which created a centralized State Board of Education, required that one-fifth of all revenue from the state of Alabama be used for schools. The SBE sought to educate blacks and cooperate with freedman schools that had been established after the Civil war. The SBE's one black member, Patyon Finley, sought a state college for blacks as his goal, and introduced a bill in the SBE that would have required the division of federal Morrill Act funds between a white and black school. (*Id.* at 81-82, 88, 110-112). The 1875 Constitution, however, redeemed white rule, abolished the SBE, and required segregated schools. (*Id.* at 79, 130, 140). Thornton testified that ultimately, the Constitution of 1901 resulted in the essentially complete disenfranchisement of blacks, and that in terms of educational opportunity, blacks continued to get very little after 1901. (*Id.* at p. 193). Thus, the Knight Plaintiffs were aware of the factual bases for their current motion, and in fact, previously introduced similar historical testimony. The law of the case doctrine precludes the Knight Plaintiffs from re-litigating this issue.

3(b). Plaintiffs' Requests for More Funding For the HBCUs. Even if the Knight Plaintiffs had just discovered this historical evidence, the remedy they argue that is justified due to that evidence: more state funding for the HBCUs, is the same remedy they have unsuccessfully argued for in the past three trials and numerous appeals. The

law of the case doctrine procedurally bars re-litigation of the funding issues for the HBCUs.

Dr. Daniel Sullivan, the Knight Plaintiffs' funding expert, was asked in 1984 to review funding practices in Alabama to determine whether they were a vestige of de jure segregation. (Sullivan, 2/5/91, at p. 20) Although he testified that Alabama was a very poor state, and below the average capacity to fund public services, he nonetheless admitted, however, that Alabama was above average in appropriations for higher education, relative to what it spends for other things. Sullivan never contended the State needed more money, but he argued it just needed a better means to divide this money. (Sullivan, 2/5/91 at p. 220). In 1995, Sullivan's suggestion was to divert 6% of the ASETF growth to Title VI Enhancements for ASU and A&M, even though ASU and A&M served less than 3% of students statewide. Projecting a 5% growth of the ASEFT each year for ten years, A&M would have received \$329.2 million and ASU would receive \$336.2 million. (Sullivan, 2/1/95 at p. 10, 14-16, 54). Sullivan also testified that his plan could adapt to anything that the Court chose to impose on the funding of the institutions, and that the plan could be changed according to the Court's decision on mission, etc. (*Id.* at 64). Additional experts for the Knight Plaintiffs and the HBCUs requested substantial sums of money, and many additional new programs and facilities.⁴ After listening to all the experts, including the Court's own experts, this Court chose not to enhance the HBCUs with that level of funding. The Knight Plaintiffs chose not to

⁴ For example, the Knight Plaintiffs requested capital funds for ASU of \$142 million; annual additions to ASU's funding base starting at \$20 million and increasing to \$40 million after five years; capital funds for A&M of \$142 million; annual additions to A&M's funding base starting at \$10 million and increasing to \$35 million after five years; and numerous other programs and land grant requirements. A&M requested a one-time funding grant at \$88 million, but argued its full needs were closer to \$277 million. (See Proposed Remedies filed by Knight Plaintiffs and A&M in 1995 trial).

appeal any of the issues after the third trial. Thus, the liability phase and the remedy phase, including what constituted an educationally sound remedy, was litigated to a final judgment in 1995.

Whether the HBCUs need more funds for their programs or facilities, or whether their needs are more worthy than other state needs, are legitimate considerations for the legislature of the State of Alabama. The law of the case doctrine, however, procedurally bars that issue from being re-litigated in this case. Removed from the remedy obligations, these educational policy decisions become a part of the complex and political funding process of higher education. As this Court held in 1995 “The minimum [funding] required of the State is what is contained in the Decree. Based on the evidence at trial, the Court set up a system and funding mechanism that it reasonably expects will provide the best services to the citizens of Alabama in a way that is practicable and educationally sound. *Anything more is a matter of politics.*” *Knight v. Alabama*, 900 F. Supp. at 272 (N.D. Ala. 1995). *See also Missouri v. Jenkins*, 495 U.S. 33, 70-71 (1990) (J. Kennedy, concurring) (Although upgraded facilities, enhanced programs and increased salaries may be educationally sound, that type of remedy is inappropriate, because it responds to “legitimate political debate over educational policy and spending priorities, not the Constitution’s command of racial equality.”)

3(c). Additional Findings of Fact That Cannot Be Re-Opened Due to Law of the Case. Several additional conclusions of fact and law in prior opinions, which were not successfully appealed by the Knight Plaintiffs or the HBCUs, likewise support the position that the Knight Plaintiffs are procedurally barred through the law of the case doctrine from obtaining the additional relief their motion seeks, particularly relief based

on a theory that historical underfunding of the HBCUs has not been sufficiently remedied. These factual conclusions also demonstrate the financial support the HBCUs have received from the State prior to and throughout this Court's decree.

- An examination of the capital funds from state appropriations and bond issues to all the institutions in the state between 1953 and 1989 revealed that AAMU, which received a total of \$27,529,686 in capital funds, received more in actual dollars than eleven of the PWIs and less in actual dollars than only AU, UA, UAB, and USoAL, institutions which this Court agreed were inappropriate comparators for the purposes of facilities comparisons and which had student enrollments as high as four times the enrollment of AAMU. *Knight v. Alabama*, 787 F. Supp. at 1274, 1277, 1061; 90 ST Ex. 202.8. ASU, which received a total of \$25,900,850 in capital funds, received more in actual dollars than ten of the PWIs. *Id.*
- Even the United States' expert, Dr. Kaiser, agreed that *at least since 1983 the HBCUs had received more in capital funding than would have been equitable considering their enrollments and program growth.* 787 F. Supp. at 1276.
- In its 1991 Order, this Court found that *programmatic funding to the HBCUs had been equal to or better than that of comparable white institutions in Alabama since at least the mid-1950s.* 787 F. Supp. at 1271. It also found that since fiscal year 1986-87, ASU had received the highest level of regular academic program funding per FTE student of all the public senior institutions of higher education, and that for fiscal years 1986-87 through 1989-99, A&M received the second highest level of regular academic program funding per FTE student among Alabama's senior public institutions of higher education. 787 F. Supp. at 1234. In its 1995 Order, this Court found that with the Title VI Enhancement funds, *ASU and AAMU received higher percentage increases in state appropriations from the time of the 1990-91 trial to 1994-95 than the average of all other senior higher education institutions, and that such was true even excluding those Title VI Program Enhancement funds.* See *Knight v. Alabama*, 900 F. Supp. at 310-11, ¶¶ 283-85.
- To determine an amount the State could award to eliminate in its entirety the vestiges remaining as a result of the State's prior discriminatory capital funding process, this Court relied on ACHE's 1990-91 capital funding recommendation, which incorporated AAMU's request for \$15,213,143 for modifications/alterations of E&G space, and ASU's request for \$14,735,938. This Court specifically held that *this amount, decreased by one-third, represented the "capital funds necessary to alleviate the vestiges of discrimination which to this day hamper the ability of ASU and AAMU to desegregate."* 787 F. Supp. at 1283. In addition, this Court held that if in the future the state enacted a general capital

appropriation for college capital improvements, then the HBCUs should receive the remaining one third of the amount recommended by ACHE. *Id.* Thus, A&M eventually received \$15,213,143 in capital funds and ASU received \$12,617,518 in capital funds.

- The effect of this Court's Order was to satisfy entirely the capital renewal requests for E&G space for AAMU and ASU in ACHE's capital funding recommendation. The rest of the institutions' capital renewal funding requests, totaling \$327,824,898, remained unsatisfied. Moreover, while this court-ordered funding was more than three times ACHE's calculated "critical capital needs" for the HBCUs, it left unmet approximately \$145 million of "critical capital needs" at the other senior public institutions. (ACHE capital funding recommendation)
- This Court was clear that the payment of capital monies ordered was "not a step along the path" in removing the vestiges that remained in the capital funding process, but rather represented "the entire journey." 787 F. Supp. at 1372 ¶ 104.
- AAMU's and ASU's Eleventh Circuit Notices of Appeal indicated they were challenging the adequacy of the remedy ordered by the district court, seeking a judgment requiring the state to allocate them more funds and to eliminate some competing academic programs. Knight Plaintiffs did not appeal the funding aspects of the decree, and the Eleventh Circuit ruled that the HBCUs had no standing to seek to expand the remedy. *Knight v. Alabama*, 14 F.3d 1534, 1556 (11th Cir. 1994).
- On August 12, 1994, this Court informed the HBCUs that while those institutions could expend funds for architectural design proposals for capital improvements, no funds could be expended for other reasons without approval of the Court. (8/17/94 Order). Later, in October of 1994, in denying a request filed by ASU to expend capital funds, this Court ruled that in light of the uncertainty surrounding the ultimate resolution of the issues in the case following the rehearing, it would not approve any requests to expend capital funds. (10/28/94 Order).
- A few months later, AAMU submitted a Remedial Proposal (dated November 11, 1994) requesting a minimum of \$20 million in capital funds and a maximum of \$75 million for new facilities, including a library, business building, and education conference center; and an additional \$10 - \$50 million for "campus infrastructure" expenditures.
- Less than five months later, on March 30, 1995, AAMU's Board of Trustees approved the issuance of Revenue Bonds worth \$46,240,000. Instead of planning to use those funds to build a new library and education conference center, which AAMU had indicated in its remedial proposal were necessary to eliminate vestiges, the revenue bonds allocated approximately \$11.6 million to construct,

furnish, and equip a new stadium with luxury skyboxes; \$19 million to build and furnish a new dormitory which included a cafeteria and banquet hall; \$4.7 million to construct, furnish and equip a new business school; and the rest to pay interest and issuance costs, pay off a previous revenue bond, and improve electrical wiring. *This bond issue put AAMU at the institution's debt capacity. Knight v. Alabama*, 900 F. Supp. 272, 296-97. This Court criticized AAMU for these funding decisions, because "the record clearly demonstrates that generally the PBIs' stigma of inferiority lies in the areas of academics and physical plant, not dorm and athletic facilities." In addition, the bonds were intended to benefit AAMU's undergraduate residential students and alumni, the vast majority of whom are black." See *Knight v. Alabama*, 900 F. Supp. at 297, ¶¶ 145-157. This Court noted AAMU had made these expenditure decisions even after its 1991 opinion criticized ASU's decision to build an athletic stadium instead of facilities to support its academic programs. 787 F. Supp. at 1282 n. 102.

- Notwithstanding those criticisms, this Court ordered new programs and expenditures at the HBCUs in its August 1, 1995 Order. However, in a separate, unappealed Order entered September 26, 1995, this Court advised both AAMU and ASU that the previously ordered capital funds would be sufficient for any new facilities deemed necessary for new programs:

In planning for the use of Court-ordered capital improvement funds, ASU and AAMU should know that the Court will require any facility improvement or new construction necessitated by the programs the Court has authorized for these institutions, to be funded from the capital improvement funds the Court has ordered ASU and AAMU to receive. The Court-ordered capital improvement funds are those funds awarded to the PBIs as a result of the 1991 Order and Decree. See, *Knight v. State of Alabama*, 787 F. Supp. 1030, 1283 at ¶¶ 1376, 1378 and 1380 (N.D. Ala. 1991).

- In another Order entered January 2, 1996, this Court reiterated its ruling that capital funds awarded pursuant to the 1991 Decree constituted *all* the funds the HBCUs would receive for facilities for its new programs:

So there will be no surprise in the future, the Court will take this opportunity to restate what it said in its September 25, 1995 Order, namely, that in planning for the use of Court-ordered capital funds, the university must remember that any construction required because of the new programs the Court has authorized is to be funded from the capital monies the Court has ordered the university to receive. *If such funds are not available because they have been spent on other projects, then the university will have to secure financing through the normal processes used by state institutions to fund renovations and new construction.*

- On November 3, 1997, after extensive input from the Oversight Committee and the HBCUs, this Court entered an Order setting forth the State's funding

requirements for electrical and mechanical engineering programs at AAMU and for allied health and accountancy programs at ASU. In addition to requiring continued line items for program enhancement and desegregation planning at A&M for five years, and at ASU for eight years, and 100% of the ACHE funding formula recommendations for A&M's engineering programs for five years and for ASU's allied health and accountancy programs for eight years, this Court also required the State to pay to AAMU an additional \$3,031,905 over three years to fund equipment and furniture to operate the engineering programs. This Court specifically held on pages 5 and 7-8 of this Order that:

A&M

(5) *The obligation of the State with respect to the funding of the electrical and mechanical engineering programs is fully met when (a) the State appropriates for five years 100% of the ACHE funding formula recommendation for these programs starting with the first year in which such funds are actually generated and (b) funds the purchase of equipment and furniture in the amounts noted above. Should the Legislature wish to provide additional sums to support these programs, they may certainly do so, but the only amounts required by the Court are those previously noted.*

(6) The University's Title VI Program Enhancement and the Title VI Planning line items shall be continued at current levels for the same five-year period as the guaranteed formula funding. These funds shall be used to support the new programs.

(9) Any curricular or program expansion beyond that specifically included in the Report shall occur and be funded through the ordinary and regular process used by the State to approve program expansion. There shall be no further recourse to the Court for additional program approval absent a showing of extraordinary cause.

ASU

(4) *The obligations of the State with respect to the funding of the allied health science and accountancy programs is fully met when the State appropriates for eight years 100% of the ACHE funding formula recommendation for these programs starting with the first year in which such funds are actually generated.*

(5) The University's Title VI Program Enhancement and the Title VI Planning line items shall be continued at current levels for the same eight-year period as the guaranteed formula funding. These funds shall be used to support the new programs.

(7) At the end of the eight-year period of guaranteed formula and Title VI funding the allied health and accountancy programs must be financed through the regular and ordinary process used by the State to fund such programs.

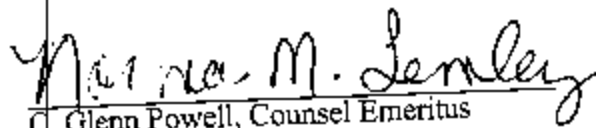
(9) Any curricular or program expansion beyond that specifically included in the Report shall occur and be funded through the ordinary and regular process used by the State to approve program expansion. There shall be no further recourse to the Court for additional program approval absent a showing of extraordinary cause.

- On May 6, 2002, the Court approved ACHE's budget in the amount of \$14,130,214, plus an additional \$1.8 million (\$200,000 additional per year for nine years in Title VI Program Enhancement Funds), for a total of \$15,930,214 for ASU's Doctor of Education in Educational Leadership, Policy and Law. Recent correspondence to the Court from ASU's Doctoral Program Coordinator indicates that the program's funding has been adequate, and has allowed for the development of a sound program. (See Document # 3214).

4. No Change in Law or in Fact to Warrant Modification. As the State noted, the Knight Plaintiffs have not alleged a change in law or fact sufficient to warrant modification of this Court's prior decrees. Today's financial crisis for higher education has not impacted the State's ability to fulfill its funding mandates as required by the Court's two decrees and subsequent orders. In fact, the State was in a funding crisis back during the 1990-1991 trial, with proration of the ASETF increasing to 6.5% that year. *Knight v. Alabama*, 787 F. Supp. at 1208 n. 83. The State's funding situation simply has not deteriorated to the point that the State cannot fulfill its funding obligations under the Decree. As this Court has noted previously, "*Anything more is a matter of politics.*" *Knight v. Alabama*, 900 F. Supp. at 272 (N.D. Ala. 1995). Therefore, the Knight Plaintiffs' motion to modify the decrees to obtain even more funding for the HBCUs is unwarranted and nothing more than a sensitive issue of state law that must be left to the state legislature.

Decree. As this Court has noted previously, "Anything more is a matter of politics." *Knight v. Alabama*, 900 F. Supp. at 272 (N.D. Ala. 1995). Therefore, the Knight Plaintiffs' motion to modify the decrees to obtain even more funding for the HBCUs is unwarranted and nothing more than a sensitive issue of state law that must be left to the state legislature.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that one true and correct copy of this pleading has been served by me on all parties in this action by depositing such copy of the same in the United States mail, postage prepaid, addressed to the following counsel of record for the respective parties indicated, all on this the 30th day of September, 2003.

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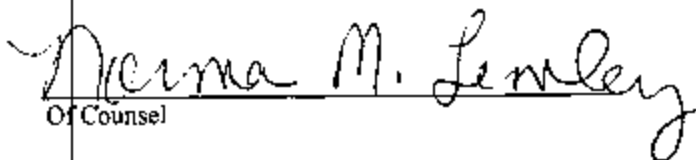
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UAS Appendices A-Q reflect, UAS institutions have taken this Decree quite seriously, and as a result have achieved noteworthy progress.

Finally, the Knight plaintiffs suggest that the services of the AGB are needed because Dr. Munchus and other African Americans were not named to the search committee for UAB's presidency. Of the 23-member search committee, five (or 22%) are African Americans, including Dr. Louis Dale, UAB's Associate Provost of Minority and Special Programs. As this Court held in 1993 when Dr. Munchus complained about the racial composition of the last UAB presidential search committee (5 of 18 were African Americans), neither the Remedial Decree nor federal discrimination laws are violated by a search committee comprised of 22% African Americans.¹²

IV. RESPONSE TO KNIGHT PLAINTIFFS' INVITATION FOR THIS COURT TO RESOLVE A POLITICAL STATE LAW AND POLICY PROPERTY TAX ISSUE

The last nine pages of the Knight plaintiffs' comments attempt to argue for the first time in this case that Alabama's low property taxes are racially motivated and has resulted in under-funding of k-12 public schools and higher education, which arguably deprives black students in particular access to higher education. They invite this Court to address this issue by asserting that Alabama's political and educational leaders have acknowledged that reform of the state's racially discriminatory property tax system is

¹² Specifically, this Court wrote in its April 15, 1993 Order at pgs. 5-6 (*emphasis in italics*):

The Court, however, does not find that the process for selecting the President of UAB violates the Remedial Decree. No part of the Remedial Decree, or any law of which the Court is aware, require that UAB appoint a selection committee whose racial composition matches that of the City of Birmingham, that UAB consult certain groups about the selection process, or that UAB obtain approval from certain groups of its selection for president. ... [*Whether UAB's selection committee contains a representative number of black members, whether UAB consults certain groups about the selection process, and whether UAB obtains approval of its selection for president from certain groups, is not relevant.*]

practicable, consistent with sound educational practices, and necessary for the educational and economic future of all citizens of Alabama.

UAS respectfully submits that this Court should not accept Knight plaintiffs' invitation, through these comments, to prolong federal court oversight of higher education to litigate what is clearly a political state law issue already before the Alabama Supreme Court. Although public senior higher education institutions would likely endorse changes in Alabama law and politics that would result in more state funding for their operations and maintenance and more capital funds for the over \$1.393 billion dollar backlog in capital project requests,¹³ and although more funding for education is obviously "educationally sound," this Court should exercise prudent self restraint and abstain from deciding sensitive political state law funding and educational policy issues. As Justice Kennedy cautioned in his concurring opinion in *Missouri v. Jenkins*, 495 U.S. 33, 70-71 (1990), an elaborate capital construction plan may be good educational policy, but "these items are a part of legitimate political debate over educational policy and spending priorities, not the Constitution's command of racial equality."

Moreover, if Alabama's property tax structure represented an unconstitutional vestige of segregation, that should have been pled and fully and fairly litigated in one of the three trials of this case. The Knight plaintiffs' failure to plead this issue when the case was first initiated, their failure to prove a constitutional violation in earlier trials, and their failure to propose in the 1995 trial modifications to Alabama's property tax system as an educationally sound and practicable remedy procedurally bars them from raising these issues now, in the last three years of the remedial phase of this case.

¹³ ACHE's Report on Facilities Master Plan and Capital Project Requests, February 2000.

The Knight plaintiffs did, however, fully litigate the issue of the state's alleged inadequate funding for black citizens. During those three trials in which they argued for enhanced HBCUs, they never expressed dismay about the impact increased funding to the HBCUs would have on the majority of black students attending Alabama's PWIs. As a result of their efforts, they obtained through two Remedial Decree orders and numerous revised orders at least an additional \$100 million for the two HBCUs in capital, planning, and programmatic funding.¹⁴ Although this Court's funding remedy fell far short of what they had requested for the HBCUs, they chose not to appeal this Court's findings of fact or conclusions of law. Those findings are final and binding on the parties. The State has not only complied with each of this Court's funding orders, but it has also voluntarily provided significant additional funds to the HBCUs. Thus, this property tax issue cannot be disguised as a remedial decree violation. There is no need for this Court to re-open the funding issues in this case to litigate a political state law question already before Alabama state courts.

V. CONCLUSION

Significant progress has been made in Alabama in increasing black representation in Alabama's student bodies, faculty, and administrative staffs. With the financial resources mandated by this Court's April 3, 2002 Order, this progress will continue, and this costly litigation, which has occupied a quarter of a century, will finally restore control of Alabama's higher education system to the people of Alabama, instead of the federal courts.

¹⁴ As UAS previously noted, it agrees with the Knight plaintiffs that the HBCUs (and State defendants) need to provide more information about the actual funds received and actual expenditures made for all Title VI-related areas (including funds obtained politically for related purposes). Receipt of that information now will facilitate a timely conclusion to federal oversight of the HBCUs and PWI defendants.

Funds related to Knight vs Alabama (CV 83-M-1676-S)
Alabama A&M University

	FY 82-83	FY 83-84	FY 84-85	FY 85-86	FY 86-87	FY 87-88	FY 88-89	FY 89-90	FY 00-01 ⁽¹⁾	FY 01-02	FY 02-03	Total
State Direct Contributions												
1			300,000	217,127	277,346							854,473
2							184,806	184,806	173,442	173,442	1,118,789	1,871,292
3	265,177		200,000	185,021	184,806	184,806	184,806	184,806	173,442	173,442	1,118,789	2,175,325
4			616,981	568,949	570,418	570,418	570,418	570,418	535,050	535,050	570,418	5,109,101
5								177,400	248,570	319,500	592,500	1,337,970
6								90,100	113,967	194,300	353,000	750,367
7						1,250,000	890,953	890,953				3,031,906
8				1,100,000	1,210,000	1,331,000	1,484,100	1,610,510	1,661,724	1,827,697	2,010,686	12,215,917
9				5,619								5,619
10				300,000								300,000
11				283,065	379,020							772,075
12					524,526							524,526
13							924,526	924,526	867,207	867,207	824,526	4,507,998
14							37,944	187,858	183,863	250,648	226,155	861,069
15			350,000									350,000
16						300,000	300,000	300,000	281,400	281,400	300,000	1,762,800
17					398,888	200,000	200,000	200,000	200,000	200,000	200,000	1,598,888
18					98,785	310,061	1,372,633	696,929	704,408	715,487	756,465	4,653,749
19		11,483,536		5,234,837								16,718,373
20									2,668,510			2,668,510
21				1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	8,000,000
22						476,807	980,190	508,380			1,502,784	3,448,147
23	265,177	11,748,713	1,466,981	9,066,599	4,120,483	6,547,718	8,089,859	7,345,780	9,136,375	6,364,912	9,727,765	73,879,342
Funds Earned Based on State's Contributions												
24			487,387	581,654	1,032,683	648,852	922,903	1,204,294	2,081,987			7,123,428
25					711,380	729,543	508,380	569,711	1,008,715	843,013		4,458,802
26				19,843	84,816	145,789	322,175	545,311	381,118	412,404		1,921,458
27		5,788	481,387	581,487	1,038,959	1,718,284	1,753,438	2,308,316	3,461,700	1,355,417		13,501,684
28	265,177	11,754,489	1,854,369	9,647,296	5,959,342	8,286,002	9,843,287	9,655,076	12,588,075	7,720,329	9,727,765	87,381,026

Notes

- 1 Beginning in FY 87-88 this line was no longer broken out in the EIF budget. The Court's order required expenditures of this traceable line before receipt of the diversity scholarship funds.
- 2 As of FY 97-98, AAM no longer accounts for these funds, however, ASU maintains that the line was rolled into its O&M line and has continued to account for it as if it was a separate line item.
- 3 The amounts on this table are shown in the Fiscal Year in which they were paid to AAM by the State.
- 4 \$823,756 was paid in O&M, \$176,244 plus \$5,619 plus interest was paid per 12/1/98 Court Order.
- 5 \$370,892 of the amount shown for FY 85-86 was paid March 28, 1996. The remaining \$22,383 was paid February 12, 1997.
- 6 Provision of 6.7% was declared in FY 2000, 2001. These amounts were originally as follows: Electrical Eng. \$285,000, Mechanical Eng. \$121,500, and 10% increase over 94-95 A&M Extension line \$331,483, Capital Eng. Funds \$2,845,000.
- 7 Information provided by Auburn University's College of Agriculture.
- 8 From Audits dated November 15, 1996, December 5, 1997, and December 7, 2001.
- 9 From Audits dated September 29, 1999, September 8, 2000 and October 11, 2002. Some of the audit amounts were amended by later revisions and agreed adjustments.
- 10 From Audits dated September 18, 1998, September 12, 1997, September 28, 1999 and October 11, 2002.
- 11 Funds allocated or pending as of May 15, 2003.

Funds related to Knight vs. Aichele (FY 03-04 1078-5)
 Mississippi State University

	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 00-01 ¹⁴	FY 01-02	FY 02-03 ¹⁴	Total FY 03-03
State Direct Contributions												
1 Berningworth Scholarship ¹¹	300,000	300,000	300,000	277,358	277,358	277,358	277,358	277,358	277,358	539,174	576,839	2,563,856
2 Dierckx Scholarship Reimbursements ¹¹				504,902	584,292	584,292	1,039,230	735,116	1,049,717	1,731,442	184,009	5,393,270
3 Thesis/Program Planning	200,000	200,000	200,000	185,001	184,909	184,909	184,909	184,909	173,442	1,554,713	1,697,477	2,059,415
4 Thesis Program Enhancement			1,192,782	1,657,426	1,657,477	1,657,477	1,657,477	1,657,477	35,550	70,400	78,100	14,047,022
5 ASU Master of Accountancy Program									119,000	216,000	286,200	601,000
6 ASU Health Information Management Program									275,777	335,290	349,700	610,677
7 ASU Occupational Therapy Program									87,909	279,900	495,400	852,609
8 ASU Physical Therapy Program										650,000	1,252,641	1,902,641
9 Ed D in Educational Leadership, Policy & Law												15,530,397
10 Capital Funds		10,867,537		4,682,960								8,000,000
11 Trust for Education Excellence				1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	5,932,648
12 State Matching Trust for Excellence ¹¹				343,877	343,877							6,828,263
13 Subtotal State Direct Contribution	500,000	11,167,537	2,792,782	7,992,789	4,368,670	3,704,093	5,707,609	4,651,657	5,522,166	5,816,828	6,828,263	58,743,192
Funds Earned Based on State's Contributions												
14 Earned Interest Appreciation Capital Fund ¹¹			824,289	791,270	802,014	711,683	631,030	509,356	53,696			4,513,510
15 Contributions from Qualified Donors Trust for Excellence ¹¹				343,877	666,452	922,418	1,030,100	1,003,317	1,174,762	1,010,000		6,121,067
16 Investments Income Trust for Excellence ¹¹				39,694	108,909	165,587	598,025	668,122	566,668	590,208		2,727,076
17 Profit Enhancement Earned Income ¹¹			15,823	100,191	239,349	262,567	87,559	281,074	282,729	84,321		1,386,062
18 Subtotal Funds Earned Based on State's Contributions			849,912	1,275,102	1,889,618	2,082,428	2,306,714	2,561,859	2,077,815	1,728,662		14,750,745
19 Total	600,000	11,997,449	3,242,694	9,267,891	6,265,258	5,786,459	8,014,222	7,413,226	7,600,081	7,544,714	6,828,263	73,693,930

Notes:
 1 Beginning in FY 07-08 this line was no longer broken out in the FTF Budget. The Courts order required expenditure of this receivable line before receipt of the diversity scholarship funds.
 2 As of FY 07-08, ARM no longer accounts for these funds. However, ASU maintains that the line was rolled into its O&M line and has continued to account for it as if it were a separate line item.
 3 The amounts on this table are shown in the Fiscal Year in which they were paid to ASU by the State. These amounts were originally as follows: Accountancy Fund - \$37,900; HMA Fund - \$125,900; CF Fund - \$240,700; PT Fund - \$83,400.
 4 From Audits dated December 5, 1997, December 15, 2000, and December 5, 2003.
 5 From Audits dated September 27, 1996, August 22, 1997, September 30, 1998, September 8, 2000 and September 18, 2001.
 6 From Audits dated September 27, 1996, August 27, 1997, September 30, 1998, September 8, 2000 and September 18, 2001.
 7 From Audits dated December 5, 1997, December 15, 2000 and December 5, 2001.
 8 Funds allocated to pending as of May 15, 2003.

Funds related to Knight vs. Alabama (CV 83 M-1678 S)
Other Allocations

	FY 92-93	FY 93-94	FY 94-95	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03 (M)	Total FY 93-03
1 ACE's Transition Funds to Auburn University				300,000								300,000
2 Court Monitor Salary		118,500	90,000	95,000	95,000	95,000	95,000	96,500	96,500	96,410	96,500	992,430
3 Court Monitor Expenses	545	13,453	16,183	11,493	14,672	7,898	10,875	10,386	10,139	10,810	3,968	104,563
4 Oversight Committee Expenses			550,000			50,000		200,000		750,000		1,050,000
5 Knight Attorney Fees	2,656,747			200,000	365,764	361,001	150,000	122,140		189,314	221,449	4,336,478
6 Minority Faculty											1,471,318	1,471,318
7 Center for Individual Rights - Fees Associated with Thompson Case									85,000			85,000
8 Elizabeth Cooper B. Clark - Fees Associated with Thompson Case		350,000							95,000			95,000
9 Payment for Co-E appointed Kennedy Expert Witnesses ¹⁰												350,000
10 Total	2,657,292	481,973	650,183	606,493	565,436	503,901	265,875	431,026	268,639	538,694	1,795,253	8,754,785

- Notes
- 1 Includes \$200,000 paid by Alabama A&M University, \$200,000 paid by Alabama State University, and \$150,000 paid by the State of Alabama
 - 2 Paid by Auburn University
 - 3 Includes \$500,000 to James Blacksher and \$100,000 to Leslie Proff paid pursuant to a Court Order dated July 27, 1992 and \$1,615,210.98 to James Blacksher, \$220,933.47 to Demetrius Newton, and \$220,801.13 to Donald Watkins pursuant to a Court order dated June 16, 1993
 - 4 Paid pursuant to a Court Order dated August 12, 1994.
 - 5 Includes \$1,040,766 in interest ordered by the Court.
 - 6 Funds for Oversight Committee to consult with the Association of Governing Boards pursuant to Court Order dated February 21, 2002.
 7. \$1,471,318 of the \$3 million was released on November 28, 2002.

Funds related to Knight vs. Alabama (CV 83-M-1676-S)

Total Funds

	FY 92-93	FY 93-94	FY 94-95	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 93-03
Alabama A&M University	265,177	11,754,499	1,954,369	9,647,096	5,959,342	9,266,002	9,843,297	9,655,076	12,500,075	7,720,329	87,381,026
Alabama State University	500,000	11,167,537	3,242,695	9,267,891	6,265,238	5,786,459	8,014,222	7,413,726	7,600,041	7,544,711	73,621,783
Other	2,657,292	481,973	650,193	606,493	505,436	533,901	285,875	431,036	268,639	558,694	8,754,785
Total	3,422,469	23,404,009	5,847,256	19,511,480	12,730,016	14,586,362	18,123,395	17,499,839	20,450,755	15,823,735	168,757,594