

No. 05-11527

IN THE COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

JOHN F. KNIGHT, JR. AND ALEASE S. SIMS, et al.,

Plaintiffs-Appellants,

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

STATE OF ALABAMA, et al.,

Defendants-Appellees.

BRIEF OF APPELLEE
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Appellants John F. Knight, Jr., and Alease S. Sims et al., through undersigned counsel, certify that the following persons, firms, and entities have an interest in the outcome of this case:

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2. State of Alabama
3. Alabama A&M University
4. Board of Trustees for Alabama A&M University
5. Alabama Commission on Higher Education
6. Alabama Public School and College Authority
7. Alabama State Board of Education
8. Alabama State University
9. Board of Trustees for Alabama State University
10. Edward S. Allen
11. James R. Andrews
12. Athens State College
13. Auburn University
14. Dennis Charles Barnett

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16. Stephanie W. Bell
17. James U. Blacksher
18. John G. Blackwell
19. Dr. Maree Macon Blackwell
20. David R Boyd
21. J. R Brooks
22. Hall Bryant, Jr.
23. Paul W. Bryant, Jr.
24. Ralph Buftkin
25. Susan Buskey
26. David F. Byers, Jr.
27. Dr. Taylor Byrd
28. Calhoun State Community College
29. Richard F. Calhoun
30. Frederick Caroline
31. Judge John L. Carroll
31. Dr. Mary Jane Caylor

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32. Jesse L. Cleveland
33. Bettye Fine Collins
34. Angus R. Cooper II
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37. Oscar Crawley
38. Vonda Cross
39. Buford Crutcher
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41. Elton N. Dean Sr.
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45. Judge John H. England
46. Joseph C. Espy III
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64. Lamar P. Higgins
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72. Carl E. Johnson, Jr.
73. Dr. Roy Johnson
74. Toreathea M. Johnson
75. Dr. Jeanette Jones
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100. Earlon C. McWhorter
101. Emma J. Melton
102. John C.H. Miller, Jr.

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103. Pauline Miller
104. Gary Mitchell, Jr.
105. Dr. Joe Morton
106. Hon. Harold L. Murphy, U.S. District Judge
107. C. Charles Nailen, Jr.
108. Demetrius Newton
109. Allen E. Owen, III
110. Tammi Palmer
111. Danny K. Patterson
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116. Sandra Ray
117. Joe L. Reed
118. Horace W. Rice
119. Robert W Rieder
120. Bob Riley, Governor of the State of Alabama

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121. Braxton Schell, Jr.
122. Stephen W. Shaw
123. Dr. Richard Showers
124. Alease S. Sims
125. Stacey Levis Sims by Her Parents Levi Sims and Alease S. Sims
126. Reginald L. Sorrells
127. Paul J. Spina, Jr
128. Finis E. St. John IV
129. Norman Stein
130. John Russell Thomas
131. William K. Thomas
132. Anthony Y. Lavonne Thompson by His Mother Lois N. Thompson
133. Sarah L. Thompson
134. Dan Tibbs, Jr.
135. Velma Tribue
136. Troy State University
137. Allen Tucker
138. Jean Walker Tucker

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139. United States of America
140. University of Alabama
141. University of Montevallo
142. University of North Alabama
143. University of South Alabama
144. University of West Alabama
145. Kreslyon Lynette Valrie by Her Mother Georgia S. Valrie
146. Howard P. Walthall, Sr.
147. Oliver Washington, III
148. Susan J. Watterson
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151. James W. Wilson III
152. Ronald W. Wise
153. R. M. Woodrow
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STATEMENT REGARDING ORAL ARGUMENT

This appeal presents questions involving numerous facts and significant legal issues with substantial public impact. Oral argument would assist the Court in addressing these issues.

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STATEMENT OF JURISDICTION

This Court has jurisdiction of this appeal pursuant to 28 U.S.C. §§ 1291, 1292(a)(1). This Court has entered an Order finding that jurisdiction exists.

STATEMENT ADOPTING APPELLANT'S STATEMENT OF THE ISSUES AND STATEMENT OF THE CASE

Pursuant to F.R.A.P. 28 (i), Appellee Alabama A&M University adopts Appellant's Statement of the Issues and Statement of the Case found at pages 1-30 of Appellant's Brief.

SUMMARY OF ARGUMENT

Alabama A&M University (“AAMU”) adopts the arguments advanced by appellants and Appellee Alabama State University, and will not simply repeat their arguments. This brief will demonstrate through the testimony of Carlos Clark, AAMU’s Director of Financial Aid, that even during the term of the Remedial Decree lack of adequate state funding has had a dramatic effect AAMU’s student body and on African-American students in general.

AAMU also briefly points out a glaring discrepancy in the District Court’s finding. It attempted to differentiate this case from the other 14th Amendment cases by finding that the challenged provisions in this case were not enacted with the intent to frustrate possible future legislation. In fact, the opposite is true. The earlier provisions were designed to prepare for the ultimate franchisement of blacks while the later provisions were designed to blunt the effect of decisions and laws requiring integration.

ARGUMENT

I. INTRODUCTION

Appellee Alabama A&M University (“AAMU”) adopts and endorses the arguments made by appellant and by its fellow appellee, Alabama State University. This brief will not repeat the arguments set forth in detail by appellants. Instead, AAMU focuses on the effects which the underfunding due to Alabama’s property tax restrictions have had on AAMU, the effectiveness of the Remedial Decree in this case, and on the ability of Alabama’s black citizens to attend college. In its analysis under both *United States v. Fordice*, 505 U.S. 717 (1992) and the 14th Amendment cases of *Hunter v. Underwood*, 471222 (1985) and *Hunter v. Erickson*, 393 U.S. 385 (1969), the District Court found that the State had carried its burden of showing that there are no continuing segregative effects of Alabama’s bizarre property tax restriction. To the contrary, black students and AAMU have both been disparately impacted during the term of the Remedial Decree by the underfunding which the record demonstrates is due to the inability to raise property taxes.

AAMU also feels obligated to briefly point out a glaring misstatement by the District Court in distinguishing this case from *Hunter v. Underwood* and *Hunter v. Erickson, supra*.

II. The ability of African-American students to attend college has been dramatically impacted by underfunding due to Alabama's property tax system.

In fashioning the remedial decree in this case, the Court had as one of its goals removal of the taint of prior segregative practices from AAMU. To remedy those practices, the Court increased AAMU's endowment, granted it new, high profile and high demand programs, and awarded capital funds to partially remedy the years of disrepair from inadequate funding for those purposes. All of this was intended to eradicate AAMU's second class citizen status, so that it would both be more attractive to other race students and better able to continue to provide quality education for Alabama's African-American population. This it is increasingly unable to do because of the long term effects of chronic underfunding from the State.

It is clear from the record that the burden of increased college costs falls disproportionately on black students in Alabama, who have significantly greater need than white Alabamians as well as blacks in other states. What this means is that the direct effect of underfunding due to inability to change the property tax system has been to make a college education an impossible goal for many, thus thwarting the goals of the Remedial Decree.

Dr. Carlos Clark, AAMU's Director of Financial Aid, dramatically pointed out the situation affecting the lower economic tier of AAMU's predominately black student population. Tuition has risen 120% since 1996, from \$920.00 to \$2,030.00 per semester. (Tr. p. 209) For a student receiving the maximum Pell Grant, the maximum federally subsidized loan and the maximum financial aid, the gap between these funds and tuition, books and room and board without any spending money whatsoever is \$1,142.00 per semester. (Tr. 202-3) The amount of the tuition increase in this short period of time is almost exactly equal to that shortfall. In 1996, a low income student could cobble together loans, Pell Grants and some state funds and at least come close to breaking even on the basic costs of attending AAMU. That individual would still have to work in order to have any spending money, but probably not full time.

Dr. Clark indicated that most students in the lower economic category have two jobs and work 40, 50 and sometimes 60 hours a week. Not surprisingly, Dr. Clark has seen a dramatic negative effect on the grades and the learning experience of these students, leading to a high attrition rate. (Tr. 205) Of the students who dropped out recently from AAMU, over 50% list financial problems as the primary reason. As Dr. Clark indicated, it is a

major factor in the vast majority of cases involving students who do not continue with their education at AAMU.

A major part of the problem is the essential nonexistence of State need-based financial aid. AAMU received about \$20,000 in aid last year, or less than \$4 per student! (Tr. 196) Need-based aid is critical to offset rising tuition, and Alabama simply cannot afford it with its current revenues. Need based financial aid from the State for all institutions is now less than \$1 million total per year. If Alabama were at the regional average that aid would total over \$92 million per year

The dramatic increases in tuition are necessary for AAMU because state funding has not kept pace with the cost of providing education. The double whammy of greatly increased tuition costs and essentially no State financial aid operate directly to deprive a significant segment of Alabama's population any opportunity to attend a four year college. This segment is disproportionately represented by blacks, so the underfunding has had a disproportionately greater impact upon Alabama's black students and upon AAMU, one of whose goals is to provide a quality education for that segment of Alabama's population.

The effect can also be seen in the amount of available federal aid (including loans) used by AAMU students. That has increased 50%, from \$20 million to over \$30 million, in just four years. (Tr. 208)

Inadequate State funding and aid has led directly to the loss of college education for a significant segment of Alabamians, a disproportional number whom are black. Without a reasonable revenue stream, this trend is irreversible.

II. The District Court’s finding that the challenged provisions were not enacted with the specific intent to foreclose antidiscrimination laws is contradicted by its findings of fact.

In denying relief based on the Fourteenth Amendment, the district court compared the constitutional provisions and legislation at issue in this case to the statutes which were struck down in *Hunter v. Erickson, supra* and *Washington v. Seattle School District No. 1*, 458 U.S. 457 (1982). The Court distinguished this situation from those two cases on two grounds: (1) the Alabama property tax structure “uniformly affects all citizens of Alabama regardless of race” and (2) “the challenged constitutional provisions were not ratified with the intent to foreclose legislation specifically tailored to remedy discrimination”. The first is not a relevant distinction at all. The Supreme Court specifically held in *Hunter v. Erickson*

that although the Akron amendment was neutral on its face, its real impact was on minority citizens so that it was in fact discriminatory.

The Court's second conclusion is inconsistent with its findings of fact. It is clear that Alabama's 1901 Constitution was drafted specifically to prevent property taxes from being raised at the local level to fund schools, due to a fear that at some point in the future blacks would be allowed to vote freely and would raise property taxes to fund their education in majority black counties. Similarly, the Lid Bill and other later developments were designed to insure that public funding for education could not be increased. This was to counter legal developments requiring integration of the public school system. There is no realistic difference between this situation and those presented by *Hunter* and *Washington*.

CONCLUSION

Based on the foregoing, and on the arguments advanced in Appellant's brief, this case should be reversed on liability and remanded to the District Court for an appropriate remedy.

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Attorney for Appellee

Alabama A&M University

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation set forth in Rule 32(a)(7)(B), Fed.R.App.P. This brief contains 2,461 words.

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and accurate copy of the foregoing upon the following counsel of record by depositing same in the U.S. mail, postage prepaid, on this ___ day of _____, 2005.

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