

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

JOHN F. KNIGHT, JR., et al.,)	
Plaintiffs,)	
)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff-Intervenor,)	
)	
v.)	CV83-M-1676-S
)	
THE STATE OF ALABAMA, et al.,)	
)	
Defendants.)	
_____)	

**OBJECTION OF THE UNITED STATES TO
TERMINATION OF THE REMEDIAL DECREES**

On October 31, 2005, this Court entered an order providing the parties until November 30, 2005 to file any objections to the termination of the Remedial Decrees, and to propose a discovery schedule and a description of the discovery sought if any objections are raised.

The United States objects to termination of the Remedial Decrees to the extent that certain provisions of those orders remain unfinished. Those provisions should either remain in place until completed, or some alternative mechanism should be imposed by this Court to assure their completion with accompanying funding sources as provided in the Decrees. Additionally, some matters remain outstanding and should be addressed prior to termination of this Court’s jurisdiction.

The United States wishes to reserve the right to take limited discovery as outlined below. However, to conserve resources for all parties, the United States suggests that prior to the taking of discovery the Court Monitor issue a report detailing the progress that has been made in complying with the provisions of this Court’s Remedial Decrees. This report should address with specificity

those areas that have not been completed, included those outlined in this response. Individual institutions should be ordered to report on any open issues and to provide supplemental information to update data in the annual reports for the 2004-05 school year.

Trust for Educational Excellence

The 1995 Remedial Decree created an endowment program, the Trust for Educational Excellence (Trust), at Alabama A&M and at Alabama State University. The Court recognized that a strong endowment program is an important mechanism for the State of Alabama to address the inadequacies caused by *de jure* segregation. *Knight v. State of Alabama*, 900 F.Supp. 272, 322 (N.D.Ala.,1995). The Court's initial funding plan for the two endowments lasts for 15 years and contemplates three sources of funds. The State of Alabama is to pay \$1,000,000 per year from the Alabama Special Education Trust Fund. An additional amount of up to \$1,000,000 per year from the State is also to be provided to AAMU and ASU as matching funds for the amounts raised by each of the universities from "gifts, grants and contributions to the Trust during the previous fiscal year from alumni, foundations, corporations, associations, Trusts, estates and any other source for the purpose of this matching annual endowment grant." *Id* at 351, 355. Unless the State wishes to accelerate payments and complete its financial obligations in a lump sum payment as a condition for dismissal of the case, the United States objects to dismissal of this case either until the 15 annual payments have been made. If the case is terminated, the dismissal order should reflect the language in the 1995 Remedial Decree stating that "[t]he Court shall retain jurisdiction over the Trusts for Educational Excellence, and payments thereunder, until completion of the last payment required of the State to fund the Trust." *Id.* at 374. The United States recommends that the Court Monitor evaluate the progress by ASU and AAMU in expanding the endowment programs and the

effectiveness of this remedy.

New High Demand Programs at AAMU and ASU

The 1995 Remedial Decree ordered the implementation of new high demand programs at AAMU and ASU to remove the vestiges of segregation clinging to the missions of these two institutions. The new engineering programs at AAMU are in place. ASU has implemented its Allied Health, Masters of Accountancy and doctoral program in education. Approval of the first two programs at ASU provided for full State funding through the 2007-08 school year and funding through 2008-09 for the Ed.D program. The proposal for the second high demand program at ASU, a Ph.D in Microbiology, has just been approved and funding is not yet resolved. There are also outstanding questions regarding capital improvements that are necessary to support successful implementation of these programs. These include ASU's request for State funding of those portions of the cost of constructing a new science and education buildings attributable to the new doctoral programs as well as for an expansion of the library needed to support collections for these new programs. The Remedial Decrees should not be terminated until all funding issues are resolved and funds committed to these programs has been paid or some enforcement mechanism is in place to ensure completion of the funding obligations.

The United States recommends that the Court Monitor issue a report evaluating compliance in this area as well as the effectiveness of these new high demand programs in addressing the vestiges of segregation in the missions of ASU and AAMU. The Oversight Committee's recent report and recommendation regarding ASU's request for capital funds includes information about these programs.

If the Court or the Court Monitor believe additional information is needed from ASU – or AAMU, these institutions should be directed to submit reports.

April 2002 Order Regarding Employment Practices at HWIs

In April 2002, this Court ordered several provisions relating to employment practices at the historically white institutions. These included increasing recruitment of Alabama students who complete the SREB Doctoral Scholars program and the establishment of committees to advise their institution's administration on best methods for increasing and retention black representation on faculties and administrative staffs. The order also required the State to appropriate annually Three Million Dollars. Each institution was to receive \$100,000 with additional amounts divided among institutions whose full-time black faculty or full-time EEO-1 staff was less than six percent of the total faculty or EEO-1 employees. The last Statewide Monitoring Committee Annual Report, Attachment 11, indicates that a total \$9,000,000 was been allocated and of that, \$1,667,752 was left to be spent. Since the report was filed last summer, the institutions should provide updates on the unspent amounts and how they intend to use the unspent funds, if any, post-dismissal.

The April 2002 Order stated that the funding would end with termination of the Remedial Decrees in 2005, "or for such period as may be ordered by the Court thereafter . . ." (Paragraph 6). The Court Monitor should report on the compliance of the institutions, the effectiveness of the provisions of the April 2002 Order, including its impact on retention, particularly at those institutions found by this Court in its 1991 Remedial Decree to have remaining vestiges of segregation in their practices and policies respecting recruitment and employment.

Conclusion

The United States objects to termination of the Remedial Decrees until the programs and related funding are completed, or until an alternative enforcement mechanism is in place to ensure completion. The United States believes that additional information from the institutions as indicated above and a report by the Court Monitor will limit or even eliminate the need for the taking of discovery. In the absence of the report and additional information from the institutions, the United States requests the opportunity to take limited discovery in the areas listed above.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

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

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