

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

JOHN F. KNIGHT, JR., et al., )  
)  
Plaintiffs and Plaintiff- )  
Intervenors, )  
)  
THE UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
v. )  
)  
THE STATE OF ALABAMA, et al., )  
)  
Defendants. )

Civil Action No.  
2:83-cv-1676-HLM

**RESPONSE OF THE ALABAMA STATE BOARD OF EDUCATION, CHANCELLOR  
ROY JOHNSON, ATHENS STATE UNIVERSITY, AND CALHOUN STATE  
COMMUNITY COLLEGE TO THE “KNIGHT-SIMS PLAINTIFFS’ MOTION TO  
EXTEND THE TERM OF CERTAIN PROVISIONS IN THE REMEDIAL DECREES,”  
THE “OBJECTION OF THE UNITED STATES TO TERMINATION OF THE  
REMEDIAL DECREES,” AND THE “OBJECTIONS” OF DEFENDANTS  
ALABAMA A&M UNIVERSITY AND ALABAMA STATE UNIVERSITY TO  
TERMINATION OF THE REMEDIAL DECREES**

Jeffery A. Foshee  
Edward M. George  
Foshee & George, L.L.C.  
900 South Perry Street  
Montgomery, Alabama 36104  
Telephone (334) 265-1960

## CONTENTS

<b>I.</b>	<b>Response To The “Knight-Sims Plaintiffs’ Motion To Extend The Term Of Certain Provisions In The Remedial Decrees”</b>	<b>5</b>
A.	Provisions That The Knight-Sims Plaintiffs Believe Should Continue Pursuant To Existing Orders	5
B.	Provisions That The Knight-Sims Plaintiffs Believe Should Continue Or Be Modified Pursuant To Pending Objections And Motions	6
1.	Appointment Of Consultants To Provide Advice And Proposed Plan	6
2.	February 13, 2002 Non-compliance Assertions	7
a.	The Boards Of Trustees Contention	8
b.	The Employment Contentions Were Resolved	9
c.	The February 13, 2002, Motion Did Not Include Athens Or Calhoun	9
d.	Calhoun State Community College	10
3.	State Constitution Property Tax Provisions Attack	11
4.	August 22, 2003 Motion To Set Faculty And Administration “Critical Mass” Definitions And Quotas	12
5.	Motion For Contempt Against Auburn University	13
C.	Provisions That The Knight-Sims Plaintiffs Assert Should Be Amended To Remedy Additional Vestiges Of Segregation Found By The Court	13
<b>II.</b>	<b>Response To The “Objection Of The United States To Termination Of The Remedial Decree”</b>	<b>14</b>
A.	Prior Satisfaction Of U.S. Claims	14
B.	General Observations	15
<b>III.</b>	<b>Response To The “Objections Of Alabama A&amp;M University To The Termination Of The Remedial Decrees”</b>	<b>16</b>
A.	The “Objections Of A&M And ASU, Insofar As They Concern The SBE Defendants, Represent Another Prohibited Attempt To, Without Legal Standing, Sue The State Of Alabama	16
B.	A&M’s Capital Funding Assertion	18
C.	A&M’s Diversity Scholarships Assertion	18
D.	A&M’s Assertion Against Calhoun Community College	19
1.	Any Present Lack Of Student Diversity At A&M Results From, And Must Be Solved By, A&M’s Own Actions	20
2.	Any Present Lack Of Student Diversity At A&M Should Not To	21

	Be “Solved” By Restricting Student Access	
E.	A&M’s Erroneous Assertion About Athens State University	22
F.	A&M’s Assertion Concerning Funding Its Engineering Program	23
G.	A&M’s Assertion Regarding Agricultural Research	23
H.	A&M’s Assertion Regarding Faculty Salaries	23
<b>IV.</b>	<b>Response To The “Notice By Alabama State University Of Objections To The Termination Of Provisions Of The Remedial Decree”</b>	<b>23</b>
A.	ASU’s Assertion Regarding Funding For Title VI Programs	24
B.	ASU’s Assertion Concerning The Ph.D. Program In Microbiology	24
C.	ASU’s Assertion Regarding Diversity Scholarships	24
D.	ASU’s Assertions Regarding Supposed Duplication	24
E.	ASU’s Request For Perpetual Restriction Of Two-year College Courses In Montgomery County	24
<b>V.</b>	<b>SBE Defendants’ Suggestions As To Discovery</b>	<b>29</b>
A.	The “Knight-Sims Plaintiffs’ Motion For Leave To Serve First Discovery Request For Hearing To Extend The Term Of The Remedial Decrees”	29
B.	Timeframe In Which To Conduct Discovery	30
C.	Topics Of Discovery	30

Come now Defendant Alabama State Board of Education (hereinafter referred to as “the SBE”) and its members; Defendant Chancellor of Postsecondary Education Roy Johnson (the “Chancellor”); Defendant Athens State University (formerly known as Athens State College and hereinafter referred to as “Athens”); and Defendant Calhoun State Community College (hereinafter referred to as “Calhoun”), collectively referred to hereinafter as “these Defendants” or the “SBE Defendants,” and respectfully submit this Response to the following recently filed documents:

- (1) “Knight-Sims Plaintiffs’ Motion to Extend the Term of Certain Provisions in the Remedial Decrees”;
- (2) “Objection of the United States to Termination of the Remedial Decree”;
- (3) “Objections of Alabama A&M University to the Termination of the Remedial Decrees”;
- (4) “Notice by Alabama State University of Objections to the Termination of Provisions of the Remedial Decree”; and,
- (5) “Knight-Sims Plaintiffs’ Motion for Leave to Serve First Discovery Request for Hearing to Extend the Term of the Remedial Decrees.”

It is the position of the SBE Defendants that the remedial decrees entered in this case and previously scheduled to expire on July 31, 2005,<sup>1</sup> should *not* be extended, at least insofar as said decrees involve, relate to, or may have an impact upon the SBE Defendants.

At the outset, these Defendants would respectfully observe that, with regard to the above-listed documents, and especially so with respect to A&M’s and ASU’s “objections,” the documents filed with the Court by the Plaintiffs and Allied Defendants generally fail to demonstrate any nexus between the additional relief requested by them (artfully presented as objections) and the legal standards for dissolving (or extending) an existing desegregation case

---

<sup>1</sup> *Knight v. Alabama*, 900 F. Supp. 272, 374 (N.D. Ala. 1995).

remedial decree. The SBE Defendants perceive the legal standards for dissolving a decree as involving considerations of constitutional good faith compliance by the defendants with existing decrees and injunctions since they were entered and whether the vestiges of past segregation have been eliminated to the extent practicable. *Bd. Of Educ. of Oklahoma City Public Schools v. Dowell*, 498 U.S. 237, 249-50, 111 S.Ct. 630, 638, 112 L. Ed. 2d 715 (1991). The SBE Defendants have acted in good faith compliance with the consent decree and remedial decrees. A&M and ASU must demonstrate their own good faith and themselves eliminate any vestiges remaining from any lack thereof; not by seeking new and excessive injunctions against co-defendants.

## **I. RESPONSE TO THE “KNIGHT-SIMS PLAINTIFFS’ MOTION TO EXTEND THE TERM OF CERTAIN PROVISIONS IN THE REMEDIAL DECREES”**

In the “Knight-Sims Plaintiffs’ Motion to Extend the Term of Certain Provisions in the Remedial Decrees,” the Knight-Sims Plaintiffs present three categories of items that, in their opinion, should continue or be newly imposed beyond July 31, 2005 – namely, a) “Provisions Continuing Pursuant to Existing Orders” (pages 2 – 3), b) “Provisions That Should Continue or Should be Modified Pursuant to Pending Objections and Motions” (pages 3 – 6), and c) “Provisions Which Should be Amended to Remedy Additional Vestiges of Segregation Found by the Court” (pages 6 – 11). Each of those categories shall be addressed herein below.

### **A. Provisions That The Knight-Sims Plaintiffs Believe Should Continue Pursuant To Existing Orders**

With respect to the first category - “Provisions Continuing Pursuant to Existing Orders,” at pages 2 and 3, the Knight-Sims Plaintiffs mention four aspects of the Remedial Decrees

regarding funding that they view as already extending for periods beyond July 31, 2005. The SBE Defendants have no comment on those items.

However, at paragraph 8 (page 3), the Knight-Plaintiffs assert that, “The other-race scholarships which have already been awarded pursuant to the 1995 Remedial Decree, 900 F. Supp. At 357, should continue for the duration of the students’ attendance at ASU and AAMU, up to the seven-year maximum.” The SBE Defendants view this assertion as being at least reasonably related to the Remedial Decrees’ objectives, and as such, in stark contrast to the so-called “Objections” made by Alabama A&M University and Alabama State University which are actually no more than wish lists designed to force other Defendants to not give relief to the Plaintiffs, but to accommodate the desires of Co-Defendants A&M and ASU.

**B. Provisions That The Knight-Sims Plaintiffs Believe Should Continue Or Be Modified Pursuant To Pending Objections And Motions**

1. *Appointment Of Consultants To Provide Advice And Proposed Plan.* At paragraph 9 (page 3), the Knight-Sims Plaintiffs refer to the joint motion filed by the State Defendants and them, on January 4, 2002, wherein it was suggested that consultants be appointed to advise the Court, the Governor, A&M, ASU, and possibly other defendant institutions “regarding their policies and practices as they contribute to or impede compliance with the Remedial Decrees” and the Knight-Sims Plaintiffs’ further request that the consultants submit to the Court a proposed plan. *Id.* The SBE Defendants submit that, with the passage of time and arrival of the scheduled end of the remedial decree term, this 2002 motion has now become moot. If not, then the SBE Defendants’ concern would be that, if the Court were to grant the motion, it should lay down definite parameters for the consultants’ work and place specific limitations on the issues to be considered and objectives(s) to be accomplished, so that the consultants do not become just a

way to “kick the can further down the road” for another day and invite even more argument between the parties about what has, has not, or should be accomplished before this litigation comes to a conclusion. Also, these Defendants would respectfully suggest that, if consultants are to be appointed, then they may be better charged with advising not as to broad, complex issues between institutions, but rather, with specific, manageable concerns.

For example, it may be useful for the Court to be informed of the extent to which on-campus events at ASU and A&M are almost always oriented toward emphasizing the heritage and supposed current status of those universities as “black” institutions, particularly in view of the Court’s admonition in its 1995 Remedial Decree that, “ASU and AAMU have maintained and asserted their black heritage in ways, and to a degree, that has had a segregative effect on student choice.” 900 F. Supp. 272, 314 ¶ 300. The Court could then receive from the consultants guidance about whether or not such practices comply with the 1995 Remedial Decree’s mandate that ASU officials “must provide an atmosphere of openness and welcomeness to other-race students which has not been a consistent practice in the past.” 900 F. Supp. 272, at 374.

2. *February 13, 2002 Non-compliance Assertions.* At paragraph 10 (page 4), the Knight-Sims Plaintiffs state that on February 13, 2002, they responded to a July 9, 2001, Order “by identifying provisions of the Remedial Decrees they contend have not been complied with fully by the defendants. (Doc. 3008.) With the exception of the objections in §§ 48-51 concerning land grant issues, all of plaintiffs’ contentions of noncompliance remain outstanding.” While the Knight-Sims Plaintiffs do not, by this statement, describe just what it was that they asserted had not been complied with, a brief review of the February 13, 2002, motion discloses that the perceived non-compliance therein identified consisted of:

Governance (representation of African-Americans on boards) § 1;

Auburn University	§§ 1 – 5;
AUM	§§ 6 – 11;
University of Alabama	§§ 12 – 18;
UAB	§§ 19 – 21;
UAH	§§ 22 – 24;
Jacksonville State U.	§§ 25 – 26;
Troy State University	§§ 27 – 29;
U. of Montevallo	§§ 30 – 31;
U. of North Alabama	§§ 32 – 33;
U. of South Alabama	§§ 34 – 35;
U. of West Alabama	§§ 36 – 37;
HBCUs (ASU & A&M)	§§ 38 – 40;
Alabama A&M University	§§ 41 – 51 (of which §§ 48 – 51 concern land grant issues);
Alabama State University	§§ 52 – 64;
State of Alabama	§§ 1 – 9 (concerning taxes and funding issues).

With the possible exception of the first item, none of the items listed above directly related to the SBE Defendants.

a. The Boards Of Trustees Contention. As to the first item listed above, the Knight-Sims Plaintiffs contended that there should be more other-race members on the various defendant institutions’ boards of trustees, and included an “Exhibit A” that presented perceived changes to the boards by race.<sup>2</sup> In response, the Court did not, of course, conclude that any additional relief

---

<sup>2</sup> The Knight-Sims Plaintiffs assert: “1. The Remedial Decrees contain no provisions requiring specific action with respect to the several boards of trustees which govern Alabama’s system of public higher education. However, the annual reports were required to include information about the race of new appointments to these boards. The reports are summarized in Exhibit A. They show there has been no significant change in the racial characteristics of the boards of trustees. Plaintiffs contend that African Americans continue to be under-represented on the HWI boards and that whites are under-represented on the HBE boards. Plaintiffs further content that this racial imbalance on the boards has contributed significantly to perceptions among students and the citizenry in general that members of the

was appropriate in this regard. Now, almost four years later and past the scheduled July 31, 2000 Remedial Decrees termination, is not the time to reconsider this matter and for the judiciary to mandate wholesale interference with legislative decisions and voter choices. Moreover, unlike State university boards of trustees, all members of the Alabama State Board of Education are directly elected by the people. The President of the SBE is the Governor. The remaining eight members of the board are elected from districts – districts that have already been redrawn according to pertinent legal requirements and judicial order. Of those eight members, two (or 25%) are African-American. Also, in the absence of the Governor the Vice-President of the Board presides over meetings. For many years during the term of the Remedial Decrees, the Board Vice President was Dr. Ethel Hall, an African-American. Therefore, the Knight-Sims Plaintiffs are not entitled to any additional relief concerning the State Board of Education's composition.

b. The Employment Contentions Were Resolved. Although the Knight-Sims Plaintiffs' assert that, with the exception of land grant issues, "all of plaintiffs' contentions of noncompliance [in their February 13, 2002 filing] remain outstanding," actually all of those contentions involving employment were resolved by the Court's April 2002 *Order*, in resolution of the then-pending employment issues.

c. The February 13, 2002, Motion Did Not Include Athens Or Calhoun. Furthermore, a close examination of the Knight-Sims Plaintiffs' February 13, 2002, filing reveals that, while it argued that particular other defendant institutions were not in compliance with the Court's

---

other race are not welcome and should not be as involved in important academic and policymaking decisions on the respective campuses as this Court intended."

decrees, the document did *not* argue non-compliance, or present criticisms concerning, Athens or Calhoun.<sup>3</sup>

d. Calhoun State Community College. Moreover, even if the Knight-Sims Plaintiffs' were somehow now endeavoring to contend that Calhoun failed to employ and retain sufficient African-American faculty and administrators, the Knight-Sims Plaintiffs have already abandoned their assertion insofar as Calhoun Community College is concerned, by admitting that Calhoun's policies and actions constituted sufficient compliance.

In this regard, it is important to place the Plaintiffs' February 13, 2002, filing in context. Specifically, on September 17, 1998, the Knight-Sims Plaintiffs filed a document entitled *Knight-Sims Plaintiffs' Motion for Enforcement of 1991 Remedial Decree Provisions Requiring Elimination of Vestiges of Segregation in WHI Faculties and Administrations*. Therein the Plaintiffs moved the Court "to conduct an investigation and to issue appropriate orders requiring that additional specific steps be taken by all the defendant historically white institutions to remove the vestiges of *de jure* segregation reflected in the continuing absence of 'critical masses' of black members of their faculties and administrators." *Id.*, at p. 1.<sup>4</sup> Pursuant to the Court's *Order* entered September 28, 1998, Calhoun, Athens, and several other Defendants submitted responses to the motion for enforcement.<sup>5</sup>

In their January 22, 1999, *Knight-Sims Plaintiffs' Reply to Responses and Objections to Their Motion for Enforcement of 1991 Remedial Decree Provisions Regarding Elimination of*

---

<sup>3</sup> The document did, as discussed elsewhere herein, briefly criticize the defendant institutions' for their boards of trustees not having more other-race members. *Knight-Sims Plaintiffs' Comments on Compliance with Remedial Decrees*, at pp. 1 – 2.

<sup>4</sup> In its brief comments about Athens and Calhoun, the Plaintiffs acknowledged that "In 1991 the Court found that 'CSCC is well integrated at the faculty level.' 787 F. Supp. At 1185, ¶ 908." *Id.*, at 23.

<sup>5</sup> Calhoun's response, dated October 26, 1998, was entitled *Response of Calhoun State Community College to the Knight-Sims Plaintiffs' Motion for Enforcement of 1991 Remedial Decree Provisions Requiring Elimination of Vestiges of Segregation in HWI Faculties and Administrations*.

*Vestiges of Segregation in HWI Faculties and Administrations*, the Plaintiffs replied to Calhoun's filing by conceding that there was *no need for further relief as to Calhoun*, by stating:

“14. Calhoun Community College. Plaintiffs agree with CSCC that the partial consent decree in *Shuford v. Alabama State Board of Education*, 846 F. Supp. 1511 (M.D. Ala. 1994), contains requirements with respect to increasing representation of African Americans in its faculty and administration that are significantly more detailed and comprehensive than those set out in this Court's Remedial Decree. The *Shuford* case is under the active supervision of the Middle District Court, and plaintiffs agree that, so long as that is so, there is no need for additional relief or enforcement actions by this Court with respect to the faculty and administration provisions applying to CSCC.”

Hence, as of their February 13, 2002, filing, the Knight-Sims Plaintiffs had already conceded that there was no need for additional orders or relief as to Calhoun employment practices. Accordingly, the SBE Defendants construe the Knight-Sims Plaintiffs' reference, in paragraph 10 of their November 30, 2005, *Knight-Sims Plaintiffs' Motion to extend the Term of Certain Provisions In the Remedial Decrees*, as not seeking to extend the 1991 and 1995 Remedial Decrees beyond July 31, 2005, as to Calhoun employment practices.<sup>6</sup>

3. *State Constitution Property Tax Provisions Attack*. At paragraph 11, the Knight-Sims Plaintiffs note that there is presently pending in the United States Court of Appeals for the Eleventh Circuit an appeal by the Knight-Sims Plaintiffs from the Court's orders of October 5, 2004, and February 10, 2005, concerning the alleged unconstitutionality and invalidity of various taxation-related provisions of the Constitution of Alabama 1901 and alleged deficiencies in

---

<sup>6</sup> The 1991 Remedial Decree, specifically 878 F. Supp. Supp., at 1378, stated “Troy State University and Calhoun State Community College shall direct their efforts towards increasing African-American administrators on their respective campuses in accordance with the consent decrees entered into by them and the United States. The Court expects to see material improvement in the employment of black faculty at these institutions within three years.” Calhoun did so. Within two years the percentage of African-American administrators went from a reported zero percent to 18.8 percent. As of Fall 2000 the percentage had risen to 29.6 percent – greater than the percentage population of African-Americans in the available applicant pools, residing in the College's service area, or living in the State of Alabama. The faculty, which according to the Court's Remedial Decree, was “well integrated” (787 F. Supp. At 1185, ¶ 908) became even more integrated. The College also uses quite detailed employment procedures (including at least 40% African-American membership on all search committees) in hiring faculty and administrative personnel.

adequate state funding perpetuated by those provisions. However, these Defendants have not, and will not, present to the Eleventh Circuit Court of Appeals argument in opposition to said appeal.

4. *August 22, 2003 Motion To Set Faculty And Administration “Critical Mass” Definitions And Quotas.* At paragraph 12, the Knight-Sims Plaintiffs state that on August 22, 2003, they filed objections to the 2003 annual reports to the Court, a motion for contempt proceedings, and a motion to modify or amended the Remedial Decrees (Doc. 3209). The Knight-Sims Plaintiffs characterize their motion as asking the Court:

“... to require each of the HWI campuses to consult their advisory committees and African-American faculty members and administrators and, based on their recommendations, to propose to this Court clear numerical goals and timetables for achieving a critical mass of African Americans on their faculties and administrations, including each school or department as deemed appropriate for each particular campus. Plaintiffs further moved that the plaintiffs be given an opportunity to respond to these proposed goals and timetables and that, thereafter, the Court will conduct an evidentiary hearing for the purpose of determining what goals and timetables should be approved by the Court as conditions for termination of the black faculty-administrator provisions of the Remedial Decree. The motion is still pending.”

Once again, the SBE Defendants do not perceive the above as being directed against them. The Court may recall that, not too long following the 1995 Decree, Your Honor called upon institutional presidents and other State officials to come to Court, and once assembled, the Court expressed its dissatisfaction with the extent of progress other defendant institutions had made in employing more African-American administrators and faculty members. In contrast, the Court complimented Calhoun on its actions. Moreover, as alluded to above, the State Board of Education and the institutions it governs have, for some years, operated under two partial consent decrees entered in the *Shuford v. State Board of Education* (M.D. Ala.) case. Attorney James Blacksher represented one of two plaintiff classes in that case. The Consent Decrees provided

for the SBE and SBE institutions to implement employment policies and procedures ensuring non-discrimination against Blacks and females in the employment of administrators and faculty. Among the policies and procedures were not only extremely detailed procedures for advertising and screening of job applicants, but also numerical goals and timetables for the employment of Blacks and females at the institutions. The two consent decrees were in most respects identical, with the first concerning employment of Blacks and the other concerning employment of females. The term of the decree regarding employment of Blacks, and Court supervision of compliance with that decree, expired without extension December 2004. The decree regarding employment of females is scheduled to expire as of December 31, 2005. Therefore, there is no need for the SBE Defendants to now, in this case, be ordered to essentially duplicate or accomplish what they have already done pursuant to the *Shuford* consent decrees.

5. *Motion For Contempt Against Auburn University.* At paragraph 13, the Knight-Sims Plaintiffs refer to their March 8, 2005, motion for an order to show cause why Auburn University should not be held in contempt. The SBE Defendants have no role regarding, nor comment about, said motion and matter.

**C. Provisions That The Knight-Sims Plaintiffs Assert Should Be Amended To Remedy Additional Vestiges Of Segregation Found By The Court**

At pages 6 – 11 the Knight-Sims Plaintiffs quote from this Court’s October 4, 2005, Opinion, and thereafter assert that, based upon the quoted findings, “the Remedial Decrees should be amended to require the State to increase its need-based financial aid to levels that would eliminate said vestiges of segregation and purposeful discrimination.” *Id.*, at 11.

The SBE Defendants assume that one or more other defendants will choose to more fully respond to the legal issue of whether or not the present level of State-funded need-based student financial assistance is properly deemed to be a present *illegal vestige* of segregation. The SBE Defendants would prefer to place their primary emphasis herein, not on that dispute of law or fact, but instead upon the fact that the two-year colleges have been, and continue to be, the *best solution of all* to issues related to any perceived lack of access to a college education for Black citizens of Alabama. This is particularly true with respect to tuition rates, geographic proximity, and the availability of remedial programs. Consequently, contrary to A&M's suggestion that Calhoun's enrollment cap be extended for additional years, Calhoun should not be limited, but instead, encouraged to provide greater access to underprivileged, or unprepared, students, both Black and white.

## **II. RESPONSE TO THE "OBJECTION OF THE UNITED STATES TO TERMINATION OF THE REMEDIAL DECREE"**

In this Part the SBE Defendants respectfully offer a few comments on the "Objection Of The United States To Termination Of The Remedial Decrees," dated November 30, 2005.

### **A. PRIOR SATISFACTION OF U.S. CLAIMS**

In its 1991 Remedial Decree, the Court observed that:

"Before the start of this [1990] trial, and over the objection of the Knight Plaintiffs, the Court reaffirmed several consent decrees previously approved by Judge Clemon. The reaffirmed consent decrees were between the United States and the University of South Alabama, the University of Montevallo, Jacksonville University, and Livingston University. This Court also approved consent decrees entered into for the first time between the United States and Troy State University, and the United States and the State Board of Education, Athens State College and Calhoun State Community College. These decrees were also objected to by the Knight Plaintiffs. **The Government considers the consent decrees to disposes of all claims which it makes against these parties.**"

(Emphasis added.) *Knight v. State of Alabama*, 787 F. Supp. 1030, 1051 (N.D. Ala. 1991).

Consistent with its position represented by the above quotation, the United States has presented nothing in its “Objections” directly impacting upon the SBE Defendants.

## **B. GENERAL OBSERVATIONS**

The 5-page “Objection” of the United States is, in essence, simply a statement that the U.S. objects to terminating the Remedial Decrees to the extent that there is something left to be done. Indeed, the United States says, “The United States objects to termination of the Remedial Decrees to the extent that certain provisions of those orders remain unfinished.” *Id.*, at p. 1. What are those “certain provisions”? The United States goes on to mention its perceived need for: (1) continued funding for the Alabama A&M and Alabama State University Trusts for Educational Excellence; (2) resolution of “funding issues” for A&M and ASU new high demand programs; and (3) a report from the Monitor regarding compliance with, and effective of, the April 2002 *Order* providing additional funds to assist HWIs in recruiting and retaining African-American faculty. *Id.*, at pp. 2 - 3.

The United States concludes its filing by stating that “The United States objects to termination of the Remedial Decrees until the programs and related funding are completed.” *Id.*, at p. 5. If the United States is correct in this objection, then its position is better restated to request that the Court terminate all portions and aspects of the Remedial Decrees except for those directly concerning funding new A&M and ASU academic programs and funding the A&M and ASU trusts for educational excellence.

The United States also suggests, however, that the Court should cause the Monitor to undertake particular action. First, the United States suggests that “prior to the taking of

discovery the Court Monitor [should] 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, including 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."

These Defendants respectfully submit that, if the United States envisions such a report as being broad-based and extending into any and all aspects of the Remedial Decrees, then, while the idea may have merit, it comes too late, and, while likely intended to narrow the issues, in actual practice could result in the parties ultimately finding even more to argue about and delay the successful conclusion of this litigation. Moreover, the Court has now already received from the *plaintiffs* in this case "objections" which identify what issues remain, by identifying what particular actions the Court should require before, or as a condition of, dismissal. In that respect, the issues have already been narrowed, and the parties can now suggest (as the Court directed) what limited discovery will be necessary to address only those narrowly stated issues.

### **III. RESPONSE TO THE "OBJECTIONS OF ALABAMA A&M UNIVERSITY TO THE TERMINATION OF THE REMEDIAL DECREES"**

#### **A. THE "OBJECTIONS" OF A&M AND ASU, INsofar AS THEY CONCERN THE SBE DEFENDANTS, REPRESENT ANOTHER PROHIBITED ATTEMPT TO, WITHOUT LEGAL STANDING, SUE THE STATE OF ALABAMA**

On or about November 30, 2005, one of the *defendants* submitted "Objections Of Alabama A&M University To The Termination Of The Remedial Decrees." The practical purpose of this document, and its submission, conflicts with the law of the case, and in particular, with the Eleventh Circuit Court of Appeals' previous ruling that Alabama A&M University and Alabama State University, being agencies of the State of Alabama, lacked standing and had no

right to sue the State of Alabama and other of its agencies under Title VI or the Fourteenth Amendment. *United States v. State of Alabama*, 791 F.2d 1450 (11<sup>th</sup> Cir. 1986), *reh. denied*, 796 F.2d 1478 (11<sup>th</sup> Cir. 1986), *cert. denied*, 479 U.S. 1085 (1987).<sup>7</sup>

In may be anticipated that A&M and ASU would argue that they are not presenting claims, but are merely commenting on their perceived need for the Court's previous orders to now be extended or supplemented. While erroneous, such an argument might seem logical to the extent to which it may urge the Court to not relinquish jurisdiction until the capital funding previously ordered is completed. But that is not the limit of what A&M and ASU have done. Instead, in their so-called "objections," A&M and ASU urge the Court (without legitimate supporting grounds) to order relief *additional* to what is included in the Court's Remedial Decrees. For example, as to Calhoun, A&M seeks to have "prohibition on expansion" "extended for at least another five years." As to Athens State University, A&M seeks to have the Court prohibit that institution from during the next five years offering a graduate degree program, based upon an alleged pre-existing "restriction" on Athens State's offering of masters level programs. However, there has been no such restriction consented to by these Defendants nor imposed by the Court. Alabama State University also includes in its "objections" a new claim for relief that would preclude Trenholm State Technical College and the former Patterson State Technical College (and any other public two-year college) from *ever*, at any time in the future, offering traditional academic courses. This is not only a new claim that goes far beyond the bounds of the present Remedial Decrees, it flies in the face of the clear facts that a community college would provide greater access to college for Black citizens in the Montgomery area. Moreover, it ignores clear precedent to the effect that "permanent" injunctive relief is not

---

<sup>7</sup> This Court also dismissed ASU's purported cross claims based upon lack of standing. *Knight v. Alabama*, No. 83-M-1676-S, slip op. at 38-51 (N.D. Ala. Mar. 12, 1990).

appropriate in desegregation cases. *Bd. Of Educ. of Oklahoma City Public Schools v. Dowell*, 498 U.S. 237, 248, 111 S.Ct. 630, 637, 112 L. Ed. 2d 715 (1991) (desegregation decrees “are not intended to operate in perpetuity”; test by which education board “to judicial tutelage for the indefinite future” rejected.) In addition, ASU’s attempt to prohibit for all time citizens, Black and white, from accessing community college education, simply cannot be legitimately considered as anything but another attempt by a State institution without legal standing to now once again make a claim for relief against the State of Alabama.

### **B. A&M’S CAPITAL FUNDING ASSERTION**

At pages 1 – 4 of its “Objections,” A&M argues that the Court should order the State to pay to that institution \$16.6 million more than already ordered. However, it is the SBE Defendants’ understanding that, by prior agreement in the record, A&M is precluded from seeking such additional monies. The SBE Defendants leave it to the Defendant University of Alabama and “State Defendants” to elaborate upon that issue and to otherwise respond to A&M’s request for an additional \$16.6 million in State funding.

### **C. A&M’S DIVERSITY SCHOLARSHIPS ASSERTION**

At pages 4 – 5 of its “Objections,” A&M asks the Court to continue the diversity scholarships for at least another five years, and that the definition of “Alabama resident” for that program be stretched far enough to permit A&M to use those scholarships for persons who completed high school outside the State of Alabama. In the course of making this request, A&M states:

“AAMU wishes to attract both traditional and non-traditional students of other races to its campus. It has received applications (and in some instances has granted scholarships) to individuals who are significantly older than recent high school graduates. In some cases, although these individuals may have lived in the

State of Alabama for a decade or more, they went to high school in some other state and their parents also reside in some other state.” Quite interestingly, A&M wholly fails to say just how many of these “applications” it received, and, as to the applications, how many “some cases” occurred wherein the applicants graduated from high school outside Alabama. Perhaps the Court would want to know just how many such cases occurred, what portion of those cases involved Caucasian applicants, and what, if any, efforts A&M has made to find and grant other scholarships and aid to those applicants in order to secure their enrollment. Once these facts are known, the parties and Court could better evaluate A&M’s new claim for relief regarding diversity scholarships.<sup>8</sup>

Perhaps the most disturbing aspect of the proposal for additional diversity scholarship funds is that, being explicitly coupled with the very next section of A&M’s “Objections,” wherein A&M seeks to further limit Calhoun Community College, the proposal once again indicates that, rather than endeavoring to get its own house in order, A&M continues to focus attention on blaming others and finding supposed problems external to its own operations. That focus must end. Whatever vestiges of segregation, if any, that remain at A&M, particularly insofar as A&M *says* that it wants to attract non-traditional and/or white students, arise from, and have to be solved within, A&M.

#### **D. A&M’S ASSERTION AGAINST CALHOUN COMMUNITY COLLEGE**

At pages 5 – 6 of its “Objections,” A&M states as follows:

“In its 1995 Decree the Court placed limitations on the expansion of CSCC for a period of ten years in the Huntsville area to give AAMU an opportunity to attract non-traditional and other students to diversify its student body. AAMU requests that this prohibition on expansion be extended for at least another five years, which coupled with the requested modifications to the diversity scholarship program will enable AAMU to further desegregate its student body.”

---

<sup>8</sup> Of course there is nothing in the Remedial Decrees that would prevent A&M from using other resources to fund additional diversity scholarships.

A&M's above request should be denied. Once again, A&M wrongly seeks to blame its perceived problems on someone else – here, Calhoun – instead of where the problem really is, squarely in A&M's own lap. In other words, if vestiges of segregation remain at A&M, then they do so on account of A&M's own failure to actively strive to eliminate them.

*1. Any Present Lack Of Student Diversity At A&M Results From, And Must Be Solved By, A&M's Own Actions.* A&M says that the restrictions imposed on Calhoun in 1995 were “to give AAMU an opportunity to attract non-traditional and other students to diversify its student body.” But the point is that, if anything, A&M had, and squandered, that opportunity. If there are still today remaining vestiges of segregation that have not been removed, the responsibility for removing those vestiges is within Alabama A&M University and its administration, not elsewhere. A&M should *itself* cease refusing to perform, and begin to implement, at least those obvious and fundamental things necessary to attract Caucasian, non-traditional (and other) students. Thus far, it has failed to do so, whether it comes to what instruction is offered when to whom, its failures to make its operations student-friendly, its failures to act cooperatively with other institutions to increase transfers of students from other institutions to A&M without loss of academic credit, its lack of aggressive marketing to potential white students, its failures to make better use of resources to attract white students, its own administrative turmoil, its self-generated problems with accreditation, and a variety of other factors that can and should be addressed internally. These Defendants submit that A&M's failures cannot reasonably nor adequately be covered up by blaming others, restricting other institutions, or just receiving more funds.

Indeed, the SBE Defendants respectfully submit that as to the restrictions previously placed on Calhoun, if anything, they should have already been removed pursuant to the 1995 Remedial Decree, but, regardless, should now come to an end. In that regard, these Defendants

respectfully refer the Court to page 359 of its 1995 Decree (900 F. Supp. 272, 359), and, particularly, the portion thereof suggesting that if A&M fails to make efforts to recruit nontraditional other-race students then that lack of effort will be a reason to lift (and certainly not *expand*) the Calhoun enrollment cap. Put another way, A&M is not to be rewarded, Calhoun is not to be punished, and overall student access to a higher education is not to be again limited, by A&M's failure to meet its own obligations. Rather, A&M is to be compelled to do what is educationally sound, practical, and in many instances obvious, to attract students and achieve diversity, and if that requires more detailed orders, greater day-to-day supervision of A&M by the Monitor or others, and/or other A&M supervision and accountability, then so be it. But any failure by A&M to remove any alleged vestiges of segregation should certainly not be considered as a reason to restrict Calhoun's efforts to provide greater access to all persons seeking a college education.

2. *Any Present Lack Of Student Diversity At A&M Should Not To Be "Solved" By Restricting Student Access.* As discussed above, the Knight-Sims Plaintiffs' present focus, and these SBE Defendants' great interest, are both on maximizing student access to higher education. The SBE Defendants strongly believe that this goal would be best accomplished by and through the State's two-year colleges and their expansion. Alabama's two-year colleges are more affordable, more integrated, more responsive to the needs of students from low income households than any other public colleges or universities. Therefore, they provide greater access to all students, particularly disadvantaged students, than other public institutions, including but not limited to A&M University and Alabama State University.

The two-year colleges, including those in Madison County and Montgomery County, educate more students, more minority students, and more low income students than the public

universities. Therefore, it would be counter-productive to the equal access goal, and contrary to this Court's commitment to spend taxpayer monies wisely, for the Court to respond to A&M's own failures to comply with the Remedial Decrees by further restricting two-year college courses. To do so would only serve to impractically restrict equal higher education access to African-Americans, low income students, and other groups who have a history of a lack of access to a college education.

#### **E. A&M'S ERRONEOUS ASSERTION ABOUT ATHENS STATE UNIVERSITY**

At page 6 of A&M's "Objections," it is stated that:

"The Court's Decrees in this case have incorporated earlier Consent Decrees, including one between the United States and Athens State. That Consent Decree provided that AAMU would teach courses at Athens State leading to a Masters Degree in Education, and placed restrictions on Athens State's ability to independently offer graduate programs in education. AAMU asks that the restrictions contained in that Consent Decree be continued for at least another five years."

The above-quoted statement as to a restriction of Athens State's offering of graduate programs is simply not true. There is *no such restriction*.

Furthermore, Athens State University is prepared to show the Court the massive extent to which, with regard to paragraph 1750 of the 1991 Remedial Decree (787 F. Supp. 1030, 1329) contemplating joint Athens State-A&M graduate level degree programs that would "assist in meeting the duty to desegregate," year after year A&M has dragged its feet, ignored correspondence, changed representatives, expressed interest or agreement only to later act to the contrary, made commitments but later ignored them, received Athens State's help in one program but then failed to honor its own reciprocal obligation, and outright claimed itself to never have made a commitment when that commitment was in writing. In short, it is A&M that needs to account for its own conduct with regard to masters level programs, and the way for

A&M to do that is not to pretend that a Consent Decree said something it did not, or to try to keep Athens State from having a program, with or without A&M, that A&M kept from being commenced by its own conduct.

#### **F. A&M’S ASSERTION CONCERNING FUNDING ITS ENGINEERING PROGRAM**

At page 6 of its “Objections,” A&M asks for yet more money for its engineering program. The SBE Defendants leave it to the University of Alabama and “State Defendants” to respond to that argument.

#### **G. A&M’S ASSERTION REGARDING AGRICULTURAL RESEARCH**

At page 7 of its “Objections,” A&M requests that additional orders be entered for A&M to receive monies for agricultural research. The SBE Defendants will leave it to other defendants to respond to that argument, and take no position thereon.

#### **H. A&M’S ASSERTION REGARDING FACULTY SALARIES**

At pages 7 – 8 of its “Objections,” A&M requests that the Court order salary adjustments. The SBE Defendants leave it to other defendants to respond to that request.

### **IV. RESPONSE TO THE “NOTICE BY ALABAMA STATE UNIVERSITY OF OBJECTIONS TO THE TERMINATION OF PROVISIONS OF THE REMEDIAL DECREE”**

On or about November 28, 2005, there was submitted to the Court the “Notice by Alabama State University ff Objections to the Termination of Provisions of the Remedial Decree.”

**A. ASU’S ASSERTION REGARDING FUNDING FOR TITLE VI PROGRAMS**

At pages 5 - 9 of its “Objections,” ASU asks for greater State funding for its programs and library. The SBE Defendants leave it to the other defendants to respond to that request.

**B. ASU’S ASSERTION CONCERNING THE PH.D. PROGRAM IN MICROBIOLOGY**

At pages 10 and 11 of its “Objections,” requests that “the issue of support for the [microbiology] program remain open pending its implementation and an opportunity to better forecast the future financial support necessary to reasonably insure the continuing viability of the program.” In this regard, the SBE Defendants defer to the other defendants for response.

**C. ASU’S ASSERTION REGARDING DIVERSITY SCHOLARSHIPS**

In its “Objections,” ASU also requests that the diversity scholarship program be modified, that ASU’s August 9, 2004, motion for clarification be granted, and that the program be extended “for at least ten (10) years beyond the July 31, 2005, expiration date.” *Id.*, at pp. 11-14, 14.

**D. ASU’S ASSERTIONS REGARDING SUPPOSED DUPLICATION**

At pages 15 – 23 of its “Objections,” ASU makes various requests relative to what ASU characterizes as supposed course or program duplications and cross-enrollment agreement(s). The SBE Defendants defer to the other defendants for response to said requests.

**E. ASU’S REQUEST FOR PERPETUAL RESTRICTION OF TWO-YEAR COLLEGE COURSES IN MONTGOMERY COUNTY**

At pages 23 – 26 of its objections, ASU quotes from the 1995 Remedial Decree, restricting until July 1, 1995, Trenholm State Technical College and the former Patterson State Technical College (that has since become part of a single institution under the Trenholm name) from offering in Montgomery County “traditional academic courses, for which credit may be

obtained toward a Bachelor's Degree at any community college, junior college or senior college in Alabama." 900 F. Supp. 272, 358-59.

ASU then makes the following request:

"61. ASU defendants respectfully request that the injunctive relief set out herein not terminate with the end date of the Remedial Decree in this case and that the injunctive relief be made permanent."

"62. Alternatively, ASU defendants request that representatives from ASU, Trenholm State technical College, the State School Superintendent, the Chancellor of the Two-Year College System and members of the State Board of Education meet and confer to develop and implement an agreement which will determine the future course and program offerings of Trenholm State Technical College, or its successor in interest and which will serve the best interest of both ASU and Trenholm State Technical College, or its successor in interest, and carry out the intentions of the Court's Remedial Decree."

The foregoing request should be denied for several reasons, just a few of which will be mentioned here.

First, the Court will note that ASU states no grounds or reasoning in support of this permanent restriction. (Perhaps that would also explain why, in its premature, July 28, 2005, filing of objections,<sup>9</sup> ASU did not mention anything about two-year colleges, but mentions two-year colleges now as an after-thought.)

Second, as discussed in Sections I.C. and III.D.2. above, for the Court to continue to restrict two-year college transfer courses (1) would be inconsistent with the concept of greater and more equal access to a higher education, because it would preclude the availability of a more affordable two-year college education to minority and other students, (2) would be a wasteful expenditure of limited State funds on a more expensive university, and (3) would deny an education to greater numbers of persons seeking training for gainful employment (many of

---

<sup>9</sup> See *Notice by Alabama State University of Objections to the Termination of Provisions of the Remedial Decree*, and August 4, 2005, *Motion for Leave to Withdraw Notice by Alabama State University of Objections to the Termination of the Remedial Decree*.

whom are minorities) in favor of more limited numbers of persons seeking bachelor's and graduate-level education, (4) would deny to students the racially more diverse two-year college learning environment, and (5) would ignore the truth that a university having nearby a two-year college with which the university enters into cooperative articulation and transfer programs will help, not hinder, the university. The positive reciprocal relationship between community colleges and universities has been shown in the examples of the University of Alabama's relationship with Shelton State Community College; Auburn University's relationship with Southern Union Community College; UAB's relationship with Jefferson State and Lawson State Community Colleges; the University of South Alabama's relationship with Bishop State Community College; and the University of West Alabama's relationship with Alabama Southern Community College. Furthermore, national and regional studies have shown that students who begin their studies at a community college and transfer to a university generally make better grades and are more likely to earn a bachelor's degree than students who begin their studies at a university, and this principle certainly applies to low income and minority students.

Third, as was said above regarding A&M University, Alabama State University should instead look to its own conduct in search of means to attract more white students. For example, there is the matter of the atmosphere that ASU continues to maintain (despite the Court's instructions otherwise) – an atmosphere that, instead of making whites feel welcome, tends to drive them away with a continued, emphatic focus on the institution's heritage and racial history.

In this regard, in its 1995 Remedial Decree the Court stated:

*“ASU's and AAMU's Outspoken Commitment to Their Heritage*

“288. The Court notes, for purposes of the following discussion, that although ASU and AAMU have been referred to as the Allied (with the Plaintiffs) Defendants, they are, nevertheless, Defendants.

\* \* \* \* \*

293. ASU's efforts to recruit whites over the years has demonstrated a pattern of inconsistent institutional commitment to the desegregation process, and such efforts have been historically deficient. At least as late as 1985, ASU was making *no* special efforts to recruit white students. AUX 778—779. In the 1991 Decree the Court ordered ASU "to recruit white students to its campus." *Knight*, 787 F. Supp. at 1380, ¶ VII A.

\* \* \* \* \*

299. In short, the desire of an HBI to maintain its racial identifiability extracts an intangible, but very real, cost in the desegregation process. It makes it more difficult to recruit white students to the college. *Leslie* (3/1/95) 69; *Jordan* (3/8/95) 24—25, 44—45.

300. The Court finds that although the HBI's play an important role in higher education, ASU and AAMU have maintained and asserted their black heritage in ways, and to a degree, that has had a segregative effect on student choice.

**301. The Court concludes that ASU and AAMU must henceforth act in a manner such that their pride in their heritage does not hinder their, the state's or the Court's efforts to reduce segregative effects on student choice.** *Jordan* (3/8/95) 22. ASU and AAMU need not deny their heritage, but they must become institutions not identified solely on the basis of race.

\* \* \* \* \*

## XVII CONCLUDING OBSERVATIONS

In order to meet their responsibility of removing the remaining vestiges of segregation from Alabama State University and Alabama A & M University, the leaderships of each of those institutions must take responsible action in areas in which they have been deficient in the past.

The leadership of both Alabama State University and Alabama A & M University must make more effort and obtain results in more fully integrating the administration, staff and study body of each University. As a part of this integration effort the Court expects to see more other-race personnel in all facets of the University with efforts to accomplish this goal to begin immediately.

The Court also expects a continuity in the office of President at each University and a reversal of the short term leadership that has damaged these institutions in

the past. Some of the former presidents have unfortunately acted in the past in ways bringing disrepute to their institutions.

Aggressive recruiting policies pointed toward recruiting other-race students into the universities must be actively pursued by the administrations. Only through the aggressive efforts of the leadership of the universities, the boards of trustees, and administrations, staffs and the student body can a critical mass of other-race students be actively pursued so that each University shall be recognized as an integrated higher educational institution. This is expected by the Court without in any way limiting the tradition or diminishing the importance of each university as an historically black institution of higher learning, a bastion of black culture in America and a birthplace of the civil rights movement.” (Emphasis added.)  
*Knight v. State of Alabama*, 900 F. Supp. 272, 374-75.

Contrary to the Court’s directive, ASU has continued to, in most everything it does, and especially those activities affecting student experiences on campus and the institution’s public reputation, over-emphasize its heritage and racial issues to the point where the average potential white student would feel anything but welcome. This can be seen, for example, in the events and activities sponsored by ASU, and how few, if any, do not have an African-American orientation. Thus, ASU should direct its attention to its own need to accommodate other-race students, not to some unfounded concern about what effect a two-year college may have at some future time.

Fourth, apparently ASU would have the Court simply ignore the racial composition of Trenholm, and imagine, albeit erroneously, that Trenholm is a historically white school that by its mere existence is preventing ASU from attracting white students. But Trenholm is a historically *black* institution that now has a student body that is very representative of the racial makeup of its service area. Therefore, in actual fact, Trenholm is not a “white alternative” to ASU for white students. What is keeping more whites from attending ASU is to be found at ASU.

Fifth, that ASU would ask this Court to *permanently* enjoin the two-year colleges from expanding in Montgomery County, without any justification for such an extreme measure, is

irrational on its face and contrary to precedent. *Bd. Of Educ. of Oklahoma City Public Schools v. Dowell*, 498 U.S. 237, 248, 111 S.Ct. 630, 637, 112 L. Ed. 2d 715 (1991) (desegregation decrees “are not intended to operate in perpetuity”).

Sixth, perhaps the most ironic aspect of ASU’s “Objections” is ASU’s alternative request that representatives of ASU, Trenholm, and others,

“meet and confer to develop and implement an agreement which will determine the future course and program offerings of Trenholm State Technical College, or its successor in interest and which will serve the best interest of both ASU and Trenholm State Technical College, or its successor in interest, and carry out the intentions of the Court’s Remedial Decree.”

The irony of this alternative ASU request that representatives meet and agree is that for some time now Trenholm’s President has been reaching out to ASU to offer the development of partnerships to help both ASU and Trenholm, and his efforts have been either ignored or discouraged by representatives of ASU.

## **V. SBE DEFENDANTS’ SUGGESTIONS AS TO DISCOVERY**

### **A. THE “KNIGHT-SIMS PLAINTIFFS’ MOTION FOR LEAVE TO SERVE FIRST DISCOVERY REQUEST FOR HEARING TO EXTEND THE TERM OF THE REMEDIAL DECREES”**

The SBE Defendants respectfully submit that, particularly given that the various institutions are busy with preparations for and conduct of student registration and beginning classes, it is simply impractical and unreasonable for them to be put to the immediate task of answering the Knight-Sims Plaintiffs’ first discovery request within 30 days after the date of Plaintiffs’ motion.

## **B. TIMEFRAME IN WHICH TO CONDUCT DISCOVERY**

The SBE Defendants are of the opinion that a discovery period of 90 days would be sufficient to conduct appropriate discovery.

## **C. TOPICS OF DISCOVERY**

The SBE Defendants have attached to this Response a summary of the topics as to which they intend to conduct discovery.

The SBE Defendants would also respectfully note that in 2001 Calhoun filed a motion to conduct discovery on A&M's desegregation efforts. By *Order* of August 30, 1991, entered on September 4, 2001, the Court denied that motion. In so doing, however, the Court stated as follows:

“The Court has before it the motion of Calhoun State Community College to conduct discovery on Alabama A&M University's desegregation efforts. The Court will deny the request at this time. Alabama A&M's success at desegregation will certainly be a matter of considerable inquiry in the future as it and the rest of the State's public institutions move toward discharge and a declaration of unitary status. At that time, Calhoun State and the other parties will be given ample opportunity to conduct relevant discovery. Moreover, the attachments to this order and the discovery already being undertaken by the Knight Plaintiffs should provide the Court and the parties with considerable information about the desegregation efforts of Alabama A&M at the present time.”

The SBE Defendants also intend to conduct discovery on the related matter of what action has, and has not been, effective in increasing the number of white persons on A&M's campus.

Respectfully submitted,

Foshee & George, L.L.C.  
900 South Perry Street, Suite B  
Montgomery, Alabama 36104  
Telephone (334) 265-1960  
Facsimile (334) 265-1623  
E-mail jfoshee@knology.net  
          egeorge@knology.net

s/ Jeffery A. Foshee  
Jeffery A. Foshee (ASB-8644-577J)  
Edward M. George (ASB-3603-G36E)  
Attorneys for the Defendants  
Alabama State Board of Education, Its  
Members, Chancellor Roy Johnson,  
Athens State University, and Calhoun  
State Community College

### **SBE Defendants Discovery Topics**

1. The nature and extent to which any member of Alabama State University's board of trustees has discouraged, prohibited, or otherwise interfered with the ability and willingness of ASU's President or other high level ASU administrators to communicate or effectively communicate with Trenholm State Technical College and its officials, regarding cooperative efforts or other matters of mutual benefit or interest.
2. Statistical and annual reports of A&M and ASU as to enrollments and employment.
3. A&M course and class offerings from 1995 to present.
4. ASU course and class offerings from 1995 to present.
5. A&M and ASU campus events, and the nature and subject matter thereof.
6. A&M and ASU student publications and recruitment materials.
7. A&M internal and external communications and actions (or lack thereof) regarding possible joint / cooperative masters programs with Athens State University.
8. A&M and ASU specific efforts and programs to attract non-traditional and white students.
9. A&M and ASU use and non-use of diversity scholarships, including the number of applications received from graduates of high schools outside Alabama.
10. A&M and ASU actions concerning articulation and other cooperative agreements with HWIs and two-year colleges.
11. Residence, origin, and race of A&M students and applicants for enrollment.
12. A&M treatment of students and teachers taking courses taught by A&M personnel at CCSC's Huntsville, Research Park campus.
13. Decrease in A&M's graduate program enrollments and white graduate program enrollments.
14. A&M education program accreditation and/or certification issues.
15. Minutes of ASU and A&M Board meetings.
16. Rates of student retention, graduation, and grade point averages of persons who transferred from Alabama public two-year colleges to Alabama public universities and persons who received their entire Alabama public higher education at universities.

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Alice H Martin, US Attorney  
[alice.martin@usdoj.gov](mailto:alice.martin@usdoj.gov)

Thomas M Lovett  
[tmlovett@una.edu](mailto:tmlovett@una.edu)

Edward S Allen  
[eallen@balch.com](mailto:eallen@balch.com)

Candis A McGowan  
[cmcgowan@saxonattorneys.com](mailto:cmcgowan@saxonattorneys.com)

David R Boyd  
[dboyd@balch.com](mailto:dboyd@balch.com)

Demetrius C Newton  
[Wilberforc@aol.com](mailto:Wilberforc@aol.com)

Larry E Craven  
[lcraven@alsde.edu](mailto:lcraven@alsde.edu)

Robert W Rieder  
[riederr@email.uah.edu](mailto:riederr@email.uah.edu)

William F Gardner  
[wfg@cabaniss.com](mailto:wfg@cabaniss.com)

Braxton Schell, Jr  
[wbschell@bellsouth.net](mailto:wbschell@bellsouth.net)

Edgar R Haden  
[ehaden@balch.com](mailto:ehaden@balch.com)

Reginald L Sorrells  
[rsorrells@alsde.edu](mailto:rsorrells@alsde.edu)

Robert D Hunter  
[rob.hunter@altec.com](mailto:rob.hunter@altec.com)

William K Thomas  
[wkt@cabaniss.com](mailto:wkt@cabaniss.com)

Carl E Johnson, Jr  
[carljohnson@bishopcolvin.com](mailto:carljohnson@bishopcolvin.com)

Sarah L Thompson  
[thompsonsue@bellsouth.net](mailto:thompsonsue@bellsouth.net)

Michael G Kendrick  
[Kendrick@evglaw.com](mailto:Kendrick@evglaw.com)

Susan J Watterson  
[tax\\_lawyer@bellsouth.net](mailto:tax_lawyer@bellsouth.net)

Robin G Laurie  
[rlaurie@balch.com](mailto:rlaurie@balch.com)

Joe R Whatley, Jr  
[jwhatley@whatleydrake.com](mailto:jwhatley@whatleydrake.com)

Norma M Lemley  
[nlemley@uasvstem.ua.edu](mailto:nlemley@uasvstem.ua.edu)

R M Woodrow  
[RMWOODROWFDC@aol](mailto:RMWOODROWFDC@aol)

Fred D. Gray  
[fgray@glsmgn.com](mailto:fgray@glsmgn.com)

Armand Derfner  
[aderfner@dawlegal.com](mailto:aderfner@dawlegal.com)

Fourier J Gale, III  
[bgale@maynardcooper.com](mailto:bgale@maynardcooper.com)

Solomon S Seay, Jr.  
[lschanc@aol.com](mailto:lschanc@aol.com)

Edward A. Hosp  
[thosp@maynardcooper.com](mailto:thosp@maynardcooper.com)

James L. Mitchell  
[jmitchell@maynardcooper.com](mailto:jmitchell@maynardcooper.com)

C A Gonzalez  
[cag@gonzalez-law.com](mailto:cag@gonzalez-law.com)

Jean Walker Tucker  
[jwtucker@usouthal.edu](mailto:jwtucker@usouthal.edu)

I hereby certify that copies of the foregoing document have been served upon the following counsel of record by placing the same in the United States Mail, properly addressed and First Class postage prepaid, on this the 9<sup>th</sup> day of December, 2005.

Richard F Calhoun  
FAULK WATKINS CLOWER & COX  
PO Box 489  
Troy, AL 36081

Jeremiah Glassman  
US DEPARTMENT OF JUSTICE-CIVIL  
RIGHTS DIVISION  
Patrick Henry Building, Suite 4300  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Respectfully submitted,

Foshee & George, L.L.C.  
900 South Perry Street, Suite B  
Montgomery, Alabama 36104  
Telephone (334) 265-1960  
Facsimile (334) 265-1623  
Email jfoshee@knology.net  
egeorge@knology.net

s/ Jeffery A. Foshee  
Jeffery A. Foshee (ASB-8644-577J)  
Edward M. George (ASB-3603-G36E)  
Attorneys for the Defendants  
Alabama State Board of Education, Its  
Members, Chancellor Roy Johnson,  
Athens State University, and Calhoun  
State Community College