

to paragraph X.A. of the 1991 Remedial Decree, *Knight v. Alabama*, 787 F.Supp. 1030, 1381 (N.D. Ala. 1991), *aff'd in relevant part*, 14 F.3d 1534 (11th Cir. 1994), file the following objections to the annual reports filed by defendants, the last of which was received from TSU on July 25, 2003. These objections are aimed primarily at the lack of compliance with the provisions of the 1991 Remedial Decree requiring the historically white universities to eradicate vestiges of *de jure* segregation from their faculties and high ranking administrative positions. 787 F.Supp. at 1187-92, 1378.

Procedural Background

1. This Court's 1991 opinion and Remedial Decree did not establish any benchmarks for determining whether, when the term of the Decree is due to expire, desegregation of the HWI faculties and administrations has been accomplished. The opinion focused solely on the procedures used by the HWIs to increase black faculty members and administrators. It praised UAB's procedures, but in general found with respect to all the HWIs "that the minority employment procedures already in place are not implemented and followed with sufficiently sustained vigor so that they can assist in increasing the number of African American faculty and administrators and thereby wash the taint of the prior dual system away." 787 F.Supp. at 1187-88. The Court rejected the use of two additional recruitment procedures suggested by plaintiffs, namely, hiring non-doctoral faculty and the HWIs' own doctoral graduates. *Id.* at 1188-89. It declined to "set a quota of black professors for AU nor will it design an affirmative action plan for the university." *Id.* at 1190-91.

2. In the summary of vestiges there is this finding: "the Court finds that vestiges remain within the **practices** of some Defendants in the following areas: faculty and administrative employment. . . ." 787 F.Supp. at 1368 (emphasis added). The opinion is silent with respect to

the question of when the small numbers of black faculty and administrators themselves represent continuing vestiges of segregation and, if so, what would constitute eradication of those vestiges.

3. The Remedial Decree itself contains a broad injunction directed to all the defendants: they are all “permanently enjoined and restrained from maintaining vestiges of discrimination in the system of public higher education in the State of Alabama and in each public institution of higher education identified as a party Defendant herein, and their successors.” 787 F.Supp. at 1378. The Decree then singles out several HWIs for specific orders requiring them to “review their practices and procedures.” *Id.* Even with respect to these institutions, there is no specific injunction with respect to numbers, only statements like “The Court expects to see material improvement in the employment of black faculty at these institutions within three years.” *Id.*

4. All of the defendant institutions were required to report annually on the racial composition of their faculties and administrations and on minority faculty and administrator recruitment. 787 F.Supp. at 1380. The only fair inference from the 1991 opinion and Remedial Decree, read in their totality, is that all the HWIs were expected over the term of the Decree to increase black representation on their faculties and administrations to a point that would “wash the taint of the prior dual system away.” 787 F.Supp. at 1187-88. Certainly, the narrative portions of annual reports of the defendants have reflected this understanding of a duty to make such progress.

5. The Remedial Decrees are scheduled to expire on July 31, 2005. *Knight v. Alabama*, 900 F.Supp. 272, 374 (N.D. Ala. 1995). The termination date of the Remedial Decree is explicitly qualified both by the ability of the parties to show cause why it should be extended and by the exercise of the Court’s own assessment of compliance. “The Court may also, at anytime, modify or amend the terms and conditions of this Decree as needed to guarantee the elimination of any remaining vestiges of discrimination within Alabama’s system and units of public higher

education.” 787 F.Supp. at 1381-82; *accord*, 900 F.Supp. at 374. “The Court may *sua sponte* extend the term of this Decree by entering the appropriate order if it deems that additional time is required to assure compliance and fully accomplish the Decree’s objectives. The Court may also, at anytime, modify or amend the terms and conditions of this Decree as needed to guarantee the elimination of any remaining vestiges of discrimination within Alabama’s system and units of public higher education.” *Knight v. Alabama*, 900 F.Supp. 272, 374 (N.D. Ala. 1995).

6. On September 17, 1998, plaintiffs filed a “motion for enforcement” of the Remedial Decree provisions relating to black faculty and high ranking administrators at the HWIs. This motion asked the Court to enlist the services of the Monitor and Oversight Committee to propose additional procedures and practices that might bring all the HWIs into compliance. In response, this Court’s order of April 3, 2002, was entered “[i]n resolution of the pending motion of the Knight plaintiffs concerning employment practices of the predominately white defendant institutions. . . .” All the of HWIs currently are participating in these court-ordered practices and procedures.

7. The April 3, 2002, order expressly bars plaintiffs from contending that participation in its program constitutes an admission by any defendant HWI that it has failed to comply with the constitutional obligation to desegregate, which is the objective of the Remedial Decrees. Plaintiffs do not contend there is any such admission of non-compliance.

The Constitutional Duty of the State

8. The constitutional obligation of the State of Alabama is capsulized in *United States v. Fordice*, 505 U.S. 717, 729 (1992): “If policies traceable to the *de jure* system are still in force and have discriminatory effects, those policies too must be reformed to the extent practicable and consistent with sound educational practices.” *Fordice* cites *Freeman v. Pitts*, 503 U.S. 467, 494

(1992) (“The school district bears the burden of showing that any current imbalance is not traceable, in a proximate way, to the prior violation.”).

9. Contrary to the repeated assertions of some defendants that the limits of their desegregation responsibilities are defined by the particularized remedies specified by the Remedial Decrees, this Court is bound to retain jurisdiction over those areas in which the State has failed to meet the desegregation obligations imposed by the Constitution itself. In higher education as in K-12 desegregation cases, the State must “take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch.” *Freeman v. Pitts, supra*, 503 U.S. at 486 (quoting *Green v. School Bd. of New Kent County*, 391 U.S. 430, 437-438 (1968)).

10. Before this Court may relinquish jurisdiction over its decrees in this action, it must determine that the State of Alabama has achieved unitary status with respect to each aspect of its system of public higher education. “The **concept of unitariness** has been a helpful one in defining the scope of the district courts’ authority, for it conveys the central idea that a school district that was once a dual system **must be examined in all of its facets, both when a remedy is ordered and in the later phases of desegregation when the question is whether the district courts’ remedial control ought to be modified, lessened, or withdrawn.**” *Freeman v. Pitts, supra*, 503 U.S. at 486 (emphasis added).

11. This Court’s Remedial Decrees and orders have many components, covering several areas of public higher education, in the HWIs, in the HBIs, in state funding and elsewhere. Before dissolving the Decrees, this Court must reassess each of these areas for compliance with the Fourteenth Amendment. It may decide to terminate its jurisdiction in some areas and retain it in others. “We hold that, in the course of supervising desegregation plans, federal courts have

the authority to relinquish supervision and control of school districts in incremental stages, before full compliance has been achieved in every area of school operations. While retaining jurisdiction over the case, the court may determine that it will not order further remedies in areas where the school district is in compliance with the decree.” *Freeman v. Pitts, supra*, 503 U.S. at 490-91.

12. For example, in the DeKalb County K-12 case, the Supreme Court upheld the district court’s exercise of equitable discretion to allow state school authorities “to regain control over student assignment, transportation, physical facilities, and extracurricular activities, while **retaining court supervision over the areas of faculty and administrative assignments** and the quality of education, where full compliance had not been demonstrated.” *Freeman v. Pitts, supra*, 503 U.S. at 492 (emphasis added).

13. In addition to examining the areas of higher education it has already targeted for remedial action, this Court should “inquire whether other elements ought to be identified, and to determine whether minority students [are] being disadvantaged in ways that require[] the formulation of new and further remedies to ensure full compliance with the court’s decree.” *Freeman v. Pitts, supra*, 503 U.S. at 492.

14. There is no bright-line test for unitariness.

That the term “unitary” does not have fixed meaning or content is not inconsistent with the principles that control the exercise of equitable power. The essence of a court's equity power lies in its inherent capacity to adjust remedies in a feasible and practical way to eliminate the conditions or redress the injuries caused by unlawful action. Equitable remedies must be flexible if these underlying principles are to be enforced with fairness and precision. In this respect, as we observed in *Swann [v. Charlotte-Mecklenburg Bd. of Education]*, 402 U.S. 1, 15-16 (1971), “a school desegregation case does not differ fundamentally from other cases involving the framing of equitable remedies to repair the denial of a constitutional right. The task is to correct, by a balancing of the individual and collective interests, the condition that offends the Constitution.” The requirement of a unitary school system must be implemented

according to this prescription.

Freeman v. Pitts, supra, 503 U.S. at 487.

Relevance of the Michigan Affirmative Action Cases

15. What this objection and motion seeks primarily to address is the end-game question of what standards and principles the Court will apply to determine unitariness with respect to the HWIs' duty fully to desegregate their faculties and administrations. Plaintiffs contend that the opinions in *Grutter v. Bollinger*, 123 S.Ct. 2325 (2003), and *Gratz v. Bollinger*, 123 S.Ct. 2411 (2003), provide guidance for this inquiry.

16. *Grutter* and *Gratz* are instructive, perhaps even controlling, precedent for the issues in this action in spite of the fact that they involved voluntary race-conscious affirmative action programs, not constitutionally mandated desegregation, and student admissions policies, not policies governing the hiring and retention of black faculty members and administrators.

17. If the University of Michigan Law School's policies are sufficiently narrowly tailored to serve a compelling state interest in voluntary racial diversity, they can be no less legitimate in the context of a remedy for *de jure* segregation. *Grutter, supra*, 123 S.Ct. at 2338-39 (*citing e.g., Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989) (plurality opinion)).

18. The benefits that racial diversity in the student body is designed to produce are the same benefits that desegregation of the faculties and administrations of historically white state universities is supposed to produce. Diversity "promotes 'cross-racial understanding,' helps to break down racial stereotypes, and 'enables [students] to better understand persons of different races.'" *Grutter, supra*, 123 S.Ct. at 2339-40. It ensures that "the diffusion of knowledge and opportunity through public institutions of higher education [is] accessible to all individuals regardless of race or ethnicity," *id.* at 2340, and it helps ensure "that the path to leadership [is]

visibly open to talented and qualified individuals of every race and ethnicity.” *Id.* at 2341.

19. Although the specific policies for enrolling a diverse student body may be different from those for achieving black professional representation, the standards for determining whether either set of policies has reached its objective – diversity on one hand and desegregation on the other – should be substantially the same.

20. For example, just as it is for Michigan’s student admissions policy, the “hallmark” of the HWIs’ policies for filling vacancies on their faculties and administrations should be their “focus on academic ability coupled with a flexible assessment of applicants’ talents, experiences, and potential ‘to contribute to the learning of those around them.’” *Grutter, supra*, 123 S.Ct. at 2331 (citation omitted). Instead of faculty and administration search committees continuing business as usual with respect to increasingly narrow and ingrown criteria, such as the prestige of the institutions where candidates received their doctoral degrees, the number and type of their scholarly publications, the prestige of the institutions where they have taught, the particular research and writing interests of incumbent faculty, the amount of administrative experience candidates already have gained, etc., their selection criteria should “not restrict the types of diversity contributions eligible for ‘substantial weight’ in the [selection] process, but instead recognize[] ‘many possible bases for diversity. . . .’” *Id.* at 2332 (citation omitted).

21. African-American candidates should not be shielded from competition, and the differences among African Americans in their individual qualities and experiences should be taken into account. *Grutter, supra*, 123 S.Ct. at 2332, 2343. “In some cases . . . an applicant’s race may play no role, while in others it may be a ‘determinative’ factor.” *Id.* at 2334 (citation omitted) (internal quotes omitted). The factor of race should be “extremely strong” without being the “predominant” factor in the total selection process. *Id.*

22. *Grutter* emphasizes the same concept of “critical mass” plaintiffs have always

contended should be the measure of faculty and administration desegregation. *Compare Grutter, supra*, 123 S.Ct. at 2332, with *Knight, supra*, 787 F.Supp. at 1344-45.

1. The meaning of critical mass is substantially the same when it is applied to black representation on the faculty and administration as when it is applied to the student body:

“[C]ritical mass’ means ‘meaningful numbers’ or ‘meaningful representation,’ which [means] a number that encourages underrepresented minority students to participate in the classroom and not feel isolated.” *Grutter, supra*, 123 S.Ct. at 2333 (citation omitted).

2. “[C]ritical mass means numbers such that underrepresented minority students [and faculty members and administrators] do not feel isolated or like spokespersons for their race.” *Id.* at 2333-34 (citation omitted).

3. “[W]hen a critical mass of underrepresented minority students[, faculty members and administrators] is present, racial stereotypes lose their force because nonminority students[, faculty members and administrators] learn there is no ‘minority viewpoint’ but rather a variety of viewpoints among minority students[, faculty members and administrators].” *Id.* at 2334 (citation omitted) (internal quotes omitted).

23. Critical mass is not a strictly quantifiable number. *Grutter, supra*, 123 S.Ct. at 2333. Quotas are not constitutionally permitted in a voluntary affirmative action plan. *Id.* at 2342. Although there are extreme circumstances in which racial quotas are permissible remedies for racial discrimination, *United States v. Paradise*, 480 U.S. 149, 170-71 (1987) (“The relief at issue was imposed upon a defendant with a consistent history of resistance to the District Court's orders, and only *after* the Department failed to live up to its court- approved commitments.”), plaintiffs do not at this time contend that such circumstances are present in this action.

24. However, numerical goals are permissible even in voluntary affirmative action programs. “[A] permissible goal ... require[s] only a good-faith effort ... to come within a range demarcated by the goal itself and permits consideration of race as a plus factor in any given case while still ensuring that each candidate compete[s] with all other qualified applicants. . . .” *Grutter, supra*, 123 S.Ct. at 2342 (citations omitted) (internal quotes omitted).

25. Developing numerical goals in an effort to reach a critical mass of black representation on faculties and administrations is constitutionally permissible. Reference to such goals in a flexible and contextual way that “remains subject to continuing oversight to assure that it will work the least harm possible to other innocent persons competing for the benefit,” *Grutter, supra*, 123 S.Ct. at 2345, would not amount to unconstitutional racial balancing so long as

“critical mass is defined by reference to the educational benefits that diversity is designed to produce.” *Grutter, supra*, 123 S.Ct. at 2339. “As the Harvard plan described by Justice Powell recognized, there is of course ‘some relationship between numbers and achieving the benefits to be derived from a diverse student body, and between numbers and providing a reasonable environment for those students admitted.’ ‘[S]ome attention to numbers,’ without more, does not transform a flexible admissions system into a rigid quota.” *Id.* at 2343 (citations omitted).

26. Goals for achieving a critical mass of African Americans on the faculties and administrations of the HWIs should be developed, at least in the first instance, by the institutions themselves. This is called for by the Supreme Court’s “tradition of giving a degree of deference to a university’s academic decisions, within constitutionally prescribed limits.” *Grutter, supra*, 123 S.Ct. at 2339 (citations omitted).

HWIs Statewide

27. It is hard to know by what standards to evaluate the small numbers by which black faculty and administrators have increased at the HWIs since 1991. To plaintiffs’ knowledge, the defendants have never established any goals or benchmarks for themselves.

28. Over the eleven-year period from 1991 to 2002 the total number of black full-time faculty members at all the HWIs (not including the community colleges, CSCC and UAB Walker) has increased by 114, from 161 to 275. Statewide report, Attachment 7. The total number of full-time faculty members at the same HWIs was 5,733 in 1991 and 6129 in 2002. Thus the black proportion of full-time faculty members increased from 2.8% in 1991 to 4.5% in 2002. This is a rate of increase of about 0.15% per year. At this rate, it will take 37 years for black representation on the HWI faculties to reach 10% and 137 years to reach 25%.

29. Over the eleven-year period from 1991 to 2002 the total number of black full-time EEO-1 level administrators at the HWIs (not including the community colleges, CSCC and UAB Walker) has increased by 40, from 48 to 88. Statewide report, Attachment 8. The total number of full-time EEO-1 level administrators at the same HWIs was 1,213 in 1991 and 1,225 in 2002. Thus the black proportion of full-time EEO-1 administrators increased from 4.0% in 1991 to 7.2% in 2002. This is a rate of increase of about 0.3% per year. At this rate, it will take 10 years for black representation on the HWI faculties to reach 10% and 60 years to reach 25%.

30. Among the 14 HWI campuses, only one, TSUM has reached “double figures” percentage-wise in black faculty (11.11%); only four others have exceeded 5% (TSU at 9.17%, ASC at 8.11%, UNA at 5.56%, and JSU at 5.19%). Statewide report, Attachment 6. USA (2.56%) and AUM (2.79%) have the lowest percentages of black faculty members. *Id.*

31. Among the 14 HWI campuses, three have reached “double figures” percentage-wise in black EEO-1 administrators. TSUM has reached a commendable 31.82%, ASC has remained at 20% (with only one black EEO-1 employee), and UAH has reached 10.5%. *Id.* UNA is still at the bottom with 2.33%, followed by AU at 3.05%. *Id.*

32. Another problem with both the faculty and EEO-1 numbers is that blacks counted usually are at the lowest ranks/positions. The annual reports do not break out faculty figures by rank.

33. With respect to administrators, plaintiffs believe there are only three black Vice Presidents, Dr. David Wilson, VP for Outreach at AU, Ms. Delois Smith, VP for Student Affairs at UAH, and Dr. Louis Dale, who was just appointed VP for Equity and Diversity at UAB. In the July 30, 2003, news report (Attachment A), Dr. Dale notes that the black community in Birmingham began asking for the appointment of a black Vice President thirty years ago. Some of the HWIs include positions like assistant book store manager in the EEO-1 category.

Plaintiffs will be able to provide more detail when they receive responses to their pending discovery request.

34. There has never been a black President at one of Alabama's HWIs, and there has not been a white President at AAMU or ASU since William Burns Paterson. To plaintiffs' knowledge, there has never been an other-race finalist for a presidential vacancy at any state institution during the term of the Remedial Decree.

35. With exceptions noted below, the advisory committees appointed by the HWI presidents pursuant to the April 3, 2002, order have not been utilized in the aggressive manner contemplated by plaintiffs and the Court. Many committees have been limited in their scope of inquiry to making recommendations about how to spend the court-ordered funds. Left aside has been their most important function, which is to study all the systemic problems contributing to underrepresentation of blacks on faculties and administrations and to recommend the institutional changes needed to correct those problems.

Athens State University

36. At Athens State University (ASC), the total number of black full-time faculty members has increased over the eleven-year period from 1991 to 2002 by 3, from 3 to 6. Statewide report, Attachment 7. The total number of full-time faculty members was 67 in 1991 and 71 in 2002. Thus the black proportion of full-time faculty members increased from 4.48% in 1991 to 8.11% in 2002. This is a rate of increase of about 0.36% per year. At this rate, it will take 5 years for black representation on the ASC faculty to reach 10% and 47 years to reach 25%.

37. ASC has a small faculty of 68, of whom 6 or 8.11% are black. Statewide report, Attachment 7. The ASC advisory committee minutes contain a number of promising recommendations, including stepped up funding for mentoring and other retention activities, intensive recruiting at AAMU and other nearby HBCUs that already have large numbers of black faculty members, and enlisting the support of black churches in the community. ASC 2003 annual report at 17-28.

38. At ASC, the advisory sub-committee on retention and mentoring reports that the African American faculty members and administrators are so few that they are overburdened providing black representation on campus committees, seminars, workshops and other functions. ASC 2003 annual report at 19.

Auburn University

39. At AU, the total number of black full-time faculty members has increased over the eleven-year period from 1991 to 2002 by 27, from 22 to 49. Statewide report, Attachment 7. The total number of full-time faculty members was 1,160 in 1991 and 1,126 in 2002. Thus the black proportion of full-time faculty members increased from 1.90% in 1991 to 4.35% in 2002. This is a rate of increase of about 0.22% per year. At this rate, it will take 26 years for black representation on the AU faculty to reach 10% and 94 years to reach 25%.

40. The 1991 Remedial Decree contained specific instructions for AU with respect to its policies and procedures:

Consistent with the Court's findings of fact, Auburn University shall review its practices and policies respecting the recruitment and employment of African-American faculty. The university shall augment those practices and policies, where necessary, to bring them up to date. The Court directs the university to apply itself with renewed diligence and financial resources to see that a genuine effort exists to increase the number of black faculty. The Court expects to see material improvement in the employment of black faculty at AU

within three years.

787 F.Supp. at 1378. By Fall 1994, AU had increased the number of blacks on its faculty by 14, from 22 to 36, that is from 1.90% to 3.16%. This Court has never indicated whether it considered that increase to be “material improvement.” Given the size of AU’s faculty, it is only incremental. Even so, had AU continued to increase black faculty representation by 5 per year, by 2002 the number would be at least 76, not 49.

41. At AU, the total number of black full-time EEO-1 administrators has increased over the eleven-year period from 1991 to 2002 by 3, from 6 to 9. Statewide report, Attachment 8. The total number of full-time EEO-1 employees was 308 in 1991 and 280 in 2002. Thus the black proportion of full-time EEO-1 employees increased from 1.89% in 1991 to 3.05% in 2002. This is a rate of increase of about 0.11% per year. At this rate, it will take 63 years for black representation on the AU administration to reach 10% and 200 years to reach 25%.

42. Attachment B to these objections contains the comments of African-American members of AU’s advisory committee on the annual reports of AU and other HWIs. These comments raise serious questions about the numbers of African Americans counted as faculty members and administrators and provide specific examples of how the advisory committees are not being allowed to function in the manner contemplated by the April 3, 2002, order. They provide evidence that the annual reports do not include the input of African-American faculty members and administrators and that the HWIs’ claims of significant desegregation progress in themselves perpetuate Alabama’s history of strict white control over higher education.

Auburn University at Montgomery

43. At AUM, the total number of black full-time faculty members has decreased from 8 to 5 over the eleven-year period from 1991 to 2002. Statewide report, Attachment 7. At no time

during this period did the number of black faculty members rise above 9. The total number of full-time faculty members was 193 in 1991 and 179 in 2002. Thus the black proportion of full-time faculty members decreased from 4.15% in 1991 to 2.79% in 2002. At this rate, black representation on the AUM faculty will never reach 10%, much less 25%.

44. At AUM, the total number of black full-time EEO-1 administrators has increased over the eleven-year period from 1991 to 2002 by 1, from 4 to 5. Statewide report, Attachment 8. The total number of full-time EEO-1 employees was 61 in 1991 and 57 in 2002. Thus the black proportion of full-time EEO-1 employees increased from 6.50% in 1991 to 8.77% in 2002. This is a rate of increase of about 0.20% per year. At this rate, it will take 6 years for black representation on the AUM administration to reach 10% and 81 years to reach 25%.

45. AUM's advisory committee appears to have met only three times, all in 2002, and to have taken a very circumscribed view of its duties. The committee appears to have taken little concrete action beyond making a recommendation that each of the five black faculty members and five black administrative staff members receive a \$5,000 stipend from the court-ordered funds.

46. On August 1, 2003, AUM dedicated its new "skyscraper dormitory." See Attachment C. Plaintiffs request that the Court require AUM to report immediately the racial composition of the students who will be housed in the new dormitory this Fall.

Jacksonville State University

47. At JSU, the total number of black full-time faculty members has increased over the eleven-year period from 1991 to 2002 by 5, from 10 to 15. Statewide report, Attachment 7. The total number of full-time faculty members was 274 in 1991 and 289 in 2002. Thus the black proportion of full-time faculty members increased from 3.65% in 1991 to 5.19% in 2002. This is

a rate of increase of about 0.14% per year. At this rate, it will take 34 years for black representation on the JSU faculty to reach 10% and 142 years to reach 25%.

48. At JSU, the total number of black full-time EEO-1 administrators has increased over the eleven-year period from 1991 to 2002 by 2, from 1 to 3. Statewide report, Attachment 8. The total number of full-time EEO-1 employees was 46 in 1991 and 47 in 2002. Thus the black proportion of full-time EEO-1 employees increased from 2.38% in 1991 to 6.38% in 2002. This is a rate of increase of about 0.36% per year. At this rate, it will take 10 years for black representation on the JSU administration to reach 10% and 52 years to reach 25%.

49. JSU appears to have a commendably active and aggressive advisory committee appointed pursuant to the April 3, 2002, order. Its annual report candidly characterizes the low black representation on JSU's faculty and administration as "a self-perpetuating problem." JSU annual report on retention and recruitment of black faculty and administrative staff at 1. Not only does JSU suffer recruiting disadvantages due to relatively low salaries at all Alabama state universities, it must compete with the larger and relatively better funded Alabama universities. *Id.* Unlike these larger institutions with dubious self-perceptions of elite status, JSU has embraced a "grow your own faculty" policy and an active mentoring program for promising students. *Id.* JSU was one of the HWIs who were directed to "devise and implement a program designed to increase the number of African-American individuals serving in positions of important administrative responsibility on their respective campuses." 787 F.Supp. at 1378.

50. The policy options "being investigated" by JSU's advisory committee should be among those put into practice at all the HWIs:

1. compile a list of projected faculty needs within each department for the next 5 years and encourage departments to hire qualified black applicants
2. institute a formal "Grow Our Own Faculty" program that identifies

potential faculty among students

3. plac[e] student workers in areas related to their career choices
4. provide mentors to students
5. purchase recruiting directories for minority doctoral candidates
6. establish a Recruiter/Affirmative Action Officer to recruit black faculty/staff
7. establish a mentoring program for black faculty/staff
8. produce a recruitment brochure targeting blacks
9. actively recruit black graduate students
10. when black faculty/staff leave JSU conduct an exit interview to determine the reasons for leaving.

Id. at 2-3.

51. One committee member proposed that JSU set a goal for black representation on faculty and administration that mirrors the black student representation, 22%. Advisory committee minutes, Dec. 11, 2002. This is another recommendation that ought to be considered seriously by the other HWIs.

52. The same committee member recommended elevating the priority of diversity characteristics among faculty selection criteria when evaluating which candidate is “best qualified.” Advisory committee minutes, Nov. 20, 2002. This is a crucial point all the HWIs should take into account, because traditionally their faculty selection criteria have been developed and applied by a non-diverse faculty who expect candidates to reflect experiences and values like their own.

53. Another exemplary recommendation by the JSU advisory committee is a faculty exchange program with nearby HBCUs, such as Talladega College. *Id.*

Troy State University

54. At
TSU, the total
number of
black full-time
faculty
members has
increased over
the eleven-
year period
from 1991 to
2002 by 12,
from 8 to 20.
Statewide
report,
Attachment 7.
The total
number of
full-time
faculty
members was
182 in 1991
and 218 in

2002. Thus
the black
proportion of
full-time
faculty
members
increased from
4.405% in
1991 to 9.17%
in 2002. This
is a rate of
increase of
about 0.43%
per year. At
this rate, it
will take 2
years for black
representation
on the TSU
faculty to
reach 10% and
37 years to
reach 25%.

55. At TSU, the total number of black full-time EEO-1 administrators has increased over the eleven-year period from 1991 to 2002 by 3, from 0 to 3. Statewide report, Attachment 8. The total number of full-time EEO-1 employees was 9 in 1991 and fell to 5 in 1999, when there were still no black administrators. In 2000, TSU obviously redefined the administrator category, because the total number jumped to 50, dropping to 43 in 2002. 2000 was the first year any black administrators were listed, 4 in that year, or 7.14%. The number of blacks had fallen to 3 in 2002, dropping the black percentage to 6.38%. In other words, it appears that TSU is actually losing ground with respect to black representation in its administration. At this rate, it will never reach 10% black representation, much less 25%.

56. The 1991 Remedial Decree provided:

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.

787 F.Supp. at 1378. There was no material improvement after three years, and there continues to be no improvement. TSU has not complied with this specific order.

57. With respect to the April 3, 2002, order, the TSU Chancellor appointed a systemwide committee to coordinate advisory committees on the three TSU campuses. He appears to have instructed the committees to limit their deliberations to recommending how the court-ordered funds should be spent, and it appears they have done little else. TSU is not in compliance with the April 3, 2002, order.

Troy State University Dothan

58. At TSUD, the total number of black full-time faculty members has increased over the eleven-year period from 1991 to 2002 by 2, from 0 to 2. Statewide report, Attachment 7.

During the five-year period 1997 to 2001, there were still 0 black faculty members. The total number of full-time faculty members was 42 in 1991 and 59 in 2002. Thus the black proportion of full-time faculty members increased from 0% in 1991 to 3.39% in 2002. This is a rate of increase of about 0.31% per year. At this rate, it will take 21 years for black representation on the TSUD faculty to reach 10% and 68 years to reach 25%.

59. At TSUD, the total number of black full-time EEO-1 administrators has increased over the eleven-year period from 1991 to 2002 by 1, from 0 to 1. Statewide report, Attachment 8. TSUD has listed one black administrator in only four of those eleven years. The total number of full-time EEO-1 employees was 8 in 1991 and 12 in 2002. Thus the black proportion of full-time EEO-1 employees increased from 0% in 1991 to 8.33% in 2002. This is a rate of increase of about 0.76% per year. At this rate, it will take 2 years for black representation on the TSUD administration to reach 10% and 22 years to reach 25%. Obviously, however, this improvement “rate” is deceptive, since it involves a single black administrator over a short number of years.

Troy State University Montgomery

60. At TSUM, the total number of black full-time faculty members has increased over the eleven-year period from 1991 to 2002 by 3, from 1 to 4. Statewide report, Attachment 7. The total number of full-time faculty members was 30 in 1991 and 36 in 2002. Thus the black proportion of full-time faculty members increased from 3.33% in 1991 to 11.11% in 2002. This is a rate of increase of about 0.71% per year. At this rate, it will take 20 years for black representation on the TSUM faculty to reach 25%.

61. At TSUM, the total number of black full-time EEO-1 administrators has increased over the eleven-year period from 1991 to 2002 by 6, from 1 to 7. Statewide report, Attachment 8. However, TSUM has listed only zero or one black administrator during the period 1993 to 1999

when the total number of administrators listed was 6 or less. The total number of full-time EEO-1 employees was 22 in 1991 and 22 in 2002. There appears to have been changes in the way TSUM categorizes administrators. Using the expanded category, the black proportion of full-time EEO-1 employees increased from 4.55% in 1991 to 31.82% in 2002. This is a rate of increase of about 2.48% per year. Although the numbers are relatively small, and there are questions about what job classifications have been included in the count, TSUM's experience may demonstrate that progress in black representation in the campus administration can be made much more rapidly than what has been reported at the other HWIs.

University of Alabama

62. At UA, the total number of black full-time faculty members has increased over the eleven-year period from 1991 to 2002 by 22, from 24 to 44. Statewide report, Attachment 7. The total number of full-time faculty members was 918 in 1991 and 907 in 2002. Thus the black proportion of full-time faculty members increased from 2.61% in 1991 to 4.85% in 2002. This is a rate of increase of about 0.20% per year. At this rate, it will take 26 years for black representation on the UA faculty to reach 10% and 101 years to reach 25%.

63. At UA, the total number of black full-time EEO-1 administrators has increased over the eleven-year period from 1991 to 2002 by 2, from 3 to 5. Statewide report, Attachment 8. The total number of full-time EEO-1 employees was 124 in 1991 and 87 in 2002. Thus the black proportion of full-time EEO-1 employees increased from 2.42% in 1991 to 5.75% in 2002. This is a rate of increase of about 2 black administrators per decade or 0.30% per year. At this rate, it will take 14 years for black representation on the UA administration to reach 10% and 64 years to reach 25%.

64. UA was one of the HWIs directed by the 1991 Remedial Decree to "devise and

implement a program designed to increase the number of African-American individuals serving in positions of important administrative responsibility on their respective campuses.” 787

F.Supp. at 1378. Not only has the total number of black EEO-1 administrators increased by only two in eleven years, UA has yet to appoint an African American to a position of Vice President or higher. UA still has only one African-American dean, Dr. Ike Adams, who has returned to the same position in the School of Social Work he held during the 1990 trial. UA can try to deluge the Court with selected national statistics and endless summaries of paper programs, but it cannot evade the fundamental message of its bottom-line numbers: not progress but noncompliance.

65. UA’s repeated assertions of good faith efforts by its President and Board of Trustees are belied by these numbers. A dramatic illustration of this lack of commitment to desegregation at the highest levels of UA was provided by their recent refusal to appoint an African American head football coach. Regardless of one’s view about the rank of football coach among academic positions, no one can deny that the head coach of the UA football team is one of the most important, most visible leadership positions in the State of Alabama. UA had an opportunity to send a message about true inclusion of African Americans in its university “family” that appointment to no other position, including, perhaps, President, could send.

66. Sylvester Croom, an African-American native of Tuscaloosa and UA graduate who was an All-American player under Coach Paul Bryant, an assistant coach at UA from 1977-86, and a successful NFL assistant coach for sixteen years, was passed over for a young white NFL assistant coach who was less qualified than Croom for the head coach position by every conceivable objective and subjective standard, as the Montgomery Advertiser reported on June 29, 2003. See Attachment D. The selection process drew national attention. USA Today emphasized the desegregation message Coach Croom’s selection would have made by invoking

the memory of Governor Wallace's stand in UA's door and by pointing out that he would be the first black head football coach in the Southeastern Conference. See Attachment E. Coach Croom has said publicly that he had the support of the Athletic Director, former players, fans, "and even some people within the administration. . . ." See Attachment F. Someone higher up made the decision to hire another white coach. *Id.* UA did not need an "affirmative action" plan or a desegregation decree from this Court to do the right thing in this case. The African-American candidate was the best qualified person. There remains a clear policy at UA that the most important leadership positions must remain lily white.

67. The response of UA's Black Faculty and Staff Association, Attachment G, demonstrates how far UA is from achieving a critical mass of African Americans on its faculty and administration. It is a composite of complaints from many BFSA members about systemic racial discrimination at UA: the denial of training and professional development opportunities, the lack of mentors for black employees in the lower administrative ranks, the continued absence of "a climate of inclusiveness," the absence of genuine commitment to the recruitment and retention of black faculty members, and, more than anything else, the lack of substantial progress placing African Americans in important administrative positions. "The campus climate for African-Americans at The University of Alabama is tantamount to a malignant cancerous growth that is impacting the health and learning experiences for many students, faculty and staff." *Id.* at 4. The bottom line of the BFSA comments emphasizes the damage being done by UA's continued noncompliance with the 1991 Remedial Decree: "It is a known fact until there are high-level [African-American] administrators in positions with decision-making authority, there will be very little progress made in changing the culture and climate at The University of Alabama." *Id.* at 3-4.

University of Alabama at Birmingham

68. At UAB, the total number of black full-time faculty members has increased over the eleven-year period from 1991 to 2002 by 41, from 44 to 85. Statewide report, Attachment 7. The total number of full-time faculty members was 1,495 in 1991 and 1,874 in 2002. Thus the black proportion of full-time faculty members increased from 2.94% in 1991 to 4.54% in 2002. This is a rate of increase of about 0.15% per year. At this rate, it will take 36 years for black representation on the UAB faculty to reach 10% and 136 years to reach 25%.

69. At UAB, the total number of black full-time EEO-1 administrators has increased over the eleven-year period from 1991 to 2002 by 5, from 16 to 21. Statewide report, Attachment 8. The total number of full-time EEO-1 employees was 246 in 1991 and 226 in 2002. Thus the black proportion of full-time EEO-1 employees increased from 6.50% in 1991 to 9.29% in 2002. This is a rate of increase of about 5 black administrators per decade or 0.25% per year. At this rate, it will take 3 years for black representation on the UAB administration to reach 10% and 63 years to reach 25%.

70. Scholarly research indicates that, because it is located in a large urban area with a sizeable black middle class, UAB is particularly well situated to attract and retain black faculty members and administrators:

For policy makers who seek to increase the presence of black faculty in postsecondary institutions, our findings suggest important ways that the academic labor market operates differently for black scholars than for their white counterparts. First, we need to recognize that the black academic labor pool appears strongly directed toward large black population centers. Further research will be required to determine the mix of “pull” and “push” factors that produces this result. Is it attraction to areas where a sizable black population creates viable black social institutions and black residential communities? Or do persisting barriers to workplace and residential integration, and an accompanying sense of feeling unwelcome, draw black faculty away from some academic institutions and their surrounding locales? If there are strong forces attracting black faculty to certain areas, then greater integration of black faculty may require efforts to

reproduce aspects of the working conditions and local environments found at HBIs. The alternative mitigating the effects of pervasive residential segregation by race poses an even more daunting challenge.

Second, differences among fields in the rate at which black doctoral recipients assume faculty positions cannot be attributed to the level of opportunity for non-academic employment, which has a barely discernable influence on the odds that black faculty will hold faculty positions. Black scientists and engineers are not underrepresented because they have been lost to the non-academic job market. Nor can their relative absence in some academic fields be attributed simply to an accumulation of educational and career disadvantages, such as enrollment in less prestigious doctoral programs which provide less effective introduction to informal networks of scholarship and “sponsored mobility” into academic careers. Although black scientists and engineers tend to have less prestigious doctoral credentials and less work experience beyond the doctorate, controlling for these factors does not alter the pattern of black faculty underrepresentation across fields.

Stephen Kulis, Heather Shaw and Yinong Chong, *External Labor Markets and the Distribution of Black Scientists and Engineers in Academia*, 71 JOURNAL OF HIGHER EDUCATION 187-222 (2000).

University of Alabama in Huntsville

71. At UAH, the total number of black full-time faculty members has increased over the eleven-year period from 1991 to 2002 by 2, from 7 to 9. Statewide report, Attachment 7. The total number of full-time faculty members was 270 in 1991 and 287 in 2002. Thus the black proportion of full-time faculty members increased from 2.59% in 1991 to 3.14% in 2002. This is a rate of increase of about 0.05% per year. At this rate, it will take 137 years for black representation on the UAH faculty to reach 10% and 437 years to reach 25%.

72. According to UAH’s annual report at pages 8-9, “[t]he low availability of black doctorates (particularly in the science, mathematics, and engineering disciplines), the unfavorable perceptions held by some individuals about the past and present racial climate in Alabama, and the constant struggle in this state to obtain adequate funding from the Alabama legislature for higher education, continue to present major challenges to the University’s efforts

to increase the number of blacks in the faculty ranks.” All three of these “major challenges” are directly traceable to the history of racial segregation and discrimination. Plaintiffs have asked this Court to provide relief from the vestiges of segregation in all three areas. Plaintiffs continue to contend that the State has not taken every educationally sound and practicable step to eradicate these vestiges. The question at UAH and at all the HWIs is whether this Court can relinquish jurisdiction over these provisions in its Remedial Decree when clearly so much remains to be done.

73. At UAH, the total number of black full-time EEO-1 administrators has increased over the eleven-year period from 1991 to 2002 by 5, from 1 to 6. Statewide report, Attachment 8. The total number of full-time EEO-1 employees was 68 in 1991 and 57 in 2002. Thus the black proportion of full-time EEO-1 employees increased from 1.47% in 1991 to 10.53% in 2002. This is a rate of increase of about 0.82% per year. At this rate, it will take 18 years for black representation on the UAH administration to reach 25%.

74. UAH is one of the HWIs singled out to develop programs to increase black administrators. 787 F.Supp. at 1378. In terms of numbers, UAH has made commendable progress, and it has appointed one African-American Vice President.

University of Montevallo

75. At UM, the total number of black full-time faculty members has increased over the eleven-year period from 1991 to 2002 by 4, from 1 to 5. Statewide report, Attachment 7. The total number of full-time faculty members was 134 in 1991 and 131 in 2002. Thus the black proportion of full-time faculty members increased from 0.75% in 1991 to 3.82% in 2002. This is a rate of increase of about 0.28% per year. At this rate, it will take 22 years for black representation on the UM faculty to reach 10% and 76 years to reach 25%.

76. UM was one of the HWIs singled out in the Remedial Decree to demonstrate material progress in black representation on its faculty within three years. 787 F.Supp. at 1378. In the third year of the Decree, the number of black faculty members jumped from 1 to 5, and it has remained at 5 ever since.

77. At UM, the total number of black full-time EEO-1 administrators has decreased over the eleven-year period from 1991 to 2002 by 2, from 2 to 0. Statewide report, Attachment 8. Since 1999 there have been no black EEO-1 employees at all. The total number of full-time EEO-1 employees was 30 in 1991 and 24 in 2002. At this rate, black representation on the UM faculty will never reach 10%, much less 25%.

University of North Alabama

78. At UNA, the total number of black full-time faculty members has increased over the eleven-year period from 1991 to 2002 by 3, from 8 to 11. Statewide report, Attachment 7. The total number of full-time faculty members was 200 in 1991 and 198 in 2002. Thus the black proportion of full-time faculty members increased from 4.00% in 1991 to 5.56% in 2002. This is a rate of increase of about 0.14% per year. At this rate, it will take 32 years for black representation on the UNA faculty to reach 10% and 139 years to reach 25%.

79. At UNA, the total number of black full-time EEO-1 administrators has not increased over the eleven-year period from 1991 to 2002. There is still only one black administrator, although the number increased to two from 1996 to 2000. Statewide report, Attachment 8. The total number of full-time EEO-1 employees was 14 in 1991 and 43 in 2002. Thus the continuing presence of a solitary black EEO-1 employee caused the representation rate to drop from 7.14% to 2.33%. At this negative rate, black representation in the UNA administration will never reach 10%, much less 25%.

80. UNA was one of the HWIs singled out in the Remedial Decree to demonstrate material progress in black representation in important administrative positions within three years. 787 F.Supp. at 1378. UNA remains in total noncompliance with this injunction.

University of South Alabama

81. At USA, the total number of black full-time faculty members has decreased over the eleven-year period from 1991 to 2002 by 3, from 20 to 17. Statewide report, Attachment 7. The total number of full-time faculty members was 673 in 1991 and 664 in 2002. Thus the black proportion of full-time faculty members declined from 2.97% in 1991 to 2.56% in 2002. At this negative rate, black representation on the USA faculty will never reach 10%, much less 25%.

82. At USA, the total number of black full-time EEO-1 administrators has increased over the eleven-year period from 1991 to 2002 by 12, from 12 to 24. Statewide report, Attachment 8. The total number of full-time EEO-1 employees was 243 in 1991 and 264 in 2002. Thus the black proportion of full-time EEO-1 employees increased from 4.94% in 1991 to 9.09% in 2002. This is a rate of increase of about 0.38% per year. At this rate, it will take 3 years for black representation on the USA administration to reach 10% and 42 years to reach 25%.

University of West Alabama

83. At UWA, the total number of black full-time faculty members has decreased over the eleven-year period from 1991 to 2002 by 2, from 5 to 3. Statewide report, Attachment 7. The total number of full-time faculty members was 95 in 1991 and 87 in 2002. Thus the black proportion of full-time faculty members declined from 5.26% in 1991 to 3.45% in 2002. At this negative rate, black representation on the UWA faculty will never reach 10%, much less 25%.

84. UWA was one of the HWIs singled out in the Remedial Decree to demonstrate material progress in black representation on its faculty within three years. 787 F.Supp. at 1378. UWA

remains in total noncompliance with this injunction.

85. At UWA, the total number of black full-time EEO-1 administrators has increased over the eleven-year period from 1991 to 2002 by 1, from 1 to 2. Statewide report, Attachment 8. The total number of full-time EEO-1 employees was 20 in 1991 and 38 in 2002. Thus the black proportion of full-time EEO-1 employees increased from 5.00% in 1991 to 5.26% in 2002. This is a rate of increase of about 0.02% per year. At this rate, it will take 237 years for black representation on the UWA administration to reach 10% and 987 years to reach 25%.

86. There are no black academicians serving on UWA's advisory committee appointed pursuant to the April 3, 2002, order. The only black UWA employees on the committee are the campus chief of police and the assistant director of auxiliary services (i.e., assistant bookstore manager). UWA 2003 annual report Form CoP-4. The only black faculty members are Dr. Marvin Grant, Visiting Associate Professor of Education, and Ms. Wanda Jones, English Instructor. Dr. Grant is being paid in whole or in part with "soft" funds ordered by this Court, and he is not in a tenure track position.

87. Judge Tammy Montgomery and other black professionals employed off campus who are serving on the advisory committee can provide much needed assistance to UWA in efforts to recruit and to retain black academicians. Unfortunately, the committee has met only once. The minutes of that meeting are included in the annual report. Those minutes list four reasons given by UWA's Provost for the university's failure to attract and keep black faculty and staff: a lack of candidates, Livingston's rural location, the de facto segregated public school system and a noncompetitive salary scale. Sumter County's population is 73.2% black, according to the 2000 census, and the public schools are all black. White residents send their children to school in Demopolis and Meridian. So, the question is, how is UWA able to attract **white** faculty, and

why do these factors make it more difficult to attract black professionals?

88. The advisory committee minutes point to a more likely explanation for UWA's noncompliance. The Provost expressed concern "that most of UWA's search committees are composed of white faculty and staff." Obviously this is the case, since there are no black professionals employed in tenure track positions. The Provost indicated that he would welcome participation on search committees by black professionals off campus, and plaintiffs agree that this is an essential step to any progress.

Motion To Modify or Amend the Remedial Decree

89. Plaintiffs move that the Court exercise its retained authority to modify or amend the Remedial Decree "as needed to guarantee the elimination of any remaining vestiges of discrimination within Alabama's system and units of public higher education," 787 F.Supp. at 1381-82, by requiring 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.

90. Plaintiffs further pray 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.

91. Under controlling Eleventh Circuit precedent, injunctions such as the Remedial Decree "are to be enforced through the trial court's civil contempt power." *Reynolds v. McInnes*, ___ F.3d ___, ___, 2003 WL 21692337 (11th Cir., July 22, 2003), p. *5 (citations omitted).

Accordingly, plaintiffs also request an order requiring the defendants to show cause why they should not be held in civil contempt for failure to comply with the provisions of the Remedial Decree relating to eradicating vestiges of *de jure* segregation from the faculties and administrations of the defendant HWIs.

Respectfully submitted,

SARAH L. THOMPSON
2422 Sixth Street
Tuscaloosa, AL 35401
(205) 345-3430
fax (205) 345-3444

DEMETRIUS NEWTON
P.O. Box 2525
Birmingham, AL 35202
(205) 254-2369
fax: (205) 324-0511

JAMES U. BLACKSHER
710 Title Bldg.
300 North Richard Arrington, Jr., Blvd.
Birmingham, AL 35203-3352
(205) 322-1100
fax (205) 322-1125

SUSAN J. WATTERSON
2610 19th Street South
Birmingham, Alabama 35209
(205) 871-3980
fax: (205) 871-4725

Attorneys for the Knight-Sims plaintiffs

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing document was served upon the following counsel of record on August 22, 2003, by first class mail or by hand.

Hon. Carlos A. González, Court Monitor, P.O. Box 450888, Atlanta, GA 30345;

JSU: R.M. Woodrow, P.O. Box 2286, Anniston, AL 36202;

ASU: Fred D. Gray, Stanley F. Gray, P.O. Box 830239, Tuskegee, AL 36083-0239;

Solomon S. Seay, Jr., P.O. Box 210998, Montgomery, AL 36121-9998;

Armand Derfner, 116 Church St., 3d Floor, P.O. Box 600, Charleston, SC 29402;

UA: C. Glenn Powell, Norma Lemley, The Office of Counsel, The University of Alabama System, 1818 University Blvd., Tuscaloosa, AL 35401;

SBE and Postsecondary Chancellor: Jeffrey A. Foshee, Edward M. George, 900 South Perry

Street, Suite B, Montgomery, AL 36104;

AU: David Boyd, P.O. Box 78, Montgomery, AL 36101;

Edward S. Allen, M. Stanford Blanton, John Russell Campbell, P.O. Box 306,
Birmingham, AL 35201;

A&M: Joe R. Whatley, Jr., Jr., Peter H. Burke, P.O. Box 10647, Birmingham, AL 35202-0647;

Braxton Schell, Jr., 1125 Financial Center, 505 N. 20th Street, Birmingham, AL 35203-
4601;

TSU: William F. Murray, Jr., 420 North 20th Street, Suite 3000, Birmingham, AL 35203;

William F. Gardner, William K. Thomas, P.O. Box 830612, Birmingham, AL 35283-
0612;

UWA:

Michael G. Kendrick, Mark T. Waggoner, 2101 Sixth Ave. North, Suite 700,
Birmingham, AL 35203;

US: Jeremiah Glassman, Pauline Miller, Educational Opportunities Litigation Section, U.S.
Dept. of Justice, P.O. Box 65958, Washington, DC 20035-5958;

SBE: Reginald L. Sorrells, Office of General Counsel, State Dept. of Education, Room 5103
Gordon Persons Bldg., P.O. Box 302101, Montgomery, AL 36130-2101;

UM: Carl E. Johnson, Jr., Bishop, Colvin & Johnson, P.O. Box 370404, Birmingham, AL
35237;

STATE:

Robert D. Hunter, Deputy Attorney General, 210 Inverness Center Drive, Birmingham,
AL 35242;

USA: Jean Walker Tucker, University Attorney, University of South Alabama, 131 Admin.
Bldg., Mobile, AL 36688;

UNA: Thomas M. Lovett, University Counsel, UNA Box 5023, Florence, AL 35632-0001.

ATTORNEY FOR PLAINTIFFS