

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

THE COALITION FOR EQUITY AND EXCELLENCE
IN MARYLAND HIGHER EDUCATION, INC.,
KELLY THOMPSON,
2320 Holyoke Road, Baltimore, MD 21237-1456
Baltimore County
DR. CHRIS HEIDELBERG,
3609 Grantley Road, Baltimore, MD 21215-7341
Baltimore City
DAMEIN MONTGOMERY
4810 Lanier Ave., Baltimore, MD 21215-6502
Baltimore City

Plaintiffs,

Civil No. MJG-06-2773

FOURTH AMENDED COMPLAINT

V.

MARYLAND HIGHER EDUCATION COMMISSION, ET AL.,

Defendants.

FOURTH AMENDED COMPLAINT

INTRODUCTION

1. This is an action seeking equitable relief to require the State of Maryland to honor its obligations to its historically black colleges and universities (HBCUs) as required by the 2000 Partnership Agreement between Maryland and the United States Department of Education Office of Civil Rights (“Partnership Agreement”), Title VI of the Civil Rights Act of 1964, the Equal Protection Clause of the Fourteenth Amendment, *United States v. Fordice*, 505 U.S. 717 (1992), and any other applicable federal and state law.
2. Throughout its history and up to the present day, Maryland has maintained a racially segregated system of higher education and has systematically and purposefully engaged in a pattern and practice of racial discrimination that has prevented HBCUs from achieving parity with their traditionally White institution (TWI) counterparts.
3. In 2000, Maryland and the United States Department of Education Office of Civil Rights (“OCR”) entered into a Partnership Agreement requiring Maryland to disestablish its segregated system of higher education. Specifically, OCR found that Maryland was deficient in nine areas, including unnecessary program duplication at the TWIs, campus climate and environment, recruitment and admissions, retention and graduation, diversity of faculty and staff and governing and advisory boards, and enhancement of the HBCUs.
4. In 2005, Defendants issued a report claiming that they had met all of their obligations under the Partnership Agreement. In reality, Defendants have failed to meet virtually every one of their obligations under the Partnership Agreement and their constitutional obligations under the Equal Protection Clause and other federal and state law. Plaintiffs now bring this action

seeking to enjoin Defendants from continuing their pattern and practice of discrimination against Maryland's HBCUs. Plaintiffs seek to make the state's HBCUs whole and to develop complete parity between with the state's TWIs within the next five years. Unless this Court grants Plaintiffs equitable relief, Plaintiffs will continue to suffer state-sponsored discrimination in the Maryland system of higher education.

JURISDICTION

5. Pursuant to 28 U.S.C. § 1331, 1343 (a)(3) and 1367(a), the Plaintiffs seek declaratory and injunctive relief for deprivations under color of state law of their federal civil rights under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.

VENUE

6. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b) because all of the events and omissions giving rise to Plaintiffs' claims occurred in the State of Maryland. In addition, all of the named plaintiffs reside in this State.

PARTIES

Plaintiffs

7. Plaintiff, The Coalition for Equity and Excellence in Maryland Higher Education, Inc., is a non-stock Maryland corporation, with its primary place of business in Baltimore, Maryland.
8. The Coalition's mission, as stated in its articles of incorporation, is to "ensure equity and excellence in higher education." The Coalition engages in community organizing and awareness campaigns on higher education issues, providing services and support to state funded HBCUs.

9. The Coalition investigates disparities between TWIs and HBCUs, conducts research, compiles data, and performs analysis of funding equity in Maryland higher education institutions.
10. The Coalition participates in advocacy for educational parity and has supported and testified about legislative initiatives within the state.
11. Members of the Coalition include, but are not limited to, alumni of public HBCUs in Maryland.
12. All members of the Coalition are impacted by Defendants' discrimination with respect to higher education in Maryland and wish to enforce their rights under the Equal Protection Clause of the Fourteenth Amendment and other applicable laws.
13. Plaintiff David J. Burton is an alumnus of Morgan State University and is the President of Plaintiff Coalition. He is a member of the board of directors of a number of corporations, including the National Minority Manufacturing Institute.
14. Plaintiff Rashaan Simon is a student at Morgan State University.
15. Plaintiff Muriel Thompson is a doctoral student at Morgan State University.
16. Plaintiff J. S. is a high school student and a potential HBCU attendee.
17. Plaintiff Anthony Robinson is an alumnus of Morgan State University and is President of the Minority Business Enterprise Legal Defense & Education Fund.
18. Plaintiff Kelly Thompson is an alumna of Coppin State University and a graduate student at the University of Maryland, Baltimore.

19. Plaintiff Dr. Chris Heidelberg is an alumnus of Morgan State University and is employed by the U.S. Social Security Administration.
20. Plaintiff Damein Montgomery is a student at Bowie State University.

Defendants

21. Defendant Maryland Higher Education Commission (“MHEC”) is an agency and instrumentality of, and created by, Defendant State of Maryland.
22. As an agency and instrumentality of the State of Maryland, MHEC shall: a) “ensure that the State Plan for Higher Education complies with the State’s equal educational opportunity obligations under State and federal law, including Title VI of the Civil Rights Act,” Md. Code Ann. Educ. § 11-105(b)(2)(ii); b) “assure that courses and programs offered are within the scope of the approved missions of the regional higher education centers,” Md. Code Ann. Educ. § 11-105(d)(1)(ii)(4); and c) “develop plans for the desegregation of Maryland institutions and the enhancement of HBCUs, and report to the Governor on the state’s compliance with such desegregation and equal education opportunity plans.” *See* Md. Code Ann. Educ. § 11-105(f).
23. Defendant Kevin M. O’Keefe is the Chairman of MHEC, and is sued in his official capacity.
24. Defendant James E. Lyons, Sr., is Secretary of Higher Education of the State of Maryland, and is sued in his official capacity.
25. In his official capacity, the Secretary of Higher Education must select and direct the staff of MHEC and ensure the implementation of MHEC policies and decisions. *See* Md. Code Ann. Educ. § 11-104(b)(1).

26. The Secretary of Higher Education must “evaluate and report annually to the Governor” and “perform other duties assigned by the Governor.” Md. Code Ann. State Gov’t § 9-1406(h)(3)-(4).
27. Defendant Martin O’Malley is the Governor of the State of Maryland, and is sued in his official capacity.
28. The Governor is the only official of Maryland that can include an appropriation in an annual budget bill. Md. Const. Art. 3, § 52. Although the legislature can reduce appropriations in an annual budget bill, it may not add or increase the amount of appropriations except for those funding the legislative or judicial branches.
29. Defendant State of Maryland receives federal funding for its higher education system including student financial aid and research grants.

FACTS GIVING RISE TO CAUSE OF ACTION

Maryland’s History of Racially Segregated Higher Education

30. Throughout its history, Maryland has systematically engaged in policies and practices that established and perpetuated a racially segregated system of higher education.
31. Maryland first instituted its system of public higher education in 1807 by establishing the University of Maryland at Baltimore. This was a White-only institution.
32. Maryland subsequently established four other White-only, public institutions of higher education: the University of Maryland, established in 1865; Towson University, established

- in 1866; Frostburg State University, established in 1898; and Salisbury State University, established in 1922.
33. The state began its dual-system by assuming control of The Baltimore Normal School, an all Black teacher's school now known as Bowie State University. This was the beginning of Maryland's segregated system of higher education.
 34. The State of Maryland had to provide educational opportunities for Black students to qualify for federal land-grant funds. Therefore, the state acquired Princess Anne Academy in 1919 as a land-grant institution for Black students who were not allowed to enroll at the White-only Maryland Agricultural College at College Park, the state's main land-grant institution.¹ Princess Anne Academy is now known as University of Maryland Eastern Shore (UMES).
 35. The state continued to invest in a segregated higher education system. In 1933, the Maryland legislature passed a statute creating partial scholarships "for Negro students who may desire to take professional courses or other work not given at the Princess Anne Academy" to attend private, all-Black Morgan College² in Baltimore or other institutions outside of the State.
 36. In response to this growing college-bound Black population, Maryland purchased Morgan College, now known Morgan State University, in 1939.

¹ UMES was originally founded in 1886 by the Delaware Conference of the Methodist Episcopal Church. The State of Maryland began a partnership with the university in 1919 to create a Maryland institution for Black students. UMES finally became a Maryland State College in 1970.

² Morgan State University was founded in 1867 as the Centenary Biblical Institute. Maryland purchased the school to provide more college opportunities for Black students.

37. In 1954, the United States Supreme Court issued its decision in *Brown v. Board of Educ. of Topeka, Shawnee County, Kan.*, 347 U.S. 483 (1954), holding that segregated school systems violate the Equal Protection Clause of the Fourteenth Amendment. At the time of the decision, Maryland operated a segregated, dual-higher education system. A marginal number of Black students were admitted to TWIs prior to *Brown*. They were only eligible for admission if the degree courses sought were not offered at one of the state's HBCUs.
38. Following *Brown*, Maryland did nothing more than lift the rule excluding Black students from White schools.
39. In response to the Civil Rights Act of 1964, Maryland ended *de jure* segregation in its public accommodations. Black Students were able to utilize libraries, restaurants and housing once closed because of skin color. Black enrollment in TWIs, however, remained minimal.
40. In 1965, however, rather than encourage integration at Morgan State, Maryland established University of Maryland Baltimore County ("UMBC"). UMBC was a complete duplication of Morgan State's entire institution, not just its programs.
41. OCR notified the State of Maryland in 1969 that it was one of ten states operating a racially segregated system of higher education in violation of Title VI and applicable federal law. See Maryland's Report and the Partnership Agreement Between the State of Maryland and the United States Department of Education, Office for Civil Rights at 3 (2000) [hereinafter, "Partnership Agreement"]. OCR unsuccessfully sought an effective plan for dismantling the

- dual system and eliminating the vestiges of segregation over the next few decades. *See* Historically Black Colleges and Universities and Higher Education Desegregation (1991).³
42. In 1974, the Maryland Council for Higher Education appointed a task force, known as “the Cox Task Force,” “to propose ways of enhancing the role and image of the predominantly black public colleges in the State.” Enhancement of Maryland’s Predominantly Black Collegiate Institutions: Consultants’ Report to the Desegregation Task Force of the State Board for Higher Education (1981). The proposal failed to satisfy the federal Title VI requirements and Maryland’s segregated higher education system jeopardized the state’s ability to collect federal funds.
43. In 1976, OCR advised Maryland that it was still not in compliance with its obligations under federal law with regard to higher education. OCR threatened to institute an enforcement action which would terminate Maryland’s federal financial assistance under Title VI, 42 U.S.C. § 2000d, if the State did not take steps to disestablish the remnants of racial segregation in its higher education system.
44. Maryland sought and was granted an injunction to prevent OCR from proceeding. The injunction was granted because OCR’s standards of evaluation lacked certainty, not because Maryland had complied with the Equal Protection Clause. *See Mandel v. U.S. Dep’t of Health, Educ. & Welfare*, 411 F. Supp. 542, 544 (D. Md. 1976); *see also* Partnership Agreement at 3.

³ Available at <http://www.ed.gov/about/offices/list/ocr/docs/hq9511.html>.

45. Private litigation also pressed Maryland to end segregation and racially discriminatory practices at public higher education institutions. *Adams v. Richardson*, 480 F.2d 1159 (D.C. Cir. 1973), required the Department of Health, Education and Welfare to establish criteria for states to follow in desegregating higher education systems and identified six key criteria that have formed the foundation for each desegregation plan Maryland has proposed and failed to implement since the late 1970s. *See Revised Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education*, 43 Fed. Reg. 6658 (Feb. 15, 1978).
46. The *Adams* criteria require states to disestablish the structure of the dual system by defining the mission of each institution on a basis other than race; strengthen the role of HBCUs by enhancing the quality and range of their program offerings and eliminating unnecessary program duplication among TWIs and HBCUs in geographic proximity; reduce racial disparities in college-going, retention and graduation rates; expand mobility between two- and four-year institutions; increase other-race enrollments at TWIs and HBCUs; equalize the graduation rates for Black and White state residents who graduate from the same state, public institutions; and increase the diversity of faculties and staff of institutions, as well as governing boards, agencies and their staffs. *See Southern Education Foundation, Miles to Go: Maryland 5* (1999).
47. During the 1980's, OCR found that, of the ten states originally identified as non-compliant in 1969, eight of them—Arkansas, Delaware, Georgia, North Carolina, Missouri, Oklahoma,

South Carolina and West Virginia—were in compliance with Title VI because they had implemented OCR-approved desegregation plans that followed the Adams criteria.

48. Maryland and Mississippi were the two remaining states not in compliance because they continued to operate segregated higher education systems.
49. Because of Maryland’s failure to implement an adequate desegregation plan, OCR resumed negotiations with Maryland to develop and implement a new desegregation plan in 1982. Maryland and OCR entered into a consent decree ending the previous litigation and promising that the state would move forward with desegregation of its dual education system, still in place more than 30 years after *Brown*. See Partnership Agreement at 3.
50. In 1985, OCR and Maryland agreed on another statewide desegregation plan in order to bring Maryland into compliance with Title VI. It was a five-year plan designed to “foster equal educational opportunity in Maryland’s public institutions of higher education.” Partnership Agreement at 3. At the end of the five years, OCR was to determine whether or not Maryland had disestablished its segregated system of higher education.
51. The goals of the 1985 desegregation plan were (1) the “continued integration” of Maryland TWIs through “enrollment goals, recruitment measures, retention efforts and affirmative action plans;” and (2) “the enhancement of HBCUs to ensure that they are comparable and competitive with TWIs with respect to capital facilities, operating budgets, and new academic programs.” Partnership Agreement at 3. Maryland was to submit yearly progress reports regarding these goals.

52. Maryland submitted the last of its yearly progress reports in 1991 outlining the results of its desegregation plan. *See* Partnership Agreement at 3. OCR only once commented on Maryland's progress in implementing the 1985 plan. *See* Partnership Agreement at 20.
53. OCR never officially responded, and therefore Maryland was never found to have complied with Title VI desegregation requirements.
54. In 1992, the Supreme Court of the United States issued its opinion in *Fordice*, finding that Mississippi was in violation of the Equal Protection Clause of the Fourteenth Amendment due to its failure to disestablish its segregated system of higher education. The case highlighted the complex responses states must take in order to dismantle segregated education systems.
55. In 1994, OCR issued a Notice of Application of Supreme Court Decision in 59 Fed. Reg. 4271 (January 31, 1994) applying the *Fordice* standards to all pending evaluations of formerly *de jure* segregated systems of higher education. The OCR Notice purported to "strictly scrutinize . . . any . . . actions that might impose undue burdens on [B]lack students, faculty, or administrators or diminish the unique roles of those institutions." Partnership Agreement at 20. Maryland, the only other state not in compliance with the 1969 OCR order, lacked an OCR approved plan to remove the vestiges of their dual system.
56. In 1998, MHEC issued its statewide plan for postsecondary education entitled, "Educating for the 21st Century." The goals of this plan were 1) ethnic diversity of doctoral candidates in faculty and administrative positions at all institutions; 2) promotion of campus climates accepting of diverse groups; 3) multicultural diversity on Maryland's campuses; 4)

- recruitment and retention of minority students, faculty, and staff; and 5) salary equity amongst gender for faculty and staff. *See* Partnership Agreement at 9. The Educating for the 21st Century plan, however, did not directly address the specific needs of HBCUs or the state's obligation under Title VI and *Fordice*.
57. Also in 1998, by order of the Maryland General Assembly, a task force was formed (the "Larson Task Force") to make recommendations to the Governor regarding changes to Maryland's system of higher education. Among the changes the task force recommended was a streamlining of the process of approving new academic programs. In accordance with the findings of the Larson Task Force, the process of approving new academic programs is now subject to the requirement that the new programs are consistent with the institution's mission and that other institutions are given the opportunity to object. *See* Larson Task Force, Report of the Task Force to Study the Governance, Coordination, and Funding of the University System of Maryland (1999).
58. In 1999, never certifying Maryland's compliance with Title VI under previous desegregation plans, OCR approached Maryland again to enter into a partnership aimed at bringing Maryland into compliance with its constitutional and federal statutory obligations.
59. MHEC, OCR and the Governor met on October 25, 1999 to discuss Maryland's failure to comply with the mandated desegregation orders since *Brown*.
60. MHEC led site visits to Maryland's HBCUs. From the campus visits, Maryland and OCR officials "recongize[d] that the enhancement of the HBCUs [would] remain an important concern." Partnership Agreement at 21. Enhancements include at a minimum uniqueness of

- HBCUs programmatic missions, development of research infrastructure, improvement of physical facilities and surrounding public infrastructure, funding to support campus life.
61. This meeting between the Governor, OCR, and MHEC led to the Partnership Agreement.
 62. According to this “partnership approach,” OCR’s focus was on 1) “[e]nhancing Maryland’s four HBCUs in order to improve educational opportunities for [Black] students who attend them and to increase their attractiveness to students of all races, especially [W]hite students, including addressing the problem of unnecessary academic program duplication among the HBCUs and geographically proximate TWIs”; 2) enhancing TWIs to include the increasing employment of Blacks at all levels; 3) “[a]ccess for African Americans to Maryland’s institutions of higher education, including need-based and other financial aid assistance programs, and access for African American students to, and retention in, graduate and professional schools in Maryland.” Partnership Agreement at 21-2.
 63. Under the terms of the Partnership Agreement, OCR agreed not to institute any actions against Maryland pursuant to Title VI or other federal law before December 2005, when the Partnership Agreement expired. *See* Partnership Agreement at 23-4. Maryland was also required to provide OCR annual reports concerning state activities pursuant to the Partnership Agreement.
 64. In short, the terms of the Partnership Agreement were meant to bring Maryland into compliance with applicable federal law, including Title VI and the Equal Protection Clause of the Fourteenth Amendment. The Partnership Agreement also was aimed at finally

rectifying decades-long struggles over segregation and racial discrimination in Maryland's public systems of higher education.

**MARYLAND'S BREACH OF ITS CONSTITUTIONAL
OBLIGATIONS TOWARD HBCUs**

The Partnership Agreement

65. Defendants made nine commitments in the Partnership Agreement. Among those are “avoiding unnecessary program duplication and expansion of mission and program uniqueness and institutional identity at the HBCUs”; “improving campus climate and environment”; “strengthening recruitment and admissions”; “strengthening retention and graduation”; “improving diversity of faculty and staff and governing and advisory boards”; and “enhancing Maryland’s historically [B]lack colleges and universities.”

Maryland’s Failures in Honoring the Partnership Agreement

66. In June 2006, Maryland submitted a report to OCR claiming that it had fully complied with the Partnership Agreement. This report purported to list the State’s accomplishments under the Partnership Agreement; however, even Defendants’ own report demonstrates their non-compliance.

67. OCR has never certified Maryland as complying with their mandates.

Maryland’s Failures With Respect to Program Duplication

68. In accordance with Maryland’s obligations under *Fordice* and the Partnership Agreement, Defendants have an obligation to remedy all policies and practices within the State’s higher education system that are traceable to the prior segregated system. This obligation

- specifically includes the unnecessary duplication of HBCU academic programs by geographically proximate TWIs.
69. Commitment Eight of the Partnership Agreement explains the requirements of the program duplication commitment as follows: “[T]he state commits to developing high-demand academic programs at HBCUs and ensuring that they are not unnecessarily duplicated at nearby institutions. For these purposes, ‘unnecessary program duplication’ refers to those instances in which broadly similar academic programs (i.e., with respect to overarching purposes, overall curriculum content, and expectations of program graduates) are offered in areas other than the core undergraduate liberal arts and sciences at a TWI and an HBCU that are operated in locations that are geographically proximate to one another.” Partnership Agreement at 33.
70. The *Fordice* decision defined unnecessary program duplication as “[t]hose instances where two or more institutions offer the same nonessential or non-core program. Under this definition, all duplication at the bachelor’s level of non-basic liberal arts and sciences course work and all duplication at the master’s level and above are considered to be unnecessary.” 505 U.S. at 738. The Court reasoned that program duplication was undeniably “part and parcel of the prior dual system of higher education—the whole notion of ‘separate but equal’ required duplicative programs in two sets of schools—and that the present unnecessary duplication is a continuation of that practice.” *Id.*
71. The *Fordice* Court also held that Mississippi’s scheme of institutional mission classification perpetuated the State’s formerly *de jure* system of segregation because the system

- determined state funding and curriculum decisions at state institutions. *Id.* at 741-43. The missions and classifications assigned to public universities were directly correlated to the inequalities among the institutions and afforded preferential treatment to TWIs. *Id.*
72. Defendant MHEC has identified two core elements to Commitment Eight of the Partnership Agreement in its report to the Office of Civil Rights to bring the State into compliance with Title VI and *Fordice* around programmatic issues: (1) avoidance of unnecessary program duplication among geographically proximate [HBCUs] and Traditionally White Institutions (TWIs); and (2) expansion of mission and program uniqueness and institutional identity at the [HBCUs]. *See* Partnership Agreement at 33.
73. Defendant MHEC's decisions to duplicate program offerings at TWIs in conjunction with the disparate funding of HBCUs and the longstanding history of maintenance of a dual higher education system, creates a state endorsed system of competition that demonstrates a bias and preference for the vitality of TWIs at the expense of state HBCUs.
74. In violation of the Partnership Agreement, the Equal Protection Clause, and *Fordice*, Defendants have allowed for duplication of the unique programs at the state's HBCUs.
75. The Baltimore metropolitan area is home to two HBCUs—Morgan State and Coppin State—and four TWIs—Towson, UMBC, University of Baltimore, and University of Maryland at Baltimore.
76. Maryland's Eastern Shore is home to one HBCU—UMES—and one TWI—Salisbury University. These schools are located within thirteen miles of each other.

77. To keep the University of Baltimore (UB) from going bankrupt, the university was made public in 1974 and incorporated into the University System of Maryland (USM) in 1975.
78. Concerned that UB would duplicate, and thereby undermine, neighboring BCCC and Morgan State University, its mission was limited to educating graduate students and third- and fourth-year undergraduates, and to focus on serving part-time, returning students.
79. USM, which governs UB, recently approved an expansion of UB's undergraduate program to serve first and second-year students, duplicating programs at near-by Coppin and MSU.
80. UB is set to accept such students starting in 2007. It thereby becomes the third public TWI within the City of Baltimore to compete with Morgan State, and the fourth within the Baltimore metropolitan area.
81. The newly admitted first- and second-year students at UB are to be admitted as full-time, day-time pre-majors in the both core and non-core undergraduate programs such as Psychology or Information Management Systems. Many of the degree programs at UB duplicate both core and non-core programs at Morgan State. UB is not equipped to handle the general education requirements for freshman and sophomores in the sciences and other areas. They probably will have to expand facilities or add another campus.
82. The duplication of Morgan State programs by UB's expansion is precisely the kind of duplication that *Fordice* holds to be "part and parcel of [a] dual system of higher education." 505 U.S. at 738. This kind of duplication is the focus of the Partnership Agreement Commitment Eight.

83. Defendant MHEC has approved programs in Engineering at the University of Maryland Baltimore County (UMBC) duplicating programs already in existence at Morgan State University. MHEC approved masters and doctorate engineering programs at UMBC, duplicating those programs offered by Morgan State since 1997.
84. In 2005, Defendant MHEC approved a Masters in Business Administration offered jointly by Towson University and UB, duplicating the program available at Morgan State since 1964. The program was approved at Towson despite the university lacking an institutional mission that supported the expansion of an MBA program. MHEC had previously denied the program to Towson because it was not in its mission.
85. In 2006, Defendant MHEC approved a graduate-level Public Health program at University of Maryland at Baltimore, duplicating the program available at Morgan State since 1999.
86. In 2001, Defendant MHEC approved an undergraduate exercise science program at Salisbury University, duplicating the program available at UMES since 1975.
87. In 2001, Defendant MHEC approved an undergraduate marketing program at Salisbury University, duplicating a program available at UMES since 1975.
88. In 1978, Defendant MHEC approved an undergraduate business program at Salisbury University, duplicating the degree program available at UMES.
89. Defendant MHEC approved an undergraduate computer science degree at Salisbury University, duplicating the degree program available at UMES.
90. Upon information and belief, Defendants have instituted other programs at TWIs that duplicate programs at HBCUs and perpetuate Maryland's dual system of higher education.

Despite OCR's *Fordice* review standard requiring strict scrutiny of any actions that might impose undue burdens on HBCUs, including program expansion, Maryland colleges and universities face a limited review for proposed new academic programs and contradicted the mandates of both *Fordice* and the Partnership Agreement to avoid unnecessary program duplication.

Maryland's Failures With Respect to Capital Enhancements

91. Defendants also have an obligation under Commitment Nine to enhance the facilities of HBCUs and to bring them into parity with TWIs.
92. During the last four decades, capital improvement projects at Morgan State have taken an average of 11 years from the year the project was initially proposed in the stated plan to the year it received final funding. Examples include the Science Complex, proposed funding in 1971 which did not receive final funding until 1993 (twenty-two years); renovation of the Hurt Gymnasium, proposed funding in 1978 which did not receive final funding until 1993 (fifteen years); the Hill Field House, proposed funding in 1986 which did not receive final funding until 1999 (thirteen years); and the Murphy Fine Arts Building, proposed funding in 1972 which did not receive final funding until (twenty-eight years).
93. Upon information and belief the time from proposed funding to final funding for capital improvement projects at Maryland TWIs is 4.6 years on a weighted average basis.
94. The number of major building projects authorized on HBCUs was constrained. For instance, only one major building project was completed for Coppin State University for the period of

1990-2007. The least number of major projects completed at any four-year TWI for the same period was three.

95. Upon information and belief, the time from proposed funding to final funding for capital improvement projects at Maryland's other HBCUs has been 7.4 years on a weighted average basis or 60% greater than TWIs throughout the same time period.
96. Upon information and belief, the State has continually failed to provide the appropriate contracts, contractors, supplies, and appropriations for timely completion of projects at HBCUs.
97. When projects at HBCUs are not timely completed, HBCUs are precluded from receiving capital projects budgets necessary to fund additional and existing projects. This denial of funding HBCUs was pervasive from 1985 to 2000.
98. From 1987 to 1994, Morgan State experienced growth in enrollment. The State's failure to fund capital projects and provide appropriate funding for renovations and refurbishments forced Morgan State to rent mobile modules in order to accommodate students and provide sufficient space for classes.
99. In 1995, Morgan State asked for budget appropriations to refurbish and renovate the facilities for the Architectural program which has not had a dedicated facility since its approval in 1979. At that time, the majority of students enrolled in the Architectural program were White. Defendants failed to approve these renovations until 2006, and as a result the school operated in substandard and inadequate facilities. The racial composition of the students is now primarily Black.

Maryland's Failures With Respect to Funding

100. Defendants committed under Commitment Nine to “ensure that the HBCUs are comparable and competitive with the TWIs in all facets of their operations and programs . . . before the expiration of this Agreement.” Commitment Nine outlined that the state’s responsibility included “the enhancement of campus environments at HBCUs to ensure parity with TWIs with respect to the physical characteristics of landscape, ambiance and appearance as well as the availability, quality and adequacy of facilities necessary to support the missions and programs of the institutions.” See Partnership Agreement at 35. Despite the promise of parity which would require significant increases for HBCU funding, the total funding of HBCUs was not affected in any way by the Partnership Agreement.
101. The trends in total funding from 1995 through 2005 reported by the Maryland State Archives shows no significant changes for the HBCUs during the period of the agreement. Total funding for each institution increased each year during the ten year period (with one exception—Morgan State’s funding actually decreased from 2002 to 2003), but the size of these increases remained essentially the same.
102. The average yearly increase in total funding during the five years preceding the Partnership Agreement was 6.99% for UMES, 5.68% for Bowie State, 5.36% for Coppin State and 7.34% for Morgan State. In comparison, the average yearly increase in total funding during the period covered by the agreement (2000-2005), was 6.95% at UMES, 7.38% at Bowie, 7.88% at Coppin, and 7.26% at Morgan. The yearly increases remained almost entirely unchanged between the five-year period before the agreement and the five-year period the

- agreement covered. Funding had decreased by 0.04% at UMES, increased by 1.71% at Bowie, increased by 2.52% at Coppin, and decreased by 1.08% at Morgan. *See generally* <http://www.msa.md.gov/msa/mdmanual/01glance/html/edhigh.html> (follow links for each of the individual institutions). If Defendants had honored their obligations under Commitment Nine to increase the funding at HBCUs such that they could be raised to parity and competitiveness with the TWIs, funding increases should have been significantly more substantial.
103. The rates of increase in total funding throughout the five year period covered by the Partnership Agreement for Towson and UMBC were substantially higher than those for any of the HBCUs, and those for UMB and UMCP were even greater.
 104. The state also failed to fund HBCUs consistent with their mission in violation of applicable federal law.
 105. Morgan State has an institutional mission to provide more students access to higher education. Concurrent with its mission, Morgan State reaches out to students who in past years have been excluded from higher education because of cost. With over 90% of the student body receiving financial aid, the state failed to provide student financial aid to meet Morgan State's unique need and provide adequate funding to support the university's mission.

Maryland's Failures With Respect to Student Retention & Graduation

106. Commitment Four of the Partnership Agreement required Defendants to work to strengthen retention and graduation rates of Black students. Specifically, Defendants must work "to

- significantly narrow or eliminate the difference in the rates at which African American and [W]hite freshman are successful in obtaining college degrees.” Partnership Agreement at 29.
107. Although the overall percentage of Black students graduating from Maryland public colleges and universities is increasing, the gap between graduation rates for White students and Black students is widening.
108. For the entering class of 1991, the four-year graduation rate for Black students was 14.4%, while that statistic for White students was 30.7%. This is a difference of 16.3 percentage points. In 1996, this statistic was 18.2% for Black students, compared with 37.1% for White students; a difference of 18.9 percentage points. In 2001, the last year for which MHEC reported this data, it was 20.2% for Black students, compared with 48.4% for White students; a difference of 28.2 percentage points. Retention and Graduation Rates at Maryland Public Four-Year Institutions at 8-11 (2006).
109. Statewide, the six-year graduation rate for White students went from 66% in 1991 to 69.6% in 2001. Six-year graduation rates for Black students went from 38.6% to 47.5% in the same years. Black students had not reached, in 2001, the rate for Whites in 1989. Moreover, the percentage of Black students graduating in six-years is less than that of White students graduating in four years. *Id.*
110. The second-year retention rate for Black students statewide in 2004 was “the lowest in sixteen years.” *Id.* at 5. The gap between the second-year retention rate for White students and that for Black students in Maryland public colleges and universities has been widening over the course of the past decade, and has continued to widen in the years since the

Partnership Agreement. Furthermore, retention rates for black students have declined during that time period. *Id.*

111. In 1996, the second-year retention rate for Black students was 75.7%, whereas that for White students was 82.5%. In 2000, the second-year retention rate for Black students had decreased to 74.9%, whereas that for Whites had increased to 84.2%. By 2004, this rate for Blacks had again decreased, now to 72.3%, while increasing again for Whites, now to 84.7%. Not only was there a continuing gap in this statistic for the two groups, but that gap continually increased, going from 6.8 percentage points in 1996 to 9.3 percentage points in 2000, and finally to 12.4 percentage points in 2004.
112. In the years immediately preceding and following the Partnership Agreement, retention rates at Coppin State University dropped. *Id.* at 15.
113. In 1998, the second-year retention rate at Coppin State was 72.2%. In 2001, it was 69.6%. In 2004, it was 63.1%.
114. Similarly, in 1997, the fourth-year retention rate at Coppin State was 36%. In 1999, it was 24.7%. And in 2001, it was 23.7% of Coppin State students were enrolled for a full four years.
115. In 1999, the second-year retention rate at UMES was 74.1%. In 2002 it was 69.7%. In 2004, it had decreased to 64.3%.
116. Fourth-year retention rates at UMES were generally increasing in the years preceding the Partnership Agreement, but dropped from over 22% in 1999 and 2000 to 19.8% in 2001.

117. White enrollment at the state's HBCUs, percentage-wise, has either stayed the same or decreased over the last decade.
118. White total-enrollment at Bowie State decreased from over 17% in 1997 to 7% in 2005. Stated another way, in 1997 Bowie State had 890 White students enrolled in University programs, by 2005 that number decreased to 374 White students. Trends in Enrollment by Race and Gender: Maryland Higher Education Institutions 47-48 (2007). Today, White enrollment continues to decline. *Id.*
119. The Partnership Agreement called for a MHEC study of enrollment if White enrollment in HBCUs decreased. The state has not made any formal investigation into or recognition of this drop.
120. White total enrollment at UMES decreased from 19% in 1997 to less than 12% in 2005 (or 615 White students to 463). *Id.* at 65-66.
121. White total enrollment in Morgan State has remained around 2% despite having had the only public MBA program in the state for many years. *Id.* at 69-70.

Maryland's Failures With Respect to Campus Programs & Activities

122. Commitment Five (5) of the Partnership Agreement required Defendants to "continu[e] and expand[] their programs and activities designed to ensure that all students encounter a campus atmosphere which is welcoming and free of hostility and that the campus atmosphere at each institution is attractive and welcoming to students of all races." Partnership Agreement at 30.

123. On information and belief, Defendants have failed to enhance HBCUs to make them as attractive and welcoming as TWIs.
124. Defendants, in their Final Committee Report to OCR, claim to have met Commitment Five. However, in support of this claim, Defendants point only to surveys asking graduating students whether they would choose to enroll in the same school if they had the option to make the choice again. This type of evidence does not meet the state's burden of proving it has met its contractual obligations to make "the campus atmosphere at each institution is attractive and welcoming to students of all races."
125. On information and belief, physical improvements and capital projects at HBCUs take an average of ten years longer to complete than at TWIs. This is demonstrative of Defendants' lack of good faith towards these improvements.
126. As an example of their efforts to improve campus climate at HBCUs, Defendants cite Morgan State's new state-funded library, which was expected to be available in late 2006. According to Defendants' report to OCR, "For the first time, Morgan students will have available two types of facilities of the quality found at other campuses." MHEC Final Committee Report I at 63 (2005). This library was requested in 1993, and has yet to be completed.
127. Declining White enrollment at HBCUs is evidence of Defendants' failure to make those campuses "attractive and welcoming to students of all races."

128. In the years immediately preceding and following the Partnership Agreement, retention rates at Coppin State University dropped. Retention and Graduation Rates at Maryland Public Four-Year Institutions at 15 (2006).

Maryland's Failures With Respect to Faculty & Staff Diversity

129. Commitment Six of the Partnership Agreement requires Maryland “to continu[e] [its] efforts to attract, recruit and retain racially diverse faculty and staff.” Partnership Agreement at 30.
130. Additionally, Maryland committed to “promoting the positive perception of all of its public institutions of higher education, in order to make them attractive to faculty and staff of all races and to the development and enforcement of measures necessary to support this commitment.” *Id.*
131. Defendants’ failure to execute the enhancement plans submitted to MHEC in 2001 as part of the Partnership Agreement has limited the ability of HBCUs to effectively compete with TWIs for faculty and staff.
132. Defendants’ failure to expeditiously complete capital projects already begun at HBCUs as of 2000 has limited the ability of HBCUs to effectively compete with TWIs.
133. Maryland’s TWIs are able to recruit and retain diverse faculty and staff at a more competitive level than the HBCUs because of the attractiveness of their atmosphere and appearance.
134. HBCUs are at a competitive disadvantage in attracting and retaining diverse faculty. While the number of non-Black full-time faculty at HBCUs increased by 10% from 1995 to 2004, non-Black full-time faculty at TWIs increased by 22.8% during that time. Conversely, Black

full-time faculty at HBCUs increased by 44%, while Black full-time faculty at TWIs only increased by 13.9%. MHEC Committee Report I at 68 (2006).

CLAIMS

First Cause of Action – Violations of Title VI

135. Plaintiffs reallege and incorporate by reference each allegation in Paragraphs 1 through 130 of this Complaint as though fully set forth herein.
136. Defendants have engaged in a pattern and practice of intentional discrimination with respect to Maryland's HBCUs in violation of Title VI of the Civil Rights Act of 1964 by maintaining a segregated system of higher education.
137. Defendants have engaged in a pattern and practice of long term failure to perform their duty to enforce state and federal laws for the provision of equal educational opportunity in Maryland's higher education system.
138. Defendants have continued to operate a segregated system of higher education and continue to take actions to perpetuate that segregated system in violation of Title VI of the Civil Rights Act.
139. Defendants have failed in their duty to bring Maryland's HBCUs into parity with its TWIs, specifically by failing to provide increased funding to HBCUs, by failing to make market improvements in facilities, and by perpetuating unnecessary program duplication.

Second Cause of Action – Violations of the Equal Protection Clause

140. Plaintiffs reallege and incorporate by reference each allegation in Paragraphs 1 through 135 of this Complaint as though fully set forth herein.
141. Defendants have engaged in a pattern and practice of intentional discrimination with respect to Maryland's HBCUs in violation of the Equal Protection Clause of the Fourteenth Amendment and under *Fordice*.
142. Defendants have continued to operate a segregated system of higher education and continue to take actions to perpetuate that segregated system in violation of the Equal Protection Clause and *Fordice*.
143. Defendants have failed in their duty to bring Maryland's HBCUs into parity with its TWIs, specifically by failing to provide increased funding to HBCUs, in violation of the Equal Protection Clause and *Fordice*.
144. Defendants have allowed Maryland's TWIs to duplicate unique programs at proximately-located HBCUs in violation of the Equal Protection Clause and *Fordice*.
145. Defendants have duplicated unique programs at Morgan State by approving University of Baltimore as a four-year undergraduate institution in violation of the Equal Protection Clause and *Fordice*.
146. Defendants have duplicated unique programs already in existence at Morgan State University by approving three programs in Engineering at UMBC in violation of the Equal Protection Clause and *Fordice*.

147. Defendants have duplicated unique programs at Morgan State by approving a Masters in Business Administration jointly at Towson University and University of Baltimore in violation of the Equal Protection Clause and *Fordice*.
148. Defendants have duplicated unique programs at Morgan State by approving a Public Health program at University of Maryland Baltimore in violation of the Equal Protection Clause and *Fordice*.
149. Defendants have duplicated unique programs at UMES by approving an exercise science program at Salisbury University in violation of the Equal Protection Clause and *Fordice*.
150. Defendants have duplicated unique programs at UMES by approving a marketing program at Salisbury University in violation of the Equal Protection Clause and *Fordice*.
151. Defendants have duplicated unique programs at UMES by approving a computer science program at Salisbury University in violation of the Equal Protection Clause and *Fordice*.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray the court award the following relief:

- (a) Declare that Defendants' conduct violates Title VI of the Civil Rights Act of 1964, the Equal Protection Clause of the Fourteenth Amendment as described in *Fordice*.
- (b) Preliminarily and permanently enjoin Defendants, their agents, representatives, and officers, from continuing the abuses described above, including acting in a manner inconsistent with the U.S. Constitution, the Maryland Constitution, the Maryland Charter for Higher Education, the Partnership Agreement, the state's equal education opportunity obligations under State and federal law, including Title VI and *Fordice*.

- (c) Preliminarily and permanently enjoin Defendants, their agents, representatives, and officers, from continuing the abuses described above, including duplicating academic programs of HBCUs at proximately located TWIs, and continuing the current process for new academic program approval.
- (d) Preliminarily and permanently enjoin Defendants, their agents, representatives, and officers, from continuing the abuses described above, including delaying campus and facility improvement projects,
- (e) Preliminarily and permanently enjoin Defendants, their agents, representatives, and officers, from continuing the abuses described above, including maintaining funding levels that do not ensure parity,
- (f) Order Defendants to honor all commitments made in the Partnership Agreement no later than 12 months of the issuance of this injunction.
- (g) Order Defendants to dismantle and eliminate all unnecessary academic program duplication at Maryland HBCUs, in particular the MBA program at Towson University and University of Baltimore.
- (h) Order Defendants to transfer resources allocated to duplicative academic programs to HBCUs and to provide HBCUs with any additional resources and/or infrastructure needed to support programs already in place, rather than increase programs in existence at TWIs.
- (i) Order Defendants to provide Maryland HBCUs with all the necessary resources and support to insure that they are comparable and competitive with Maryland's TWI in all facets of their operations and programs, to ensure that the campus environments at the HBCUs are

comparable to TWIs with respect to physical characteristics of landscape, ambiance, student life, appearance, availability, quality and adequacy of facilities necessary to support the missions and programs of the institutions.

- (j) Order Defendants to immediately revise the State funding guidelines so as to create funding guidelines unique to HBCUs and focus on enhancing HBCUs so that they reach parity with Maryland TWIs in all respects, as identified in the Partnership Agreement.
- (k) Award Plaintiffs the cost of this action together with their attorney's fees; and
- (l) Grant such other relief as may be appropriate or necessary.

Dated: March 30, 2010

Respectfully submitted,

/s/

Michael D. Jones, Esq. (Bar No. 08634)
Karen Walker (Bar No. 14182)
Michele E. Gutrick (Bar No. 28964)
Charanjit Brahma (*pro hac vice*)
Edward Meyers (*pro hac vice*)
Savaria B. Harris (*pro hac vice*)
Henry Thompson, II (*pro hac vice*)
Alexandra M. Spear (*pro hac vice*)
Megan L. Meier (*pro hac vice*)
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N. W.
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200
Email : megan.meier@kirkland.com

Aderson B. Francois, Esq. (Bar No. 17449)
Howard University School of Law
Civil Rights Clinic
2900 Van Ness Street, N. W.
Washington, D.C. 20008
Telephone: (202) 806-8065
Facsimile: (202) 806-8436
Email: afrancois@law.howard.edu

Jon Greenbaum (*pro hac vice*)
Ray McClain (*pro hac vice*)
David Cooper (*pro hac vice*)
Erik Kosa (*pro hac vice*)
Phillip Dupré (*pro hac vice*)
Lawyers' Committee for Civil Rights Under Law
1401 New York Avenue, N.W., Suite 400
Washington, D.C. 20005
Telephone: (202) 662-8332

Facsimile: (202) 783-0857
Email: jgreenbaum@lawyerscommittee.org

ATTORNEYS FOR PLAINTIFFS

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

THE COALITION FOR EQUITY AND EXCELLENCE
IN MARYLAND HIGHER EDUCATION, INC.,
KELLY THOMPSON,
2320 Holyoke Road, Baltimore, MD 21237-1456
Baltimore County
DR. CHRIS HEIDELBERG,
3609 Grantley Road, Baltimore, MD 21215-7341
Baltimore City
DAMEIN MONTGOMERY
4810 Lanier Ave., Baltimore, MD 21215-6502
Baltimore City

Plaintiffs,

Civil No. MJG-06-2773

~~THIRD~~FOURTH AMENDED
COMPLAINT

V.

MARYLAND HIGHER EDUCATION COMMISSION, ET AL.,

Defendants.

~~THIRD~~FOURTH AMENDED COMPLAINT

INTRODUCTION

1. This is an action seeking equitable relief to require the State of Maryland to honor its obligations to its historically black colleges and universities (HBCUs) as required by the 2000 Partnership Agreement between Maryland and the United States Department of Education Office of Civil Rights (“Partnership Agreement”), Title VI of the Civil Rights Act of 1964, the Equal Protection Clause of the Fourteenth Amendment, *United States v. Fordice*, 505 U.S. 717 (1992), and any other applicable federal and state law.
2. Throughout its history and up to the present day, Maryland has maintained a racially segregated system of higher education and has systematically and purposefully engaged in a pattern and practice of racial discrimination that has prevented HBCUs from achieving parity with their traditionally White institution (TWI) counterparts.
3. In 2000, Maryland and the United States Department of Education Office of Civil Rights (“OCR”) entered into a Partnership Agreement requiring Maryland to disestablish its segregated system of higher education. Specifically, OCR found that Maryland was deficient in nine areas, including unnecessary program duplication at the TWIs, campus climate and environment, recruitment and admissions, retention and graduation, diversity of faculty and staff and governing and advisory boards, and enhancement of the HBCUs.
4. In 2005, Defendants issued a report claiming that they had met all of their obligations under the Partnership Agreement. In reality, Defendants have failed to meet virtually every one of their obligations under the Partnership Agreement and their constitutional obligations under the Equal Protection Clause and other federal and state law. Plaintiffs now bring this action

seeking to enjoin Defendants from continuing their pattern and practice of discrimination against Maryland's HBCUs. Plaintiffs seek to make the state's HBCUs whole and to develop complete parity between with the state's TWIs within the next five years. Unless this Court grants Plaintiffs equitable relief, Plaintiffs will continue to suffer state-sponsored discrimination in the Maryland system of higher education.

JURISDICTION

5. Pursuant to 28 U.S.C. § 1331, 1343 (a)(3) and 1367(a), the Plaintiffs seek declaratory and injunctive relief for deprivations under color of state law of their federal civil rights under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.

VENUE

6. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b) because all of the events and omissions giving rise to Plaintiffs' claims occurred in the State of Maryland. In addition, all of the named plaintiffs reside in this State.

PARTIES

Plaintiffs

7. Plaintiff, The Coalition for Equity and Excellence in Maryland Higher Education, Inc., is a non-stock Maryland corporation, with its primary place of business in Baltimore, Maryland.
8. The Coalition's mission, as stated in its articles of incorporation, is to "ensure equity and excellence in higher education." The Coalition engages in community organizing and awareness campaigns on higher education issues, providing services and support to state funded HBCUs.

9. The Coalition investigates disparities between TWIs and HBCUs, conducts research, compiles data, and performs analysis of funding equity in Maryland higher education institutions.
10. The Coalition participates in advocacy for educational parity and has supported and testified about legislative initiatives within the state.
11. Members of the Coalition include, but are not limited to, alumni of public HBCUs in Maryland.
12. All members of the Coalition are impacted by Defendants' discrimination with respect to higher education in Maryland and wish to enforce their rights under the Equal Protection Clause of the Fourteenth Amendment and other applicable laws.
13. Plaintiff David J. Burton is an alumnus of Morgan State University and is the President of Plaintiff Coalition. He is a member of the board of directors of a number of corporations, including the National Minority Manufacturing Institute.
14. Plaintiff Rashaan Simon is a student at Morgan State University.
15. Plaintiff Muriel Thompson is a doctoral student at Morgan State University.
16. Plaintiff J. S. is a high school student and a potential HBCU attendee.
17. Plaintiff Anthony Robinson is an alumnus of Morgan State University and is President of the Minority Business Enterprise Legal Defense & Education Fund.
18. Plaintiff Kelly Thompson is an alumna of Coppin State University and a graduate student at the University of Maryland, Baltimore.

19. Plaintiff Dr. Chris Heidelberg is an alumnus of Morgan State University and is employed by the U.S. Social Security Administration.
20. Plaintiff Damein Montgomery is a student at Bowie State University.

Defendants

21. Defendant Maryland Higher Education Commission (“MHEC”) is an agency and instrumentality of, and created by, Defendant State of Maryland.
22. As an agency and instrumentality of the State of Maryland, MHEC shall: a) “ensure that the State Plan for Higher Education complies with the State’s equal educational opportunity obligations under State and federal law, including Title VI of the Civil Rights Act,” Md. Code Ann. Educ. § 11-105(b)(2)(ii); b) “assure that courses and programs offered are within the scope of the approved missions of the regional higher education centers,” Md. Code Ann. Educ. § 11-105(d)(1)(ii)(4); and c) “develop plans for the desegregation of Maryland institutions and the enhancement of HBCUs, and report to the Governor on the state’s compliance with such desegregation and equal education opportunity plans.” *See* Md. Code Ann. Educ. § 11-105(f).
23. Defendant Kevin M. O’Keefe is the Chairman of MHEC, and is sued in his official capacity.
24. Defendant James E. Lyons, Sr., is Secretary of Higher Education of the State of Maryland, and is sued in his official capacity.
25. In his official capacity, the Secretary of Higher Education must select and direct the staff of MHEC and ensure the implementation of MHEC policies and decisions. *See* Md. Code Ann. Educ. § 11-104(b)(1).

26. The Secretary of Higher Education must “evaluate and report annually to the Governor” and “perform other duties assigned by the Governor.” Md. Code Ann. State Gov’t § 9-1406(h)(3)-(4).

27. Defendant Martin O’Malley is the Governor of the State of Maryland, and is sued in his official capacity.

28. The Governor is the only official of Maryland that can include an appropriation in an annual budget bill. Md. Const. Art. 3, § 52. Although the legislature can reduce appropriations in an annual budget bill, it may not add or increase the amount of appropriations except for those funding the legislative or judicial branches.

29. ~~27.~~ Defendant State of Maryland receives federal funding for its higher education system including student financial aid and research grants.

FACTS GIVING RISE TO CAUSE OF ACTION

Maryland’s History of Racially Segregated Higher Education

30. ~~28.~~ Throughout its history, Maryland has systematically engaged in policies and practices that established and perpetuated a racially segregated system of higher education.

31. ~~29.~~ Maryland first instituted its system of public higher education in 1807 by establishing the University of Maryland at Baltimore. This was a White-only institution.

32. ~~30.~~ Maryland subsequently established four other White-only, public institutions of higher education: the University of Maryland, established in 1865; Towson University, established

in 1866; Frostburg State University, established in 1898; and Salisbury State University, established in 1922.

33. ~~31.~~The state began its dual-system by assuming control of The Baltimore Normal School, an all Black teacher's school now known as Bowie State University. This was the beginning of Maryland's segregated system of higher education.

34. ~~32.~~The State of Maryland had to provide educational opportunities for Black students to qualify for federal land-grant funds. Therefore, the state acquired Princess Anne Academy in 1919 as a land-grant institution for Black students who were not allowed to enroll at the White-only Maryland Agricultural College at College Park, the state's main land-grant institution.¹ Princess Anne Academy is now known as University of Maryland Eastern Shore (UMES).

35. ~~33.~~The state continued to invest in a segregated higher education system. In 1933, the Maryland legislature passed a statute creating partial scholarships "for Negro students who may desire to take professional courses or other work not given at the Princess Anne Academy" to attend private, all-Black Morgan College² in Baltimore or other institutions outside of the State.

¹ UMES was originally founded in 1886 by the Delaware Conference of the Methodist Episcopal Church. The State of Maryland began a partnership with the university in 1919 to create a Maryland institution for Black students. UMES finally become a Maryland State College in 1970.

² Morgan State University was founded in 1867 as the Centenary Biblical Institute. Maryland purchased the school to provide more college opportunities for Black students.

36. ~~34.~~—In response to this growing college-bound Black population, Maryland purchased Morgan College, now known Morgan State University, in 1939.
37. ~~35.~~—In 1954, the United States Supreme Court issued its decision in *Brown v. Board of Educ. of Topeka, Shawnee County, Kan.*, 347 U.S. 483 (1954), holding that segregated school systems violate the Equal Protection Clause of the Fourteenth Amendment. At the time of the decision, Maryland operated a segregated, dual-higher education system. A marginal number of Black students were admitted to TWIs prior to *Brown*. They were only eligible for admission if the degree courses sought were not offered at one of the state’s HBCUs.
38. ~~36.~~—Following *Brown*, Maryland did nothing more than lift the rule excluding Black students from White schools.
39. ~~37.~~—In response to the Civil Rights Act of 1964, Maryland ended *de jure* segregation in its public accommodations. Black Students were able to utilize libraries, restaurants and housing once closed because of skin color. Black enrollment in TWIs, however, remained minimal.
40. ~~38.~~—In 1965, however, rather than encourage integration at Morgan State, Maryland established University of Maryland Baltimore County (“UMBC”). UMBC was a complete duplication of Morgan State’s entire institution, not just its programs.
41. ~~39.~~—OCR notified the State of Maryland in 1969 that it was one of ten states operating a racially segregated system of higher education in violation of Title VI and applicable federal law. *See* Maryland’s Report and the Partnership Agreement Between the State of Maryland and the United States Department of Education, Office for Civil Rights at 3 (2000) [hereinafter, “Partnership Agreement”]. OCR unsuccessfully sought an effective plan for

dismantling the dual system and eliminating the vestiges of segregation over the next few decades. *See* Historically Black Colleges and Universities and Higher Education Desegregation (1991).³

42. ~~40.~~ In 1974, the Maryland Council for Higher Education appointed a task force, known as “the Cox Task Force,” “to propose ways of enhancing the role and image of the predominantly black public colleges in the State.” Enhancement of Maryland’s Predominantly Black Collegiate Institutions: Consultants’ Report to the Desegregation Task Force of the State Board for Higher Education (1981). The proposal failed to satisfy the federal Title VI requirements and Maryland’s segregated higher education system jeopardized the state’s ability to collect federal funds.

43. ~~41.~~ In 1976, OCR advised Maryland that it was still not in compliance with its obligations under federal law with regard to higher education. OCR threatened to institute an enforcement action which would terminate Maryland’s federal financial assistance under Title VI, 42 U.S.C. § 2000d, if the State did not take steps to disestablish the remnants of racial segregation in its higher education system.

44. ~~42.~~ Maryland sought and was granted an injunction to prevent OCR from proceeding. The injunction was granted because OCR’s standards of evaluation lacked certainty, not because Maryland had complied with the Equal Protection Clause. *See Mandel v. U.S. Dep’t of*

³ Available at <http://www.ed.gov/about/offices/list/ocr/docs/hq9511.html>.

Health, Educ. & Welfare, 411 F. Supp. 542, 544 (D. Md. 1976); *see also* Partnership Agreement at 3.

45. 43.—Private litigation also pressed Maryland to end segregation and racially discriminatory practices at public higher education institutions. *Adams v. Richardson*, 480 F.2d 1159 (D.C. Cir. 1973), required the Department of Health, Education and Welfare to establish criteria for states to follow in desegregating higher education systems and identified six key criteria that have formed the foundation for each desegregation plan Maryland has proposed and failed to implement since the late 1970s. *See Revised Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education*, 43 Fed. Reg. 6658 (Feb. 15, 1978).

46. 44.—The *Adams* criteria require states to disestablish the structure of the dual system by defining the mission of each institution on a basis other than race; strengthen the role of HBCUs by enhancing the quality and range of their program offerings and eliminating unnecessary program duplication among TWIs and HBCUs in geographic proximity; reduce racial disparities in college-going, retention and graduation rates; expand mobility between two- and four-year institutions; increase other-race enrollments at TWIs and HBCUs; equalize the graduation rates for Black and White state residents who graduate from the same state, public institutions; and increase the diversity of faculties and staff of institutions, as well as governing boards, agencies and their staffs. *See Southern Education Foundation, Miles to Go: Maryland 5* (1999).

47. 45.—During the 1980’s, OCR found that, of the ten states originally identified as non-compliant in 1969, eight of them—Arkansas, Delaware, Georgia, North Carolina, Missouri, Oklahoma, South Carolina and West Virginia—were in compliance with Title VI because they had implemented OCR-approved desegregation plans that followed the Adams criteria.
48. 46.—Maryland and Mississippi were the two remaining states not in compliance because they continued to operate segregated higher education systems.
49. 47.—Because of Maryland’s failure to implement an adequate desegregation plan, OCR resumed negotiations with Maryland to develop and implement a new desegregation plan in 1982. Maryland and OCR entered into a consent decree ending the previous litigation and promising that the state would move forward with desegregation of its dual education system, still in place more than 30 years after *Brown*. See Partnership Agreement at 3.
50. 48.—In 1985, OCR and Maryland agreed on another statewide desegregation plan in order to bring Maryland into compliance with Title VI. It was a five-year plan designed to “foster equal educational opportunity in Maryland’s public institutions of higher education.” Partnership Agreement at 3. At the end of the five years, OCR was to determine whether or not Maryland had disestablished its segregated system of higher education.
51. 49.—The goals of the 1985 desegregation plan were (1) the “continued integration” of Maryland TWIs through “enrollment goals, recruitment measures, retention efforts and affirmative action plans;” and (2) “the enhancement of HBCUs to ensure that they are comparable and competitive with TWIs with respect to capital facilities, operating budgets,

- and new academic programs.” Partnership Agreement at 3. Maryland was to submit yearly progress reports regarding these goals.
52. ~~50.~~ Maryland submitted the last of its yearly progress reports in 1991 outlining the results of its desegregation plan. *See* Partnership Agreement at 3. OCR only once commented on Maryland’s progress in implementing the 1985 plan. *See* Partnership Agreement at 20.
53. ~~51.~~ OCR never officially responded, and therefore Maryland was never found to have complied with Title VI desegregation requirements.
54. ~~52.~~ In 1992, the Supreme Court of the United States issued its opinion in *Fordice*, finding that Mississippi was in violation of the Equal Protection Clause of the Fourteenth Amendment due to its failure to disestablish its segregated system of higher education. The case highlighted the complex responses states must take in order to dismantle segregated education systems.
55. ~~53.~~ In 1994, OCR issued a Notice of Application of Supreme Court Decision in 59 Fed. Reg. 4271 (January 31, 1994) applying the *Fordice* standards to all pending evaluations of formerly *de jure* segregated systems of higher education. The OCR Notice purported to “strictly scrutinize . . . any . . . actions that might impose undue burdens on [B]lack students, faculty, or administrators or diminish the unique roles of those institutions.” Partnership Agreement at 20. Maryland, the only other state not in compliance with the 1969 OCR order, lacked an OCR approved plan to remove the vestiges of their dual system.
56. ~~54.~~ In 1998, MHEC issued its statewide plan for postsecondary education entitled, “Educating for the 21st Century.” The goals of this plan were 1) ethnic diversity of doctoral

candidates in faculty and administrative positions at all institutions; 2) promotion of campus climates accepting of diverse groups; 3) multicultural diversity on Maryland's campuses; 4) recruitment and retention of minority students, faculty, and staff; and 5) salary equity amongst gender for faculty and staff. *See* Partnership Agreement at 9. The Educating for the 21st Century plan, however, did not directly address the specific needs of HBCUs or the state's obligation under Title VI and *Fordice*.

57. ~~55.~~—Also in 1998, by order of the Maryland General Assembly, a task force was formed (the “Larson Task Force”) to make recommendations to the Governor regarding changes to Maryland's system of higher education. Among the changes the task force recommended was a streamlining of the process of approving new academic programs. In accordance with the findings of the Larson Task Force, the process of approving new academic programs is now subject to the requirement that the new programs are consistent with the institution's mission and that other institutions are given the opportunity to object. *See* Larson Task Force, Report of the Task Force to Study the Governance, Coordination, and Funding of the University System of Maryland (1999).

58. ~~56.~~—In 1999, never certifying Maryland's compliance with Title VI under previous desegregation plans, OCR approached Maryland again to enter into a partnership aimed at bringing Maryland into compliance with its constitutional and federal statutory obligations.

59. ~~57.~~—MHEC, OCR and the Governor met on October 25, 1999 to discuss Maryland's failure to comply with the mandated desegregation orders since *Brown*.

60. ~~58.~~ MHEC led site visits to Maryland's HBCUs. From the campus visits, Maryland and OCR officials "recongize[d] that the enhancement of the HBCUs [would] remain an important concern." Partnership Agreement at 21. Enhancements include at a minimum uniqueness of HBCUs programmatic missions, development of research infrastructure, improvement of physical facilities and surrounding public infrastructure, funding to support campus life.
61. ~~59.~~ This meeting between the Governor, OCR, and MHEC led to the Partnership Agreement.
62. ~~60.~~—According to this "partnership approach," OCR's focus was on 1) "[e]nhancing Maryland's four HBCUs in order to improve educational opportunities for [Black] students who attend them and to increase their attractiveness to students of all races, especially [W]hite students, including addressing the problem of unnecessary academic program duplication among the HBCUs and geographically proximate TWIs"; 2) enhancing TWIs to include the increasing employment of Blacks at all levels; 3) "[a]ccess for African Americans to Maryland's institutions of higher education, including need-based and other financial aid assistance programs, and access for African American students to, and retention in, graduate and professional schools in Maryland." Partnership Agreement at 21-2.
63. ~~61.~~ Under the terms of the Partnership Agreement, OCR agreed not to institute any actions against Maryland pursuant to Title VI or other federal law before December 2005, when the Partnership Agreement expired. *See* Partnership Agreement at 23-4. Maryland was also required to provide OCR annual reports concerning state activities pursuant to the Partnership Agreement.

64. ~~62.~~ In short, the terms of the Partnership Agreement were meant to bring Maryland into compliance with applicable federal law, including Title VI and the Equal Protection Clause of the Fourteenth Amendment. The Partnership Agreement also was aimed at finally rectifying decades-long struggles over segregation and racial discrimination in Maryland's public systems of higher education.

**MARYLAND'S BREACH OF ITS CONSTITUTIONAL
OBLIGATIONS TOWARD HBCUS**

The Partnership Agreement

65. ~~63.~~ Defendants made nine commitments in the Partnership Agreement. Among those are "avoiding unnecessary program duplication and expansion of mission and program uniqueness and institutional identity at the HBCUs"; "improving campus climate and environment"; "strengthening recruitment and admissions"; "strengthening retention and graduation"; "improving diversity of faculty and staff and governing and advisory boards"; and "enhancing Maryland's historically [B]lack colleges and universities."

Maryland's Failures in Honoring the Partnership Agreement

66. ~~64.~~ In June 2006, Maryland submitted a report to OCR claiming that it had fully complied with the Partnership Agreement. This report purported to list the State's accomplishments under the Partnership Agreement; however, even Defendants' own report demonstrates their non-compliance.

67. ~~65.~~ OCR has never certified Maryland as complying with their mandates.

Maryland's Failures With Respect to Program Duplication

68. 66.—In accordance with Maryland’s obligations under *Fordice* and the Partnership Agreement, Defendants have an obligation to remedy all policies and practices within the State’s higher education system that are traceable to the prior segregated system. This obligation specifically includes the unnecessary duplication of HBCU academic programs by geographically proximate TWIs.

69. 67.—Commitment Eight of the Partnership Agreement explains the requirements of the program duplication commitment as follows: “[T]he state commits to developing high-demand academic programs at HBCUs and ensuring that they are not unnecessarily duplicated at nearby institutions. For these purposes, ‘unnecessary program duplication’ refers to those instances in which broadly similar academic programs (i.e., with respect to overarching purposes, overall curriculum content, and expectations of program graduates) are offered in areas other than the core undergraduate liberal arts and sciences at a TWI and an HBCU that are operated in locations that are geographically proximate to one another.” Partnership Agreement at 33.

70. 68.—The *Fordice* decision defined unnecessary program duplication as “[t]hose instances where two or more institutions offer the same nonessential or non-core program. Under this definition, all duplication at the bachelor’s level of non-basic liberal arts and sciences course work and all duplication at the master’s level and above are considered to be unnecessary.” 505 U.S. at 738. The Court reasoned that program duplication was undeniably “part and parcel of the prior dual system of higher education—the whole notion of ‘separate but equal’

required duplicative programs in two sets of schools—and that the present unnecessary duplication is a continuation of that practice.” *Id.*

71. ~~69.~~—The *Fordice* Court also held that Mississippi’s scheme of institutional mission classification perpetuated the State’s formerly *de jure* system of segregation because the system determined state funding and curriculum decisions at state institutions. *Id.* at 741-43. The missions and classifications assigned to public universities were directly correlated to the inequalities among the institutions and afforded preferential treatment to TWIs. *Id.*

72. ~~70.~~—Defendant MHEC has identified two core elements to Commitment Eight of the Partnership Agreement in its report to the Office of Civil Rights to bring the State into compliance with Title VI and *Fordice* around programmatic issues: (1) avoidance of unnecessary program duplication among geographically proximate [HBCUs] and Traditionally White Institutions (TWIs); and (2) expansion of mission and program uniqueness and institutional identity at the [HBCUs]. *See* Partnership Agreement at 33.

73. ~~71.~~—Defendant MHEC’s decisions to duplicate program offerings at TWIs in conjunction with the disparate funding of HBCUs and the longstanding history of maintenance of a dual higher education system, creates a state endorsed system of competition that demonstrates a bias and preference for the vitality of TWIs at the expense of state HBCUs.

74. ~~72.~~—In violation of the Partnership Agreement, the Equal Protection Clause, and *Fordice*, Defendants have allowed for duplication of the unique programs at the state’s HBCUs.

75. ~~73.~~ The Baltimore metropolitan area is home to two HBCUs—Morgan State and Coppin State—and four TWIs—Towson, UMBC, University of Baltimore, and University of Maryland at Baltimore.
76. ~~74.~~ Maryland's Eastern Shore is home to one HBCU—UMES—and one TWI—Salisbury University. These schools are located within thirteen miles of each other.
77. ~~75.~~ To keep the University of Baltimore (UB) from going bankrupt, the university was made public in 1974 and incorporated into the University System of Maryland (USM) in 1975.
78. ~~76.~~ Concerned that UB would duplicate, and thereby undermine, neighboring BCCC and Morgan State University, its mission was limited to educating graduate students and third- and fourth-year undergraduates, and to focus on serving part-time, returning students.
79. ~~77.~~ USM, which governs UB, recently approved an expansion of UB's undergraduate program to serve first and second-year students, duplicating programs at near-by Coppin and MSU.
80. ~~78.~~ UB is set to accept such students starting in 2007. It thereby becomes the third public TWI within the City of Baltimore to compete with Morgan State, and the fourth within the Baltimore metropolitan area.
81. ~~79.~~ The newly admitted first- and second-year students at UB are to be admitted as full-time, day-time pre-majors in the both core and non-core undergraduate programs such as Psychology or Information Management Systems. Many of the degree programs at UB duplicate both core and non-core programs at Morgan State. UB is not equipped to handle

the general education requirements for freshman and sophomores in the sciences and other areas. They probably will have to expand facilities or add another campus.

82. ~~80.~~—The duplication of Morgan State programs by UB’s expansion is precisely the kind of duplication that *Fordice* holds to be “part and parcel of [a] dual system of higher education.” 505 U.S. at 738. This kind of duplication is the focus of the Partnership Agreement Commitment Eight.

83. ~~81.~~—Defendant MHEC has approved programs in Engineering at the University of Maryland Baltimore County (UMBC) duplicating programs already in existence at Morgan State University. MHEC approved masters and doctorate engineering programs at UMBC, duplicating those programs offered by Morgan State since 1997.

84. ~~82.~~—In 2005, Defendant MHEC approved a Masters in Business Administration offered jointly by Towson University and UB, duplicating the program available at Morgan State since 1964. The program was approved at Towson despite the university lacking an institutional mission that supported the expansion of an MBA program. MHEC had previously denied the program to Towson because it was not in its mission.

85. ~~83.~~—In 2006, Defendant MHEC approved a graduate-level Public Health program at University of Maryland at Baltimore, duplicating the program available at Morgan State since 1999.

86. ~~84.~~—In 2001, Defendant MHEC approved an undergraduate exercise science program at Salisbury University, duplicating the program available at UMES since 1975.

87. ~~85.~~ In 2001, Defendant MHEC approved an undergraduate marketing program at Salisbury University, duplicating a program available at UMES since 1975.
88. ~~86.~~ In 1978, Defendant MHEC approved an undergraduate business program at Salisbury University, duplicating the degree program available at UMES.
89. ~~87.~~ Defendant MHEC approved an undergraduate computer science degree at Salisbury University, duplicating the degree program available at UMES.
90. ~~88.~~ Upon information and belief, Defendants have instituted other programs at TWIs that duplicate programs at HBCUs and perpetuate Maryland's dual system of higher education. Despite OCR's *Fordice* review standard requiring strict scrutiny of any actions that might impose undue burdens on HBCUs, including program expansion, Maryland colleges and universities face a limited review for proposed new academic programs and contradicted the mandates of both *Fordice* and the Partnership Agreement to avoid unnecessary program duplication.

Maryland's Failures With Respect to Capital Enhancements

91. ~~89.~~ Defendants also have an obligation under Commitment Nine to enhance the facilities of HBCUs and to bring them into parity with TWIs.
92. ~~90.~~ During the last four decades, capital improvement projects at Morgan State have taken an average of 11 years from the year the project was initially proposed in the stated plan to the year it received final funding. Examples include the Science Complex, proposed funding in 1971 which did not receive final funding until 1993 (twenty-two years); renovation of the Hurt Gymnasium, proposed funding in 1978 which did not receive final funding until 1993

(fifteen years); the Hill Field House, proposed funding in 1986 which did not receive final funding until 1999 (thirteen years); and the Murphy Fine Arts Building, proposed funding in 1972 which did not receive final funding until (twenty-eight years).

93. ~~91.~~ Upon information and belief the time from proposed funding to final funding for capital improvement projects at Maryland TWIs is 4.6 years on a weighted average basis.
94. ~~92.~~ The number of major building projects authorized on HBCUs was constrained. For instance, only one major building project was completed for Coppin State University for the period of 1990-2007. The least number of major projects completed at any four-year TWI for the same period was three.
95. ~~93.~~ Upon information and belief, the time from proposed funding to final funding for capital improvement projects at Maryland's other HBCUs has been 7.4 years on a weighted average basis or 60% greater than TWIs throughout the same time period.
96. ~~94.~~ Upon information and belief, the State has continually failed to provide the appropriate contracts, contractors, supplies, and appropriations for timely completion of projects at HBCUs.
97. ~~95.~~ When projects at HBCUs are not timely completed, HBCUs are precluded from receiving capital projects budgets necessary to fund additional and existing projects. This denial of funding HBCUs was pervasive from 1985 to 2000.
98. ~~96.~~ From 1987 to 1994, Morgan State experienced growth in enrollment. The State's failure to fund capital projects and provide appropriate funding for renovations and refurbishments

forced Morgan State to rent mobile modules in order to accommodate students and provide sufficient space for classes.

99. ~~97.~~—In 1995, Morgan State asked for budget appropriations to refurbish and renovate the facilities for the Architectural program which has not had a dedicated facility since its approval in 1979. At that time, the majority of students enrolled in the Architectural program were White. Defendants failed to approve these renovations until 2006, and as a result the school operated in substandard and inadequate facilities. The racial composition of the students is now primarily Black.

Maryland's Failures With Respect to Funding

100. ~~98.~~—Defendants committed under Commitment Nine to “ensure that the HBCUs are comparable and competitive with the TWIs in all facets of their operations and programs . . . before the expiration of this Agreement.” Commitment Nine outlined that the state’s responsibility included “the enhancement of campus environments at HBCUs to ensure parity with TWIs with respect to the physical characteristics of landscape, ambiance and appearance as well as the availability, quality and adequacy of facilities necessary to support the missions and programs of the institutions.” *See* Partnership Agreement at 35. Despite the promise of parity which would require significant increases for HBCU funding, the total funding of HBCUs was not affected in any way by the Partnership Agreement.

101. ~~99.~~—The trends in total funding from 1995 through 2005 reported by the Maryland State Archives shows no significant changes for the HBCUs during the period of the agreement. Total funding for each institution increased each year during the ten year period (with one

exception—Morgan State’s funding actually decreased from 2002 to 2003), but the size of these increases remained essentially the same.

102. ~~100.~~—The average yearly increase in total funding during the five years preceding the Partnership Agreement was 6.99% for UMES, 5.68% for Bowie State, 5.36% for Coppin State and 7.34% for Morgan State. In comparison, the average yearly increase in total funding during the period covered by the agreement (2000-2005), was 6.95% at UMES, 7.38% at Bowie, 7.88% at Coppin, and 7.26% at Morgan. The yearly increases remained almost entirely unchanged between the five-year period before the agreement and the five-year period the agreement covered. Funding had decreased by 0.04% at UMES, increased by 1.71% at Bowie, increased by 2.52% at Coppin, and decreased by 1.08% at Morgan. *See generally* <http://www.msa.md.gov/msa/mdmanual/01glance/html/edhigh.html> (follow links for each of the individual institutions). If Defendants had honored their obligations under Commitment Nine to increase the funding at HBCUs such that they could be raised to parity and competitiveness with the TWIs, funding increases should have been significantly more substantial.

103. ~~101.~~—The rates of increase in total funding throughout the five year period covered by the Partnership Agreement for Towson and UMBC were substantially higher than those for any of the HBCUs, and those for UMB and UMCP were even greater.

104. ~~102.~~—The state also failed to fund HBCUs consistent with their mission in violation of applicable federal law.

105. ~~103.~~ Morgan State has an institutional mission to provide more students access to higher education. Concurrent with its mission, Morgan State reaches out to students who in past years have been excluded from higher education because of cost. With over 90% of the student body receiving financial aid, the state failed to provide student financial aid to meet Morgan State's unique need and provide adequate funding to support the university's mission.

Maryland's Failures With Respect to Student Retention & Graduation

106. ~~104.~~ Commitment Four of the Partnership Agreement required Defendants to work to strengthen retention and graduation rates of Black students. Specifically, Defendants must work "to significantly narrow or eliminate the difference in the rates at which African American and [W]hite freshman are successful in obtaining college degrees." Partnership Agreement at 29.

107. ~~105.~~ Although the overall percentage of Black students graduating from Maryland public colleges and universities is increasing, the gap between graduation rates for White students and Black students is widening.

108. ~~106.~~ For the entering class of 1991, the four-year graduation rate for Black students was 14.4%, while that statistic for White students was 30.7%. This is a difference of 16.3 percentage points. In 1996, this statistic was 18.2% for Black students, compared with 37.1% for White students; a difference of 18.9 percentage points. In 2001, the last year for which MHEC reported this data, it was 20.2% for Black students, compared with 48.4% for

White students; a difference of 28.2 percentage points. Retention and Graduation Rates at Maryland Public Four-Year Institutions at 8-11 (2006).

109. ~~107.~~ Statewide, the six-year graduation rate for White students went from 66% in 1991 to 69.6% in 2001. Six-year graduation rates for Black students went from 38.6% to 47.5% in the same years. Black students had not reached, in 2001, the rate for Whites in 1989. Moreover, the percentage of Black students graduating in six-years is less than that of White students graduating in four years. *Id.*

110. ~~108.~~ The second-year retention rate for Black students statewide in 2004 was “the lowest in sixteen years.” *Id.* at 5. The gap between the second-year retention rate for White students and that for Black students in Maryland public colleges and universities has been widening over the course of the past decade, and has continued to widen in the years since the Partnership Agreement. Furthermore, retention rates for black students have declined during that time period. *Id.*

111. ~~109.~~ In 1996, the second-year retention rate for Black students was 75.7%, whereas that for White students was 82.5%. In 2000, the second-year retention rate for Black students had decreased to 74.9%, whereas that for Whites had increased to 84.2%. By 2004, this rate for Blacks had again decreased, now to 72.3%, while increasing again for Whites, now to 84.7%. Not only was there a continuing gap in this statistic for the two groups, but that gap continually increased, going from 6.8 percentage points in 1996 to 9.3 percentage points in 2000, and finally to 12.4 percentage points in 2004.

- 112.** ~~110.~~ In the years immediately preceding and following the Partnership Agreement, retention rates at Coppin State University dropped. *Id.* at 15.
- 113.** ~~111.~~ In 1998, the second-year retention rate at Coppin State was 72.2%. In 2001, it was 69.6%. In 2004, it was 63.1%.
- 114.** ~~112.~~ Similarly, in 1997, the fourth-year retention rate at Coppin State was 36%. In 1999, it was 24.7%. And in 2001, it was 23.7% of Coppin State students were enrolled for a full four years.
- 115.** ~~113.~~ In 1999, the second-year retention rate at UMES was 74.1%. In 2002 it was 69.7%. In 2004, it had decreased to 64.3%.
- 116.** ~~114.~~ Fourth-year retention rates at UMES were generally increasing in the years preceding the Partnership Agreement, but dropped from over 22% in 1999 and 2000 to 19.8% in 2001.
- 117.** ~~115.~~ White enrollment at the state's HBCUs, percentage-wise, has either stayed the same or decreased over the last decade.
- 118.** ~~116.~~ White total-enrollment at Bowie State decreased from over 17% in 1997 to 7% in 2005. Stated another way, in 1997 Bowie State had 890 White students enrolled in University programs, by 2005 that number decreased to 374 White students. Trends in Enrollment by Race and Gender: Maryland Higher Education Institutions 47-48 (2007). Today, White enrollment continues to decline. *Id.*
- 119.** ~~117.~~ The Partnership Agreement called for a MHEC study of enrollment if White enrollment in HBCUs decreased. The state has not made any formal investigation into or recognition of this drop.

120. ~~118.~~ White total enrollment at UMES decreased from 19% in 1997 to less than 12% in 2005 (or 615 White students to 463). *Id.* at 65-66.

121. ~~119.~~ White total enrollment in Morgan State has remained around 2% despite having had the only public MBA program in the state for many years. *Id.* at 69-70.

Maryland's Failures With Respect to Campus Programs & Activities

122. ~~120.~~ Commitment Five (5) of the Partnership Agreement required Defendants to “continu[e] and expand[] their programs and activities designed to ensure that all students encounter a campus atmosphere which is welcoming and free of hostility and that the campus atmosphere at each institution is attractive and welcoming to students of all races.” Partnership Agreement at 30.

123. ~~121.~~ On information and belief, Defendants have failed to enhance HBCUs to make them as attractive and welcoming as TWIs.

124. ~~122.~~ Defendants, in their Final Committee Report to OCR, claim to have met Commitment Five. However, in support of this claim, Defendants point only to surveys asking graduating students whether they would choose to enroll in the same school if they had the option to make the choice again. This type of evidence does not meet the state’s burden of proving it has met its contractual obligations to make “the campus atmosphere at each institution is attractive and welcoming to students of all races.”

125. ~~123.~~ On information and belief, physical improvements and capital projects at HBCUs take an average of ten years longer to complete than at TWIs. This is demonstrative of Defendants’ lack of good faith towards these improvements.

126. ~~124.~~ As an example of their efforts to improve campus climate at HBCUs, Defendants cite Morgan State's new state-funded library, which was expected to be available in late 2006. According to Defendants' report to OCR, "For the first time, Morgan students will have available two types of facilities of the quality found at other campuses." MHEC Final Committee Report I at 63 (2005). This library was requested in 1993, and has yet to be completed.

127. ~~125.~~ Declining White enrollment at HBCUs is evidence of Defendants' failure to make those campuses "attractive and welcoming to students of all races."

128. ~~126.~~ In the years immediately preceding and following the Partnership Agreement, retention rates at Coppin State University dropped. Retention and Graduation Rates at Maryland Public Four-Year Institutions at 15 (2006).

Maryland's Failures With Respect to Faculty & Staff Diversity

129. ~~127.~~ Commitment Six of the Partnership Agreement requires Maryland "to continu[e] [its] efforts to attract, recruit and retain racially diverse faculty and staff." Partnership Agreement at 30.

130. ~~128.~~ Additionally, Maryland committed to "promoting the positive perception of all of its public institutions of higher education, in order to make them attractive to faculty and staff of all races and to the development and enforcement of measures necessary to support this commitment." *Id.*

131. ~~129.~~ Defendants' failure to execute the enhancement plans submitted to MHEC in 2001 as part of the Partnership Agreement has limited the ability of HBCUs to effectively compete with TWIs for faculty and staff.

132. ~~130.~~ Defendants' failure to expeditiously complete capital projects already begun at HBCUs as of 2000 has limited the ability of HBCUs to effectively compete with TWIs.

133. ~~131.~~ Maryland's TWIs are able to recruit and retain diverse faculty and staff at a more competitive level than the HBCUs because of the attractiveness of their atmosphere and appearance.

134. ~~132.~~ HBCUs are at a competitive disadvantage in attracting and retaining diverse faculty. While the number of non-Black full-time faculty at HBCUs increased by 10% from 1995 to 2004, non-Black full-time faculty at TWIs increased by 22.8% during that time. Conversely, Black full-time faculty at HBCUs increased by 44%, while Black full-time faculty at TWIs only increased by 13.9%. MHEC Committee Report I at 68 (2006).

CLAIMS

First Cause of Action – Violations of Title VI

135. ~~133.~~ Plaintiffs reallege and incorporate by reference each allegation in Paragraphs 1 through 130 of this Complaint as though fully set forth herein.

136. ~~134.~~ Defendants have engaged in a pattern and practice of intentional discrimination with respect to Maryland's HBCUs in violation of Title VI of the Civil Rights Act of 1964 by maintaining a segregated system of higher education.

137. ~~135.~~ Defendants have engaged in a pattern and practice of long term failure to perform their duty to enforce state and federal laws for the provision of equal educational opportunity in Maryland's higher education system.

138. ~~136.~~ Defendants have continued to operate a segregated system of higher education and continue to take actions to perpetuate that segregated system in violation of Title VI of the Civil Rights Act.

139. ~~137.~~ Defendants have failed in their duty to bring Maryland's HBCUs into parity with its TWIs, specifically by failing to provide increased funding to HBCUs, by failing to make market improvements in facilities, and by perpetuating unnecessary program duplication.

Second Cause of Action – Violations of the Equal Protection Clause

140. ~~138.~~ Plaintiffs reallege and incorporate by reference each allegation in Paragraphs 1 through 135 of this Complaint as though fully set forth herein.

141. ~~139.~~ Defendants have engaged in a pattern and practice of intentional discrimination with respect to Maryland's HBCUs in violation of the Equal Protection Clause of the Fourteenth Amendment and under *Fordice*.

142. ~~140.~~ Defendants have continued to operate a segregated system of higher education and continue to take actions to perpetuate that segregated system in violation of the Equal Protection Clause and *Fordice*.

143. ~~141.~~ Defendants have failed in their duty to bring Maryland's HBCUs into parity with its TWIs, specifically by failing to provide increased funding to HBCUs, in violation of the Equal Protection Clause and *Fordice*.

144. ~~142.~~—Defendants have allowed Maryland’s TWIs to duplicate unique programs at proximately-located HBCUs in violation of the Equal Protection Clause and *Fordice*.
145. ~~143.~~—Defendants have duplicated unique programs at Morgan State by approving University of Baltimore as a four-year undergraduate institution in violation of the Equal Protection Clause and *Fordice*.
146. ~~144.~~—Defendants have duplicated unique programs already in existence at Morgan State University by approving three programs in Engineering at UMBC in violation of the Equal Protection Clause and *Fordice*.
147. ~~145.~~—Defendants have duplicated unique programs at Morgan State by approving a Masters in Business Administration jointly at Towson University and University of Baltimore in violation of the Equal Protection Clause and *Fordice*.
148. ~~146.~~—Defendants have duplicated unique programs at Morgan State by approving a Public Health program at University of Maryland Baltimore in violation of the Equal Protection Clause and *Fordice*.
149. ~~147.~~—Defendants have duplicated unique programs at UMES by approving an exercise science program at Salisbury University in violation of the Equal Protection Clause and *Fordice*.
150. ~~148.~~—Defendants have duplicated unique programs at UMES by approving a marketing program at Salisbury University in violation of the Equal Protection Clause and *Fordice*.

151. 149. Defendants have duplicated unique programs at UMES by approving a computer science program at Salisbury University in violation of the Equal Protection Clause and *Fordice*.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray the court award the following relief:

- (a) Declare that Defendants' conduct violates Title VI of the Civil Rights Act of 1964, the Equal Protection Clause of the Fourteenth Amendment as described in *Fordice*.
- (b) Preliminarily and permanently enjoin Defendants, their agents, representatives, and officers, from continuing the abuses described above, including acting in a manner inconsistent with the U.S. Constitution, the Maryland Constitution, the Maryland Charter for Higher Education, the Partnership Agreement, the state's equal education opportunity obligations under State and federal law, including Title VI and *Fordice*.
- (c) Preliminarily and permanently enjoin Defendants, their agents, representatives, and officers, from continuing the abuses described above, including duplicating academic programs of HBCUs at proximately located TWIs, and continuing the current process for new academic program approval.
- (d) Preliminarily and permanently enjoin Defendants, their agents, representatives, and officers, from continuing the abuses described above, including delaying campus and facility improvement projects,

- (e) Preliminarily and permanently enjoin Defendants, their agents, representatives, and officers, from continuing the abuses described above, including maintaining funding levels that do not ensure parity,
- (f) Order Defendants to honor all commitments made in the Partnership Agreement no later than 12 months of the issuance of this injunction.
- (g) Order Defendants to dismantle and eliminate all unnecessary academic program duplication at Maryland HBCUs, in particular the MBA program at Towson University and University of Baltimore.
- (h) Order Defendants to transfer resources allocated to duplicative academic programs to HBCUs and to provide HBCUs with any additional resources and/or infrastructure needed to support programs already in place, rather than increase programs in existence at TWIs.
- (i) Order Defendants to provide Maryland HBCUs with all the necessary resources and support to insure that they are comparable and competitive with Maryland's TWI in all facets of their operations and programs, to ensure that the campus environments at the HBCUs are comparable to TWIs with respect to physical characteristics of landscape, ambiance, student life, appearance, availability, quality and adequacy of facilities necessary to support the missions and programs of the institutions.
- (j) Order Defendants to immediately revise the State funding guidelines so as to create funding guidelines unique to HBCUs and focus on enhancing HBCUs so that they reach parity with Maryland TWIs in all respects, as identified in the Partnership Agreement.

- (k) Award Plaintiffs the cost of this action together with their attorney's fees; and
- (l) Grant such other relief as may be appropriate or necessary.

Dated: ~~December 11, 2009~~ March 30, Respectfully submitted,
2010

/s/

Michael D. Jones, Esq. (Bar No. 08634)

Karen Walker (Bar No. 14182)

Michele E. Gutrick (Bar No. 28964)

Charanjit Brahma (pro hac vice)

~~Henry Thompson~~ **Edward Meyers** (*pro hac vice*)

Savaria B. Harris (*pro hac vice*)

Henry Thompson, II (pro hac vice)

Alexandra M. Spear (pro hac vice)

Megan L. Meier (pro hac vice)

KIRKLAND & ELLIS LLP

655 Fifteenth Street, N. W.

Washington, D.C. 20005

Telephone: (202) 879-5000

Facsimile: (202) 879-5200

Email : ~~henry.thompson~~ **megan.meier**@kirkland.com

Aderson B. Francois, Esq. (Bar No. 17449)

Howard University School of Law

Civil Rights Clinic

2900 Van Ness Street, N. W.

Washington, D.C. 20008

Telephone: (202) 806-8065

Facsimile: (202) 806-8436

Email: afrancois@law.howard.edu

~~Tricia Jefferson, Esq. (Bar No. 17651)~~

~~Jon Greenbaum (pro hac vice)~~

Ray McClain (pro hac vice)

~~David Cooper (pro hac vice)~~

~~Erik Kosa (pro hac vice)~~

Phillip Dupré (pro hac vice)

Lawyers' Committee for Civil Rights Under Law

1401 New York Avenue, N.W., Suite 400

Washington, D.C. 20005

Telephone: (202) 662-8332

Facsimile: (202) 783-0857

Email: tjefferson@lawyerscommittee.org

ATTORNEYS FOR PLAINTIFFS

ATTORNEYS FOR PLAINTIFFS