

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is made this 27th day of April _____ 2021, by and between The Coalition for Equity and Excellence in Maryland Higher Education (the "Coalition") and David Burton, Rashaan Simon, Muriel Thompson, Anthony Robinson, Dr. Chris Heidelberg, Damein Montgomery, Kelly Thompson, and Jomari Smith (hereinafter "Plaintiffs"), and the State of Maryland (the "State"), Maryland Higher Education Commission ("MHEC"), MHEC Chairman Andrew R. Smarick, and Secretary of Higher Education James D. Fielder, Jr., (hereinafter "Defendants"), (collectively the "Parties").

RECITALS

WHEREAS, in 2006, the Coalition and several individual plaintiffs filed suit against Defendants in the Circuit Court for Baltimore City and the case was removed to the United States District Court for the District of Maryland ("District Court"), *Coalition for Equity and Excellence in Maryland Higher Education, et al. v. Maryland Higher Education Commission, et al.*, Civil No. CCB-06-2773 (the "Lawsuit"); and

WHEREAS, the District Court issued a Memorandum and Opinion on October 7, 2013, and a Remedial Order on November 8, 2017.

WHEREAS, in 2021, the Maryland General Assembly passed emergency legislation, Historically Black Colleges and Universities - Funding, S.B. 1 (Md. 2021) (the "Legislation"), to settle the Lawsuit, and on March 24, 2021, the Governor of Maryland signed the Legislation into law; and

WHEREAS, a copy of the Legislation is attached to this Settlement Agreement and Release as Exhibit A and incorporated herein by reference; and

WHEREAS, Defendants deny any and all liability for the claims asserted by Plaintiffs;

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration as is more fully described below, Plaintiffs and Defendants agree as follows:

AGREEMENT

A. The Parties to this Settlement Agreement and Release ("Settlement Agreement") are the Plaintiffs and the Defendants. Except for the parties released by this

Settlement Agreement, no other person or entity shall be deemed a third-party beneficiary of this Settlement Agreement.

B. This Settlement Agreement applies to, is binding upon, and inures to the benefit of the Plaintiffs (and Plaintiffs' successors and assigns) and the Defendants (and their successors, assigns, and designees).

C. Each undersigned representative of the Parties to this Settlement Agreement certifies that he or she is fully authorized by the Party to enter into and execute the terms and conditions of this Settlement Agreement and to legally bind such Party to this Settlement Agreement.

D. This Settlement Agreement, incorporating Exhibits A and B, is the entire agreement between the Plaintiffs and the Defendants in this case. This Settlement Agreement constitutes the complete, final, and entire understanding of the Parties hereto, and they shall not be bound by any terms, conditions, covenants, or representations not expressly contained or expressly incorporated by referenced herein. To the extent this Settlement Agreement references documents other than Exhibits A and B, those documents are referenced for informational purposes only and are not thereby incorporated by reference into, and do not constitute a part of, this Settlement Agreement. All prior conversations, meetings, discussions, drafts, and writings of any kind are specifically superseded by this Settlement Agreement.

E. This Settlement Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing the agreement to be drafted.

F. This Settlement Agreement may be executed in any number of counterpart originals, each of which shall be deemed to constitute as original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any Party shall have the same force and effect as if that Party had signed all other counterparts.

G. The Parties agree that any Maryland policy of unnecessary program duplication traceable to de jure segregation has been cured by the terms of this Settlement Agreement.

H. Within five business days after all Parties have signed this Settlement Agreement, the Parties will submit to the District Court a motion that the District Court issue an indicative ruling pursuant to Rule 62.1 of the Federal Rules of Civil Procedure stating that if the Lawsuit is remanded by the Court of Appeals, the District Court will enter an order providing that any Maryland policy of unnecessary program duplication traceable to de jure segregation has been cured by the terms of this Settlement Agreement. If the District Court grants the Parties' motion, the Parties will file a motion asking the Court of

Appeals to remand the case to allow the District Court to grant the motion as provided in its indicative ruling. If the District Court grants the Parties' motion, and following remand from the Court of Appeals, the District Court enters an order as provided in this paragraph, the Parties agree that this Lawsuit will be resolved. If the District Court declines to grant the motion or indicates that it would enter relief other than as provided in this paragraph, this Settlement Agreement shall be of no force and effect.

I. If the District Court enters an order as provided in Paragraph H, the Attorney General of Maryland agrees to transmit notice of the order and this Settlement Agreement to the Department of Legislative Services consistent with the terms of the Legislation.

J. The State agrees to pay Plaintiffs' attorneys' fees and costs in the amount of \$22,032,000 by July 1, 2022, as authorized by and through the allocation process described in the Legislation, to Michael D. Jones, P.C., Partner, Kirkland & Ellis, LLP, who represents that for administrative convenience he is authorized to receive the entire amount of that sum on behalf of all attorneys for the Plaintiffs entitled to fees. Attorneys for the Plaintiffs have executed a representation concerning their entitlement to the agreed upon attorneys' fees, which is attached as Exhibit B.

K. Upon this Settlement Agreement becoming final, the Parties agree to dismiss their appeals and cross-appeals, if at that point any remain pending before the United States Court of Appeals for the Fourth Circuit.

L. This Settlement Agreement is governed by, and interpreted according to, the laws of the State of Maryland without regard to conflict of laws principles.

M. This Settlement Agreement may not be modified or changed orally, but only by an agreement in writing signed by all parties.

N. The Parties represent that prior to signing this Settlement Agreement, each has read it, understood its terms and conditions, consulted with counsel, and voluntarily signed it.

RELEASE

O. Upon signing by the Parties, in full and final settlement of the Plaintiffs' claims, the Parties agree that the following release of claims shall become effective:

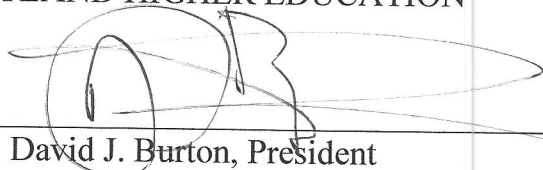
Each of the Plaintiffs, being of lawful age, for himself or herself and any claiming through him or her, his or her heirs, executors, administrators and assigns, does hereby release, acquit and forever discharge the Defendants, as well as their respective successors and assigns, departments, divisions, units, current and former officials, current and former officers, current and former agents, current and former

servants, current and former representatives, current and former employees and current and former independent contractors and any and all other persons, associations, corporations and government entities, whether or not named herein or referenced, who together with the Defendants may be jointly or severally liable to the Plaintiff (the "Releasees"), from all claims, demands, actions, causes of action, suits, damages, losses, attorneys' fees and expenses of each and every kind, type or nature whatsoever, whether known or unknown, raised in the Lawsuit, which could have been raised in the Lawsuit, or which relate in any way to the matters alleged in the Lawsuit. Nothing in this paragraph shall be read to release any future claim, demand, cause of action, or suit to enforce the terms of this Settlement Agreement.

FOR PLAINTIFFS:

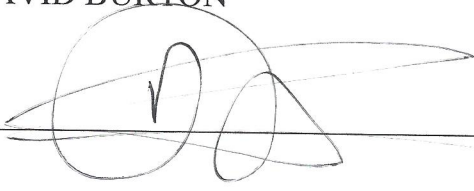
COALITION FOR EQUITY AND EXCELLENCE IN
MARYLAND HIGHER EDUCATION

Dated: 4/27/21


By: David J. Burton, President

DAVID BURTON

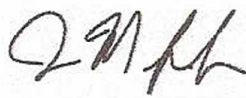
Dated: 4/27/21


RASHAAN SIMON, MURIEL THOMPSON,
ANTHONY ROBINSON, DR. CHRIS
HEIDELBERG, DAMEIN MONTGOMERY, KELLY
THOMPSON, AND JOMARI SMITH

Dated: 4/27/21


By: Michael D. Jones, P.C.,
Partner, Kirkland & Ellis LLP

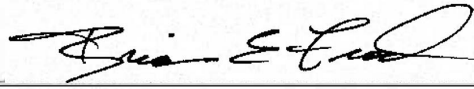
April 27, 2021
Dated:


By: Jon M. Greenbaum, Chief Counsel
Lawyers Committee for Civil Rights Under Law

FOR DEFENDANTS:


STATE OF MARYLAND

Dated: 04/27/21


By: Brian E. Frosh
Attorney General of Maryland

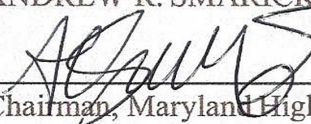
MARYLAND HIGHER EDUCATION COMMISSION

Dated: 04/27/2021


By: James D. Fielder, Jr.
Secretary of Higher Education

ANDREW R. SMARICK

Dated: 4/27/21



Chairman, Maryland Higher Education Commission

JAMES D. FIELDER, JR.

Dated: 04/27/2021


Secretary of Higher Education

Approved for legal sufficiency:



Assistant Attorney General

EXHIBIT A

Chapter 42

(Senate Bill 1)

AN ACT concerning

Historically Black Colleges and Universities – Funding

FOR the purpose of requiring the Maryland Higher Education Commission to establish a certain new unit to assist in evaluating and reviewing certain proposals for new programs and substantial modifications of existing programs by an institution of postsecondary education; requiring the Governor, beginning in a certain fiscal year, to include in the annual budget bill an amount sufficient to employ certain staff; requiring the Governor, in certain fiscal years, to include in the annual budget bill certain funds for certain historically black colleges and universities in the State; specifying how certain funds shall be allocated; providing for the allowable uses of certain funds; providing that certain funds be in addition to certain base funds appropriated to certain institutions; prohibiting certain funds from being included in certain calculations of State funding for certain institutions of higher education under certain provisions of law; requiring certain historically black colleges and universities to report annually, for a certain duration, certain information to the Governor, the President of the Senate, the Speaker of the House, the House Appropriations Committee, and the Senate Budget and Taxation Committee; establishing the Historically Black Colleges and Universities Reserve Fund as a special, nonlapsing fund; specifying the purpose of the Fund; requiring the Commission to administer the Fund; requiring the State Treasurer to hold the Fund and the Comptroller to account for the Fund; specifying the contents of the Fund; specifying the purpose for which the Fund may be used; providing for the investment of money in and expenditures from the Fund; requiring interest earnings of the Fund to be credited to the Fund; exempting the Fund from a certain provision of law requiring interest earnings on State money to accrue to the General Fund of the State; requiring the Cigarette Restitution Fund to include a separate account consisting of payments received by the State as a result of certain litigation; requiring distributions from a certain separate account to supplant a certain general fund appropriation; stating certain findings of the General Assembly; defining a certain term; requiring the University System of Maryland William E. Kirwan Center for Academic Innovation, in collaboration with UMUC Ventures, to assist certain historically black colleges and universities with developing and offering online academic programs; providing that certain procurements and contracts are not subject to the approval of the Board of Public Works under a certain provision of law; authorizing the Board of Regents of the University System of Maryland to use the fund balance to support the development and offering of certain online programs; ~~requiring the Commission, in consultation with certain institutions, to study its own policies and practices and report the results on or before a certain date~~ Department of Legislative Services to contract with a consultant to study the capacity and capability of the Commission to carry out certain policies and practices and report the results in an interim and final report on or before certain dates; requiring the

Commission to provide certain information to the Department of Legislative Services or a certain consultant; encouraging certain historically black colleges and universities to hire a certain consultant and report the results and any findings on or before a certain date; encouraging certain historically black colleges and universities to use certain funds to implement and support the Blueprint for Maryland's Future; requiring the Governor to provide a certain allocation in a certain fiscal year for certain fees and expenses under certain circumstances; authorizing the Attorney General to execute a certain final settlement agreement; making conforming changes; making certain provisions of this Act subject to a certain contingency; making this Act an emergency measure; and generally relating to historically black colleges and universities in the State.

BY adding to

Article – Education

Section 10–214, 11–206.3, 15–126, and 15–127

Annotated Code of Maryland

(2018 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, without amendments,

Article – State Finance and Procurement

Section 6–226(a)(2)(i) and 7–317(a)

Annotated Code of Maryland

(2015 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,

Article – State Finance and Procurement

Section 6–226(a)(2)(ii)122. and 123. and 7–317(b), (e), and (h)

Annotated Code of Maryland

(2015 Replacement Volume and 2020 Supplement)

BY adding to

Article – State Finance and Procurement

Section 6–226(a)(2)(ii)124. and 7–317(h)

Annotated Code of Maryland

(2015 Replacement Volume and 2020 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Education

10–214.

THE GENERAL ASSEMBLY FINDS THAT:

(1) THE STATE OF MARYLAND WISHES TO PROVIDE ALL OF ITS CITIZENS WITH EQUAL ACCESS TO HIGHER EDUCATION AT EXCELLENT AND AFFORDABLE PUBLIC COLLEGES AND UNIVERSITIES;

(2) THE GENERAL ASSEMBLY HAS CAREFULLY REVIEWED THE MEMORANDUM OPINIONS AND ORDERS OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, ISSUED OCTOBER 7, 2013, AND NOVEMBER 8, 2017, IN THE ACTION, THE COALITION FOR EQUITY AND EXCELLENCE IN MARYLAND HIGHER EDUCATION, ET AL. V. MARYLAND HIGHER EDUCATION COMMISSION, ET AL., 06–CV–02773–CCB;

(3) THE DISTRICT COURT FOUND THAT THE STATE FAILED TO ELIMINATE A TRACEABLE DE JURE ERA POLICY OF UNNECESSARY DUPLICATION OF PROGRAMS AT HISTORICALLY BLACK COLLEGES AND UNIVERSITIES IN THE STATE THAT HAS EXACERBATED THE RACIAL IDENTIFIABILITY OF MARYLAND’S HISTORICALLY BLACK COLLEGES AND UNIVERSITIES;

(4) MARYLAND’S HISTORICALLY BLACK COLLEGES AND UNIVERSITIES, WHICH ARE BOWIE STATE UNIVERSITY, COPPIN STATE UNIVERSITY, MORGAN STATE UNIVERSITY, AND UNIVERSITY OF MARYLAND EASTERN SHORE, SHOULD RECEIVE ADDITIONAL SUPPORT TO REMEDY THE FINDINGS OF THE DISTRICT COURT;

(5) THE ADDITIONAL SUPPORT SHALL BE PROVIDED IN THE FORM OF ADDITIONAL FUNDING IN THE AMOUNT OF \$577,000,000, WHICH SHALL BE PROVIDED IN AMOUNTS AS CALCULATED UNDER § 15–126 OF THIS ARTICLE IN EACH OF FISCAL YEARS 2023 THROUGH 2032, AND SHALL BE ALLOCATED AMONG THE INSTITUTIONS; AND

(6) THE PROVISIONS OF §§ 15–126 AND 15–127 OF THIS ARTICLE SHALL ENSURE THAT MARYLAND’S HISTORICALLY BLACK COLLEGES AND UNIVERSITIES SHALL RECEIVE THIS SUPPORT.

11–206.3.

(A) THE COMMISSION SHALL ESTABLISH A PROGRAM EVALUATION UNIT TO EVALUATE NEW PROGRAMS AND SUBSTANTIAL MODIFICATIONS.

(B) (1) THE UNIT ESTABLISHED IN THIS SECTION SHALL HAVE AT LEAST 10 STAFF MEMBERS WHO ARE EMPLOYEES OF THE COMMISSION.

(2) THE STAFF MEMBERS ASSIGNED TO THIS UNIT SHALL BE IN ADDITION TO THE CURRENT WORKFORCE OF THE COMMISSION.

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(C) THE UNIT ESTABLISHED IN THIS SECTION SHALL ASSIST THE COMMISSION IN REVIEWING AND EVALUATING PROPOSALS FOR NEW PROGRAMS AND SUBSTANTIAL MODIFICATIONS OF EXISTING PROGRAMS IN ACCORDANCE WITH §§ 11-206 AND 11-206.1 OF THIS SUBTITLE.

(D) BEGINNING IN FISCAL YEAR 2023, THE GOVERNOR SHALL INCLUDE IN THE ANNUAL BUDGET BILL AN APPROPRIATION IN AN AMOUNT SUFFICIENT TO EMPLOY THE 10 STAFF MEMBERS REQUIRED UNDER THIS SECTION.

15-126.

(A) ~~FOR~~ SUBJECT TO SUBSECTION (D) OF THIS SECTION, FOR FISCAL YEAR 2023, THE GOVERNOR SHALL INCLUDE IN THE ANNUAL BUDGET BILL A GENERAL FUND APPROPRIATION OF AT LEAST:

- (1) \$16,790,700 FOR BOWIE STATE UNIVERSITY;
- (2) \$9,000,000 FOR COPPIN STATE UNIVERSITY;
- (3) \$24,003,200 FOR MORGAN STATE UNIVERSITY; AND
- (4) \$9,693,600 FOR UNIVERSITY OF MARYLAND EASTERN SHORE.

(B) (1) ~~FOR~~ SUBJECT TO SUBSECTION (D) OF THIS SECTION, FOR EACH OF FISCAL YEARS 2024 THROUGH 2031, THE GOVERNOR SHALL INCLUDE IN THE ANNUAL BUDGET BILL A GENERAL FUND APPROPRIATION TO THE HISTORICALLY BLACK COLLEGES AND UNIVERSITIES AS CALCULATED UNDER PARAGRAPH (2) OF THIS SUBSECTION.

(2) THE FUNDS PROVIDED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE ALLOCATED TO EACH INSTITUTION IN AN AMOUNT THAT IS THE GREATER OF:

- (I) \$9,000,000; OR
- (II) THE PRODUCT OF:

1. THE PERCENTAGE SHARE OF STUDENTS ENROLLED DURING THE IMMEDIATELY PRECEDING ACADEMIC YEAR AT EACH INSTITUTION COMPARED TO THE TOTAL NUMBER OF STUDENTS ENROLLED AT ALL OF THE HISTORICALLY BLACK COLLEGES AND UNIVERSITIES; AND

2. \$57,700,000.

LAWRENCE J. HOGAN, JR., Governor

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(3) (I) ~~FOR~~ SUBJECT TO SUBSECTION (D) OF THIS SECTION, FOR FISCAL YEAR 2032, THE GOVERNOR SHALL INCLUDE IN THE ANNUAL BUDGET BILL A GENERAL FUND APPROPRIATION EQUAL TO THE DIFFERENCE OF:

1. \$577,000,000; MINUS

2. THE SUM OF THE TOTAL FUNDS ALLOCATED FOR EACH OF FISCAL YEARS 2023 THROUGH 2031 UNDER THIS SECTION.

(II) THE FUNDS PROVIDED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE ALLOCATED TO EACH HISTORICALLY BLACK COLLEGE AND UNIVERSITY IN AN AMOUNT THAT IS EQUAL TO THE PRODUCT OF:

1. THE PERCENTAGE SHARE OF STUDENTS ENROLLED DURING THE IMMEDIATELY PRECEDING ACADEMIC YEAR AT EACH INSTITUTION COMPARED TO THE TOTAL NUMBER OF STUDENTS ENROLLED AT ALL OF THE HISTORICALLY BLACK COLLEGES AND UNIVERSITIES; AND

2. THE AMOUNT OF GENERAL FUNDS DETERMINED FOR FISCAL YEAR 2032 UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH.

(4) AT THE END OF EACH FISCAL YEAR, ANY UNUSED FUNDS PROVIDED UNDER THIS SECTION SHALL BE DISTRIBUTED TO THE HISTORICALLY BLACK COLLEGES AND UNIVERSITIES RESERVE FUND ESTABLISHED UNDER § 15-127 OF THIS SUBTITLE.

(C) FUNDS PROVIDED UNDER THIS SECTION:

(1) SHALL BE SUPPLEMENTAL TO, AND MAY NOT SUPPLANT, FUNDS APPROPRIATED TO PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN THE STATE BUDGET;

(2) MAY BE USED FOR THE FOLLOWING PURPOSES, AS DETERMINED BY THE UNIVERSITY RECEIVING THE FUNDS:

(I) SCHOLARSHIPS AND FINANCIAL AID SUPPORT SERVICES;

(II) FACULTY RECRUITMENT AND DEVELOPMENT;

(III) EXPANDING AND IMPROVING EXISTING ACADEMIC PROGRAMS, INCLUDING ONLINE PROGRAMS;

(IV) DEVELOPMENT AND IMPLEMENTATION OF NEW ACADEMIC PROGRAMS, INCLUDING ONLINE PROGRAMS;

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(V) ACADEMIC SUPPORT; AND

(VI) MARKETING; AND

(3) MAY NOT BE INCLUDED IN THE CALCULATIONS OF STATE FUNDING UNDER §§ 16–305, 16–512, AND 17–104 OF THIS ARTICLE.

(D) IF THE SPECIAL ACCOUNT IN THE CIGARETTE RESTITUTION FUND ESTABLISHED UNDER § 7–317 OF THE STATE FINANCE AND PROCUREMENT ARTICLE HAS A BALANCE, THE GOVERNOR SHALL USE THE BALANCE TO SUPPLANT THE GENERAL FUND APPROPRIATION TO THE HISTORICALLY BLACK COLLEGES AND UNIVERSITIES REQUIRED UNDER THIS SECTION.

~~(D)~~ (E) ON OR BEFORE DECEMBER 1 EACH YEAR, BEGINNING IN 2023 AND GOING THROUGH 2033, EACH HISTORICALLY BLACK COLLEGE OR UNIVERSITY SHALL REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2–1257 OF THE STATE GOVERNMENT ARTICLE, THE PRESIDENT OF THE SENATE, THE SPEAKER OF THE HOUSE, THE HOUSE APPROPRIATIONS COMMITTEE, AND THE SENATE BUDGET AND TAXATION COMMITTEE ON:

(1) THE USES OF THE FUNDS IN ACCORDANCE WITH SUBSECTION (C)(2) OF THIS SECTION; AND

(2) ANY NEW ACADEMIC PROGRAM DEVELOPED WITH RESPECT TO:

(I) DEVELOPMENT COSTS;

(II) STARTUP COSTS; AND

(III) ONGOING COSTS TO MAINTAIN THE PROGRAM.

15–127.

(A) IN THIS SECTION, “FUND” MEANS THE HISTORICALLY BLACK COLLEGES AND UNIVERSITIES RESERVE FUND.

(B) THERE IS A HISTORICALLY BLACK COLLEGES AND UNIVERSITIES RESERVE FUND.

(C) THE PURPOSE OF THE FUND IS TO PROVIDE RESERVE FUNDING FOR BOWIE STATE UNIVERSITY, COPPIN STATE UNIVERSITY, MORGAN STATE UNIVERSITY, AND UNIVERSITY OF MARYLAND EASTERN SHORE THAT IS USED FOR

PURPOSES CONSISTENT WITH THE USES SPECIFIED UNDER § 15–126 OF THIS SUBTITLE.

(D) THE MARYLAND HIGHER EDUCATION COMMISSION SHALL ADMINISTER THE FUND.

(E) (1) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT TO § 7–302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(2) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY, AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

(F) THE FUND CONSISTS OF:

(1) THE REMAINDER OF ANY FUNDS UNUSED AT THE END OF A FISCAL YEAR THAT IS DISTRIBUTED TO THE FUND UNDER § 15–126 OF THIS SUBTITLE;

(2) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND;

(3) INTEREST EARNINGS; AND

(4) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR THE BENEFIT OF THE FUND.

(G) THE FUND MAY BE USED ONLY FOR THE USES SPECIFIED UNDER § 15–126 OF THIS SUBTITLE.

(H) (1) THE STATE TREASURER SHALL INVEST THE MONEY OF THE FUND IN THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.

(2) ANY INTEREST EARNINGS OF THE FUND SHALL BE CREDITED TO THE FUND.

(I) EXPENDITURES FROM THE FUND MAY BE MADE ONLY IN ACCORDANCE WITH THE STATE BUDGET.

(J) MONEY EXPENDED FROM THE FUND FOR THE USES SPECIFIED UNDER § 15–126 OF THIS SUBTITLE IS SUPPLEMENTAL TO AND IS NOT INTENDED TO TAKE THE PLACE OF FUNDING THAT OTHERWISE WOULD BE APPROPRIATED FOR THE USES SPECIFIED UNDER § 15–126 OF THIS SUBTITLE OR ANY OTHER FUNDS APPROPRIATED TO PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN THE STATE BUDGET.

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6–226.

(a) (2) (i) Notwithstanding any other provision of law, and unless inconsistent with a federal law, grant agreement, or other federal requirement or with the terms of a gift or settlement agreement, net interest on all State money allocated by the State Treasurer under this section to special funds or accounts, and otherwise entitled to receive interest earnings, as accounted for by the Comptroller, shall accrue to the General Fund of the State.

(ii) The provisions of subparagraph (i) of this paragraph do not apply to the following funds:

122. the Racing and Community Development Financing Fund;

[and]

123. the Racing and Community Development Facilities Fund;

AND

124. THE HISTORICALLY BLACK COLLEGES AND UNIVERSITIES RESERVE FUND.

7–317.

(a) There is a Cigarette Restitution Fund.

(b) (1) The Fund is a continuing, nonlapsing fund that is not subject to § 7–302 of this subtitle.

(2) [There] EXCEPT AS PROVIDED IN SUBSECTION (H) OF THIS SECTION, THERE shall be credited to the Fund all revenues consisting of funds received by the State from any source resulting, directly or indirectly, from any judgment against or settlement with tobacco product manufacturers, tobacco research associations, or any other person in the tobacco industry relating to litigation, administrative proceedings, or any other claims made or prosecuted by the State to recover damages for violations of State law.

(3) There shall be credited to the Fund all money collected under § 24–508 of the Health – General Article or § 5–608 of the Labor and Employment Article.

(e) (1) The Fund shall be expended subject to any restrictions on its use or other limitations on its allocation that are:

(i) expressly provided by statute;

(ii) required as a condition of the acceptance of funds; or

(iii) determined to be necessary to avoid recoupment by the federal government of money paid to the Fund.

(2) [Disbursements] EXCEPT AS OTHERWISE PROVIDED UNDER SUBSECTION (H) OF THIS SECTION, DISBURSEMENTS from the Fund to programs funded by the State or with federal funds administered by the State shall be used solely to supplement, and not to supplant, funds otherwise available for the programs under federal or State law as provided in this section.

(H) (1) THE FUND SHALL INCLUDE A SEPARATE ACCOUNT CONSISTING OF PAYMENTS RECEIVED BY THE STATE AS A RESULT OF LITIGATION BY PARTICIPATING MANUFACTURERS RELATED TO THE STATE'S DILIGENT ENFORCEMENT OF TITLE 16, SUBTITLE 4 OF THE BUSINESS REGULATION ARTICLE.

(2) DISTRIBUTIONS FROM THE SEPARATE ACCOUNT MAY BE USED ONLY TO SUPPLANT THE GENERAL FUND APPROPRIATION TO THE HISTORICALLY BLACK COLLEGES AND UNIVERSITIES REQUIRED UNDER § 15-126 OF THE EDUCATION ARTICLE.

[(h)] (I) For each program, project or activity receiving funds appropriated under subsection (g)(3) of this section, the Governor shall:

(1) develop appropriate statements of vision, mission, key goals, key objectives, and key performance indicators and report these statements in a discrete part of the State budget submission, which shall also provide data for key performance indicators; and

(2) report annually, subject to § 2-1257 of the State Government Article, to the General Assembly no later than November 1 on:

(i) total funds expended, by program and subdivision, in the prior fiscal year from the Fund established under this section; and

(ii) the specific outcomes or public benefits resulting from that expenditure.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) (1) The University System of Maryland William E. Kirwan Center for Academic Innovation, in collaboration with UMUC Ventures, shall work with the State's historically black colleges and universities, Bowie State University, Coppin State University, Morgan State University, and University of Maryland Eastern Shore, with the goal of developing and offering online academic programs.

(2) The procurements and contracts for developing and offering online academic programs under paragraph (1) of this subsection are not subject to the approval of the Board of Public Works under § 12–112 of the Education Article.

(3) The Board of Regents of the University System of Maryland may use the fund balance to support the development and offering of online academic programs under this subsection.

(b) On or before December 1, 2021, each institution shall submit a report on its efforts and any findings to the Governor and, in accordance with § 2–1257 of the State Government Article, the President of the Senate and the Speaker of the House that summarizes the steps taken to comply with the requirement provided under subsection (a) of this section.

SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) ~~The Maryland Higher Education Commission shall, in consultation with Morgan State University, the University System of Maryland, and St. Mary's College of Maryland, study the Commission's~~ The Department of Legislative Services shall contract with a consultant to study the capacity and capability of the Maryland Higher Education Commission to carry out the current policies and practices and any new policies or practices established in accordance with this Act for the purpose of:

(1) evaluating, streamlining, improving, and making recommendations on the Commission's policies and practices with respect to academic program review;

(2) enhancing the economic competitiveness of the State by ensuring the responsiveness of institutions of higher education to market demand; and

(3) effectively supporting the State's workforce development requirements.

(b) The Maryland Higher Education Commission shall provide any information requested by the Department of Legislative Services or the consultant conducting the study under subsection (a) of this section in a timely manner.

~~(b) (c) (1)~~ (1) On or before December 1, 2021, the ~~Commission~~ Department of Legislative Services shall submit ~~a~~ an interim report on its findings to the Governor and, in accordance with § 2–1257 of the State Government Article, the President of the Senate and the Speaker of the House that summarizes the ~~results~~ progress of the study conducted in accordance with subsection (a) of this section.

(2) On or before September 1, 2022, the Department of Legislative Services shall submit a final report on its findings to the Governor and, in accordance with § 2–1257 of the State Government Article, the President of the Senate and the Speaker of the House that summarizes the results of the study conducted in accordance with subsection (a) of this section.

SECTION 4. AND BE IT FURTHER ENACTED, That:

(a) The State's historically black colleges and universities, Bowie State University, Coppin State University, Morgan State University, and University of Maryland Eastern Shore, are encouraged to hire a consultant who would assist the institutions, as a collective, with programmatic development.

(b) On or before December 1, 2021, each institution shall submit a report on its efforts and any findings to the Governor and, in accordance with § 2-1257 of the State Government Article, the President of the Senate and the Speaker of the House that summarizes the steps taken to comply with subsection (a) of this section.

SECTION 5. AND BE IT FURTHER ENACTED, That the State's historically black colleges and universities, Bowie State University, Coppin State University, Morgan State University, and University of Maryland Eastern Shore, are encouraged to use funds provided by this Act to support and implement the Blueprint for Maryland's Future.

SECTION 6. AND BE IT FURTHER ENACTED, That:

(a) Section 1 of this Act is contingent on the execution of a final settlement agreement in the case of The Coalition for Equity and Excellence in Maryland Higher Education v. Maryland Higher Education Commission, 06-CV-02773-CCB (D. MD) on or before June 1, 2021, that:

(1) incorporates and does not exceed the financial and programmatic commitments contained in Section 1 of this Act;

(2) incorporates the order described in subsection (d)(2) of this section; and

(3) provides for attorney's fees and expenses in an amount not less than \$14,000,000 but not more than \$25,000,000 to plaintiffs' counsel in The Coalition for Equity and Excellence in Maryland Higher Education v. Maryland Higher Education Commission, 06-CV-02773-CCB (D. MD).

(b) (1) In fiscal year 2023, the Governor shall provide an allocation for the attorney's fees and expenses in the amount specified in the final settlement agreement described in subsection (a) of this section.

(2) The amount allocated under paragraph (1) of this subsection shall be provided from the funds for the historically black colleges and universities under Section 1 of this Act, with the amounts allocated based on each institution's share of the total funds provided under Section 1 of this Act.

(3) Notwithstanding § 12-501 of the State Government Article or any other provision of law, the settlement agreement as provided in subsection (a) of this section,

including attorney's fees and expenses provided in the settlement agreement, are not subject to approval by the Board of Public Works.

(c) The Attorney General:

(1) is authorized to execute the final settlement agreement in subsection (a) of this section on behalf of the State on terms the Attorney General deems:

(i) as final resolution of the case of The Coalition for Equity and Excellence in Maryland Higher Education v. the Maryland Higher Education Commission, 06–CV–02773–CCB (D. MD); and

(ii) appropriate to carry out the purposes of Section 1 of this Act; and

(2) shall provide written notice of the executed settlement agreement to the Department of Legislative Services, 90 State Circle, Annapolis, MD 21401.

(d) Section 1 of this Act, with no further action required by the General Assembly, shall be null and void if, on or before June 11, 2021:

(1) the Department of Legislative Services has not received notice of the settlement agreement; and

(2) an order has not been issued from the United States District Court for the District of Maryland or the United States Court of Appeals for the Fourth Circuit that:

(i) reverses or vacates the District Court's holding that the State failed to eliminate traceable de jure era policy of unnecessary program duplication; or

(ii) holds that any policy of unnecessary program duplication traceable to de jure segregation has been cured by the terms of the settlement agreement.

SECTION 7. AND BE IT FURTHER ENACTED, That, except as provided in Section 6 of this Act, this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a ye and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

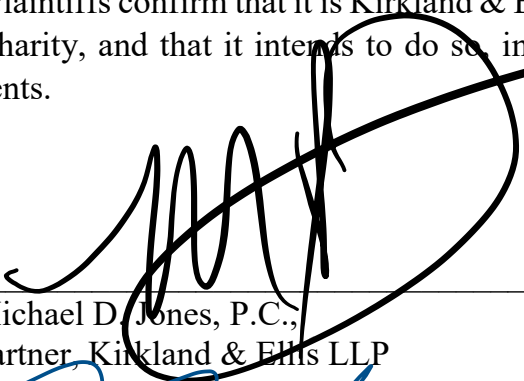
Approved by the Governor, March 24, 2021.

EXHIBIT B

The undersigned counsel for Plaintiffs represent that the legal services performed in this matter would warrant in their view an award of attorneys' fees and costs in excess of \$26,500,000 based upon the applicable law and rules in the United States District Court for the District of Maryland and in the United States Court of Appeals for the Fourth Circuit if such fees and costs were to be awarded by a court.

The undersigned counsel for Plaintiffs confirm that it is Kirkland & Ellis LLP policy to donate its attorneys' fees to charity, and that it intends to do so, including for the benefit of Maryland HBCU students.

Dated: 4/27/21



Michael D. Jones, P.C.,
Partner, Kirkland & Ellis LLP

Dated: April 27, 2021



Jon M. Greenbaum, Chief Counsel
Lawyers Committee for Civil Rights Under Law