

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

**JOHN F. KNIGHT, JR. and  
ALEASE S. SIMS, et al.,** )

**Plaintiffs,** )

**v.** )

**THE STATE OF ALABAMA, et al.,** )

**Defendants,** )

**UNITED STATES OF AMERICA,** )

**Plaintiff,** )

**v.** )

**THE STATE OF ALABAMA, et al.,** )

**Defendants.** )

**CIVIL ACTION NO.**

**83-M-1676-S**

**SETTLEMENT AGREEMENT BETWEEN THE  
KNIGHT-SIMS PLAINTIFFS AND TROY UNIVERSITY**

## I. PURPOSE AND BASIS OF THE AGREEMENT

This Settlement Agreement (hereinafter referred to as “Agreement”) is entered into by John F. Knight, Jr., and Alease S. Sims, et al., on behalf of themselves and the plaintiff class they have been certified to represent, and by defendant Troy University (hereinafter “defendant University” or “Troy”). The purpose of this Agreement is to specify the terms on which the Knight-Sims plaintiffs will join defendant University in requesting that the Court enter a judgment finally dismissing any and all claims against defendant University in this action.

A. Agreement That Defendant University Has Satisfied Legal Burden for Termination of Federal Supervision:

1. Applicable desegregation law requires the Court to determine whether Troy has complied in good faith with the requirements of the 1991 and 1995 Remedial Decrees and whether through that compliance any remaining vestiges of segregation have been eliminated to the extent practicable and

consistent with sound educational practices. The Court must also satisfy itself that the State's system of public higher education will continue to operate in a constitutional and non-discriminatory fashion before it can declare the system to be unitary. To that end, this Agreement's primary focus is on continuing to improve meaningful African American participation in Alabama's system of public higher education.

2. By entering into this Agreement, the Plaintiffs acknowledge that the defendant University has satisfied this legal burden to warrant termination of this Decree with respect to defendant University. The parties agree that good faith efforts to enhance diversity should continue, and that continued progress does not depend on continued federal court supervision. The defendant University pledges to continue to make good faith efforts to further the progress that has been achieved over the course of this litigation in redressing historical discrimination in higher education against African American citizens of this state,

and reaffirms its good faith commitment to operate in a constitutional and non-discriminatory fashion.

B. Agreement To Create Strategic Diversity Plan:

It is in this spirit that Troy and the Knight Plaintiffs have reached this Agreement to acknowledge the effectiveness of many of the ongoing programs and initiatives at defendant University and for Troy to create and implement, with collegial dialogue with and input from representatives selected by its African American faculty and administrators, a Strategic Diversity Plan at the defendant University, the contents of which is entirely discretionary with the administration of the defendant University, but with the following components in its plan as noted in sections II-IV.

**II. Board Commitment and Institutional Statements**

1. Seeking to secure diversity within higher education institutions is an educational policy that the defendant University freely and enthusiastically endorses as essential to the education

of its students and as part of its broader educational mission. The defendant University recognizes that the educational benefits flowing from racial and ethnic diversity are considerable. The defendant University agrees that students who learn from each other in an environment with a variety of backgrounds are more apt to understand and appreciate the world they inhabit than students who are educated in more culturally and racially homogenous institutions. In this context, diversity is not the end in itself but is aligned with the defendant University's commitment to prepare all its students for productive lives in the twenty-first century. Consistent with applicable law, defendant University also recognizes that the educational interest in diversity is conceptually broader than racial and ethnic diversity alone.

2. The parties acknowledge that Troy's Board of Trustees has passed resolutions publicly reaffirming its strong commitment to the goal of increasing the representation of African Americans in faculty and staff positions and has included as a

strategic objective in its Vision 2010 Strategic Plan an objective of increasing the number of African American faculty and administrators, and that Troy University has a strong commitment to maintaining a diverse student population. By signing this Agreement, the defendant University once again reaffirms its commitment to diversity as an educational policy, and its good faith commitment to operate in a constitutional and non-discriminatory fashion.

3. The defendant University will continue to document, using whatever language in whatever document its administration deems appropriate, that diversity is important to the defendant University and that its educational mission is enhanced and furthered by the existence of a diverse student body, faculty, and Professional level staff, which includes the highest leadership levels.

4. The defendant University will produce a statement that affirms its good faith commitment to operate in a

constitutional and non-discriminatory fashion, and a statement of support for diversity to reinforce the notion that diversity is an important institutional goal that contributes to the institution's educational mission.

5. The defendant University shall identify an administrative position at cabinet level to oversee implementation of its Strategic Diversity Plan.

**III. Accountability for Effectuating Diversity Commitment and Annual Assessment of Progress**

1. The defendant University agrees that the Chancellor, Vice Chancellors, and Deans shall be responsible for providing the leadership to create meaningful progress in diversity. The defendant University agrees that for at least the next five years, performance evaluations of the Vice Chancellors and Deans will include an evaluation of that administrator's efforts in achieving diversity.

2. For the next five years, the defendant University will, in collegial dialogue with representatives selected by its African American faculty and administrators, establish a five-year goal for African American representation in the faculty and Professional level staff, not as a legally or contractually enforceable quota, but as a standard management technique for assessing effectiveness of ongoing diversity initiatives. For the next five years, the defendant University will continue to submit to the Chancellor on an annual basis data or performance indicators for each of those areas. Legal liability will not attach to the defendant University for failure to reach its stated goals.

3. The defendant University agrees to prepare for the next five years, a Strategic Diversity Report, the contents of which shall be determined by its administration, but which shall, at a minimum, contain the following information:



a) Racial composition data of student body (total, undergraduate, and graduate) from 1991 to the prior Fall semester;

b) Racial composition data of students awarded bachelor, graduate and professional degrees the prior academic year for which data is available;

c) Racial composition of full-time faculty from 1991 to the prior Fall semester;

d) Racial composition of vice chancellors, provosts, deans, and other Professional level administrators for 1991 to the prior Fall semester;

e) Racial analysis of faculty and Professional level searches filled during the past academic year, including the number of African Americans who self-identified as applicants for the position; and

f) An assessment of progress by defendant university in enhancing diversity and/or moving toward its

diversity goals, with an emphasis on the representation of black faculty, Professional administrators, and students.

#### **IV. Continued Diversification of Faculty and Professional Staff**

1. The defendant University recognizes that its need to employ African American faculty and senior-level administrators is essential to its overall educational mission and is essential in securing the benefits that diversity adds to its mission. The defendant University also recognizes that diversity is, and must be, broader than simply the inclusion of African Americans in its faculty and Professional level administrative staff.

2. The defendant University commits to continuing to engage in strategic diversity initiatives that its administration deems appropriate to recruit, hire, and retain African American faculty and Professional level administrators. A description of some of the strategic diversity initiatives and practices employed

at the defendant University for the past fifteen years can be found in defendant University's Title VI annual reports.

3. A decision by the defendant University to continue or discontinue a particular strategic diversity program or initiative identified in its annual report or its decision to continue, implement or discontinue other current or new programs/initiatives will not constitute a breach of this Settlement Agreement. It is up to the administration of the defendant University to decide whether a particular strategic diversity initiative or practice complies with the law regarding institutional diversity initiatives and/or is cost effective or otherwise an appropriate program/initiative to continue. Should a court or federal agency disagree with the defendant University's interpretation and conclude the law has not been complied with, the defendant University will not be deemed for that reason to have breached this Settlement Agreement.

4. The defendant University agrees to require that African American representation, to the extent practicable, be on

all search committees for chancellor and all Professional level administrative positions.

5. The defendant University agrees to require representation of African Americans, to the extent practicable, on all search committees for tenured or tenure track faculty.

6. The defendant University agrees to send announcements of faculty and Professional level administrator position searches to the black faculty on its campuses with an invitation for them to identify possible recruits. The defendant University also agrees for the next five years to provide to the SREB, to the extent that SREB continues to accept such lists, a list of faculty vacancies in the event that the SREB, if it so chooses, will notify graduates of the SREB Doctoral Scholars Program of those vacancies.

7. The defendant University agrees for the next five years to distribute annually the SREB doctoral scholars list provided by ACHE (to the extent one exists and ACHE distributes

it) to Vice Chancellors and Deans with a request that these officials attempt to contact the SREB Doctoral Fellows within applicable fields of study and invite them to apply for positions that may be applicable to the SREB scholars' fields of study.

8. The defendant University agrees to implement new initiatives, activities, or programs or to utilize or modify existing initiatives that encourage black undergraduates to continue with graduate studies at the defendant University.

9. The Chief Academic Officer of the defendant University, or his/her designee, agrees to meet at least twice annually for the next five years with representatives selected by its African American faculty and administrators, to receive recommendations on best practices and policies for increasing diversity on the faculty and at the senior administrative levels of the defendant University and on the retention of such faculty and administrators. The purpose of this meeting is not to review employment and retention decisions for individual faculty or staff

positions, but rather is to exchange ideas and information about best practices.

10. For the next five years, the defendant University agrees to send representatives selected by its African American faculty and administrators and representatives who are involved in the recruitment and retention of black faculty and Professional level staff to the statewide meeting for representatives of public bachelor degree granting institutions sponsored by the University of Alabama System to discuss information about the recruitment and retention of African Americans and other under-represented groups and to continue to identify effective and constitutionally permissible recruitment and retention practices. One or more representatives selected by its African American faculty and administrators and representatives of the defendant's Diversity Committee shall be allowed to attend and to participate fully in these meetings. Any reports and/or recommendations emanating

from these meetings will be considered by defendant University in its ongoing efforts to improve diversity recruitment and retention.

## **V. Dismissal of Action and Settlement Implementation**

### **A. Preliminary Court Approval of Agreement:**

1. Promptly after execution of this Agreement, but in no event later than 10 days after the execution of this Agreement, the parties to this Agreement, by joint motion, shall submit the Agreement to the District Court requesting that the Court enter an order granting preliminary approval of the Agreement. The District Court shall be requested to direct the giving of notice to the plaintiff class and to schedule a fairness hearing. In the event the Court declines to preliminarily approve the Agreement, or to find the Agreement provides an adequate basis for issuing notice and scheduling a fairness hearing, then the entire Agreement shall become null and void unless the parties promptly agree in writing to other mutually satisfactory settlement provisions and agree to proceed with the Agreement, subject to approval by the Court.

B. Final Judgment:

At the final hearing on fairness, adequacy, and reasonableness of the settlement as set forth in this Agreement, the defendant University and Knight-Sims Plaintiffs agree to cooperate in good faith to achieve the expeditious approval of the settlement, and shall request the Court to grant final approval of the Agreement and to enter judgment thereon (“Judgment”). In order to satisfy the requirements of the Agreement, the Judgment must include, by specific statement or by reference to the Agreement to the extent permitted by law and the rules of court, provisions which:

1. Affirm certification of the proceeding as a class action pursuant to Rule 23 of the Fed. R. Civ. P. with the plaintiff class as previously defined by the Court;

2. Find that the notice given to class members satisfied the requirements of both Rule 23, Fed. R. Civ. P, and due process, and that the Court has jurisdiction over the class;



3. Find that the Agreement is fair, adequate, and reasonable in all respects;

4. Find that the class representatives, and all class members, have released all claims against defendant University, all as set forth in the Agreement;

5. Order that the defendant University shall implement the Settlement Agreement;

6. Find that on judicial approval of this Agreement, including the commitments contained herein, the defendant University shall be in full compliance with the law, and that, therefore, there are no continuing policies or practices of defendant University, or remnants, traceable to *de jure* segregation, with present discriminatory effects which can be eliminated, altered or replaced with educationally sound, feasible and practical alternatives or remedial measures;

7. Dismiss on the merits and with prejudice (I) all claims against defendant University set forth in the complaint, as

amended; (ii) all claims against defendant University set forth in the complaint-in-intervention; and (iii) all claims against defendant University of racial discrimination asserted before the Court throughout the pendency of this action, the trials and appeals, and the entire remedial phase of the action including, without limitation, claims of system or institutional aspects, features, policies and practices alleged to be remnants of the *de jure* system.

C. Finality and Term of Agreement:

1. This Agreement shall become final upon the occurrence of all of the following events: (a) approval of the Agreement in all respects by the District Court as required by Rule 23(e) of the Fed. R. Civ. P.; and (b) entry of the Judgment as provided for above.

2. The term of the provisions of this Agreement shall be for five (5) years from the date it is finally approved by the Court. Under no circumstances will the term of this Agreement be

extended beyond five (5) years from the date it is finally approved by the Court. The Agreement shall be binding upon the successors and assigns of the parties and shall inure to their benefit.

D. Enforcement:

1. The parties to this Agreement, including all class members, agree that litigation regarding enforcement of this Agreement is counterproductive. If there is a claim that the defendant University has not complied with the terms of this Agreement, then the parties agree that resolution of any such allegation should first and foremost be achieved by informal discussions and negotiations between counsel for the Knight Plaintiffs and counsel for the defendant University. Counsel for Knight Plaintiffs, acting on behalf of the class members, shall notify counsel for defendant University of the specific provision(s) of this Agreement that the defendant University has allegedly not complied with. Upon receipt of that notice, counsel for defendant

University will within a reasonable time period respond to that allegation, and if it concedes non-compliance, the defendant University will make reasonable efforts to cure any alleged breach. Counsel for both parties agree to use good faith efforts to resolve legitimate disputes regarding differences of interpretation of the settlement agreement. If the parties are unable to resolve the matter, they agree to select a mediator acceptable to all the parties to reach a resolution to the issue. Each party will pay for their own fees and expenses associated with any dispute regarding compliance with the terms of this agreement.

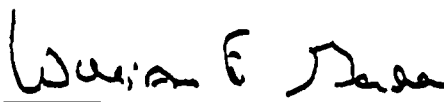
This 4<sup>th</sup> day of October, 2006.

For the Knight-Sims Plaintiffs  
And plaintiff class,



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