

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

JOHN F. KNIGHT, JR., and ALEASE S. SIMS, et al., individually and on behalf of others similarly situated, *

Plaintiffs and Plaintiffs-Intervenors, *

UNITED STATES OF AMERICA, *

Plaintiff-Intervenor, *

v. *

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

THE STATE OF ALABAMA, et al., *

Defendants. *

**KNIGHT-SIMS PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE
WHY DEFENDANT AUBURN UNIVERSITY AND ITS BOARD OF TRUSTEES
SHOULD NOT BE HELD IN CONTEMPT**

Plaintiffs John F. Knight, Jr., and Alease S. Sims et al., through undersigned counsel, on behalf of themselves and the class of black citizens they represent, move for entry of an order requiring defendant Auburn University and its Board of Trustees (collectively hereafter "AU") to show cause why they should not be held in contempt of this Court's orders requiring them to implement practices and procedures effectively to recruit and to retain African Americans in order to increase black representation on the faculty and in the administration of AU. As grounds for their motion, plaintiffs would show as follows:

1. Recent events demonstrate that AU has not operationalized practices and procedures that

make compliance with this Court's orders an important criterion for making personnel decisions, particularly with respect to administrative positions.

2. According to AU's last annual report to the Court, in Fall 2003 it employed only 14 black administrators out of 323 total, or 4.3%. Very few of these black administrators held high ranking positions with "line" authority that directly impact academic programs. The Vice President for University Outreach is the highest ranking African American in AU's administration.

3. Most recently, AU terminated the employment of African-American administrators who held the positions of Associate Athletic Director and Assistant Athletic Director. The sole reason given for the termination of these black administrators was an alleged interest in reorganizing and "streamlining" the AU Athletics Department. AU publicly denied that the black administrators were terminated because of poor performance or in retaliation for a charge of racial discrimination that the Associate Athletic Director had filed against AU in 2003, and which was settled, according to press reports, by payment to the complainant of \$80,000 and promotion to the position of Associate Director. Exhibits A and B.

4. The decision to terminate the two black Athletics Department administrators was made without any perceptible consideration by AU of this Court's orders regarding the hiring and retention of African Americans in high-ranking administrative positions and without any input from members of AU's black community, not even the Interim Assistant Provost for Diversity and Multi-cultural Affairs or the Title VI advisory committee established by this Court's order entered April 3, 2002. Exhibit A.

5. In response to a request by the Legislative Black Caucus for an explanation, AU's President stated that a Strategic Diversity Plan has not yet been implemented at AU and that the termination of

the two black Athletics Department “do not reflect on the individuals but instead are designed to maximize the service that we provide to student athletes.” Exhibit C. The President’s memorandum to the Legislative Black Caucus is further evidence that compliance with this Court’s orders was not considered in the decision further to reduce black representation in AU’s administration.

6. Nor was any consideration given to the practices and procedures recommended to the President by the Title VI advisory committee established pursuant to this Court’s order of April 3, 2002. The Athletic Director stated publicly that he was unaware of any procedure requiring him to discuss these personnel decisions with the Office of Diversity and Multicultural Affairs before implementing them. Exhibit A. In fact, at the time these Athletic Department personnel decisions were made, the advisory committee had not met in several weeks, due mainly to the forced resignation, without any input from AU’s faculty, of the Provost who chaired the committee.

7. Nor was there input from the African American administrator who held the position of Executive Director, Affirmative Action/EEO Office, who was also a member of the Title VI advisory committee, because she had been terminated in August 2004 and has filed a charge of racial discrimination with the EEOC. The former Director has stated publicly that the philosophy of AU’s administration is “if we don’t write about it and we don’t talk about it, we don’t have to defend it.” Exhibit D.

8. The former Affirmative Action/EEO Director’s remarks were published in the context of a report by the Southern Association of Colleges and Schools which found that AU’s self-assessment was “all but silent” with regard to its diversity commitment. Exhibit D. AU’s transfer of the affirmative action position to the Office of Human Resources creates a conflict of interest by placing the director in

the very office the Affirmative Action/EEO Director is supposed to be monitoring. *Id.*

9. AU's last annual report to the Court shows that black representation on both its faculty and administration is less than 5%. These figures coupled with the recent terminations of black administrators have been interpreted as evidence that AU is not serious about racially diversifying its administration. A *Montgomery Advertiser* editorial notes that AU's previous statements of commitment to diversity have produced "only marginal results," and that "[i]t will take more than hiring two or three administrators at Auburn to really change the diversity picture there." Exhibit E. However, a *Birmingham News* editorial defends AU and argues that the verbal commitment of AU's President to "diversity" should mollify the African-American community unless the terminated black administrators can prove actionable racial discrimination against themselves individually. Exhibit H. Nowhere is there mention of this Court's remedial decrees or AU's constitutional obligation to eradicate vestiges of *de jure* segregation.

10. On March 2, 2005, AU published a "Strategic Diversity Plan" that has been in preparation for two years. Exhibit F. The Plan is notable in several respects:

a. The plan recites several rationales for increasing racial diversity, including a "business justification," Plan at 7, but nowhere is there any mention of Alabama's long history of white supremacy and segregation and the State's obligation under the Fourteenth Amendment and Title VI to eradicate all continuing vestiges of those purposefully discriminatory official policies and practices. There is not even a reference to this Court's 1991 remedial decree or its April 3, 2002, order. This is continuing evidence of the all the HWIs' refusal publicly to acknowledge their constitutional duty to increase black representation on their faculties and administrations, a problem noted in the Knight-Sims

plaintiffs' motion, dated August 22, 2003, seeking modification of the Remedial Decree to specify compliance with provisions requiring desegregation of HWI faculties and administrations. This motion is still pending before the Court.

b. The Plan does contain something new and important. It appears to adopt as AU policy a requirement that each college and department establish "specific goals" for increasing black representation with respect to "faculty, staff, administration, employees and students," and it holds responsible administrators accountable for continually measuring progress toward achieving and periodically reviewing those goals. Plan at 30. The plan cites as support the Supreme Court's Michigan affirmative action case. *Id.* at 4. This comes close to adopting the "critical mass" approach plaintiffs asked this Court to order all the HWIs to utilize in their 2003 motion. The joint response to our motion filed by the HWIs on October 14, 2003, contended that their constitutional desegregation obligations do not extend to adoption of such goals and timetables that the Supreme Court has held universities may adopt voluntarily. Indeed, the HWIs contended that this Court's decree does not require them to achieve any particular numerical results, but only to adopt written practices and procedures aimed at increasing black representation. See plaintiffs' reply to the HWIs' joint response, filed November 12, 2003.

11. The 1991 Remedial Decree provides in relevant part:

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

...

E. AU, UA, UAH, and JSU shall individually devise and implement a program designed to increase the number of African-American individuals serving in positions of important administrative responsibility on their respective campuses. Within three years, the Court expects to see material improvement in the employment of black administrators at these universities.

Knight v. Alabama, 787 F.Supp. 1030, 1378 (N.D. Ala. 1991), *aff'd in relevant part*, 14 F.3d 1534 (11th Cir. 1994).

12. This Court's order entered April 3, 2002, provides, *inter alia*:

5. The predominately white defendant institutions shall establish, if not already in existence, a committee whose purpose shall be to advise their respective administrations on the best methods for increasing and retaining black representation on their respective faculties and administrative staffs. . . .

...

6. Until the termination of the Decree in 2005, or for such period as may be ordered by the Court thereafter, the State shall provide an annual appropriation of \$3 million (\$3,000,000) in new money to supplement the current efforts of the predominantly white defendant institutions to recruit and retain black faculty and administrative staff. . . . These funds will be allocated in addition to currently allocated resources utilized by the institution in recruiting and retaining African-American employees.

...

C. The president shall decide on the allocation of the funds within the organization. The president should, however, carefully consider the recommendation of the committee described in Paragraph 5 above in allocating the funds. The funds can be but need not be budgeted for new faculty or EEO-1 positions. They shall however, be budgeted in such a way as to increase hiring and retention of African-American faculty and EEO-1 staff.

13. This contempt motion alleges that to date, despite the policies and procedures AU has represented it has adopted in this action, AU has not placed such policies and procedures in actual operation at the level of personnel decision-making. This failure to operationalize its paper commitments to faculty and administration desegregation violates both the letter and spirit of this

Court's orders.

WHEREFORE, plaintiffs pray the Court will enter an order requiring AU to show cause why it should not be held in contempt of this Court's orders requiring AU to implement policies and procedures and to spend court-ordered funds in ways that will increase the hiring and retention of African-American faculty and EEO-1 staff.

Plaintiffs further pray that the Court will require AU to purge itself of contempt:

(1) by calling public attention to its obligations under this Court's remedial decrees and the Constitution and laws of the United States to increase African-American representation on its faculty and administration to levels that demonstrably eradicate the vestiges of *de jure* segregation;

(2) by demonstrating that it has genuinely operationalized the desegregation policies and procedures ordered by this Court in its routine employment decision-making; and

(3) by adopting and implementing "An Agenda for Promoting Diversity at Auburn University," a copy of which is attached to this motion as Exhibit G.

Respectfully submitted March 8, 2005,

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CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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