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September 10, 2019

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Speaker, Maryland House of Delegates
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Re: ***Maryland HBCU Litigation***

Dear Members of the Maryland Legislature:

I am writing on behalf of The Coalition for Equity and Excellence in Maryland Higher Education in connection with its lawsuit against Maryland on behalf of the State's four black colleges, Morgan State University, Coppin State University, Bowie State University and the University of Maryland Eastern Shore. Jon Greenbaum, Chief Counsel of the Lawyers' Committee for Civil Rights and I have been lead counsel for the past 10 years advocating for justice for the HBCUs in your state.¹

¹ The Lawyers' Committee for Civil Rights engages the resources of the private bar to provide pro bono representation in a wide range of civil rights cases, such as discrimination in education, housing, and voting. It celebrated its 50th Anniversary in 2013, when President Obama and Attorney General Eric Holder welcomed the group at the White House to reiterate President John F. Kennedy's call to the private bar in 1963 to help in the fight for civil rights.

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In 2013, Federal Judge Catherine C. Blake ruled in favor of the Coalition and HBCU students and alums and against the State, noting that “Maryland had a shameful history of *de jure* segregation throughout much of the past century. Public higher education opportunities for African Americans were either non-existent or decidedly inferior to the opportunities afforded to white citizens.” Indeed, the State’s own documents show that it deliberately set up its four black schools to be “inferior in every aspect of their operation.” And as the court noted, Maryland’s own reports show that “the contrast between the amounts of money received by the two racial groups would show, if possible, of computation, an enormous differential in favor of the white race.” In particular, Judge Blake found the State liable for the 10:1 disparity in unique, high demand programs between the State’s HBCUs and its Traditionally White Institutions (TWIs), and the unnecessary duplication of HBCU programs. The court ordered Maryland to close this disparity by providing the HBCUs with additional funding for programs, marketing and scholarships on top of what the State is already providing.

Last year the Governor’s counsel, Mr. Robert Scholz wrote to then Caucus Chair Delegate Glenn offering to settle this case for \$100 million dollars, while at the same time noting that a real remedy would cost \$1 billion dollars. In contrast, almost twenty years ago, Mississippi, a much poorer state than Maryland, settled its HBCU case for \$516.98 million dollars for 3 HBCUs. Adjusting for inflation, the Mississippi settlement is approximately \$791 million in today’s dollars. Further adjusting for four schools rather than three, the figure would be \$1.05 billion dollars, consistent with the State’s own estimate of the cost of a remedy in this case.

Ironically, Judge Blake concluded that Maryland was as bad as, if not worse than Mississippi of the 1970’s in terms of its programmatic disparity. Moreover, a year and a half ago, after two failed mediations, Judge Blake ruled that Maryland had not offered a serious remedial proposal. Further, last January, the Fourth Circuit Court of Appeals ordered the parties to engage in additional mediation to settle the case but that mediation also failed. I am writing to urge your direct involvement in bringing justice to your HBCUs, and to resolve this litigation.

With increasing attention focused on equity for the nations’ HBCUs, in light of the various proposals put forth by several presidential candidates, and the fact that this is National HBCU week, now is the time to bring justice to Maryland’s black colleges. As elected officials, you are in a position to play a role similar to that of Congressman Bennie Thompson, who provided the leadership to settle Mississippi’s case twenty years ago.

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The Coalition is willing to resolve this case for less than what Mississippi paid: for \$577 million dollars in today's dollars, spread over a reasonable time period. These settlement funds would allow the HBCUs to develop and launch a number of new, independent academic programs of the kind the State promised to provide in its 2000 Agreement with the Office of Civil Rights and which Judge Blake ordered. This would allow the schools to hire quality faculty to run the programs. In addition, these funds would be used to provide scholarships that would enable the HBCUs to better compete for students and provide for substantial rebranding to offset the State's decades of stigmatization of the HBCUs.

If Mississippi could afford to pay the equivalent of \$791 million, surely Maryland can afford a lesser amount to remedy its constitutional violation. Indeed, the State should have been making plans to meet this financial obligation over the past thirteen years since the Maryland Attorney General's office warned the State in 2006 that it was "vulnerable legally" for its treatment of the State's HBCUs. At a minimum, the State should have begun making plans six years ago, when Judge Blake found the State liable and noted that it would have to provide a remedy which would need to include funding for new programs. That was in 2013.

At least a half dozen Maryland educational commissions have urged the State to close the gap between its HBCUs and its TWIs, including the 2008 Bohanan Commission chaired by former Delegate John Bohanan. The Bohanan Commission concluded that Maryland's historic treatment of its HBCUs had "the effect of substantially marginalizing" them and left them unable to compete with the State's TWIs. In 2009, Maryland adopted the Bohanan Commission report and committed in its 2009 state plan for Higher Education to make its HBCUs "comparable and competitive" to its TWIs. But just as the state reneged on the 2000 Office of Civil Rights, it reneged on this commitment as well. The Coalition hopes Maryland will accept this offer in order to, as Judge Blake said, "strengthen and enhance Maryland's HBIs for the benefit of all Maryland students, present and future."

As the United Negro College Fund has regularly pointed out, investments in HBCUs have a ripple and multiplier effect in their communities. As you know, two of the HBCUs are located in Baltimore, a city which could profit from additional investments.

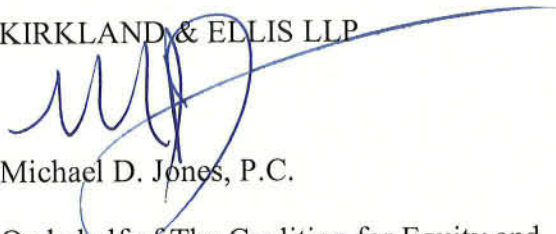
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We look forward to your response and assistance.

Sincerely,

KIRKLAND & ELLIS LLP

A handwritten signature in blue ink, appearing to be "MJ", is written over the printed name "Michael D. Jones, P.C." and extends across the line above it.

Michael D. Jones, P.C.

On behalf of The Coalition for Equity and
Excellence in Maryland Higher Education

cc: Senator Chris Van Hollen
Senator Ben Cardin
Congressman Elijah Cummings
Congressman Anthony Brown