

**Case No. 17-2418**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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THE COALITION FOR EQUITY AND EXCELLENCE IN  
MARYLAND HIGHER EDUCATION, et al.,  
*Plaintiffs-Appellees,*

vs.

MARYLAND HIGHER EDUCATION COMMISSION, et al.,  
*Defendants-Appellants.*

On Appeal from the United States District Court  
for the District of Maryland  
(Catherine C. Blake, District Judge)

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BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION FOR EQUAL  
OPPORTUNITY IN HIGHER EDUCATION IN SUPPORT OF PLAINTIFFS-  
APPELLEES

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July 27, 2018

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5. Is party a trade association? (amici curiae do not complete this question)  YES  NO  
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Signature: /s/ Jason McCarter

Date: July 27, 2018

Counsel for: Amicus Curiae NAFEO

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## STATEMENT OF INTEREST

The National Association for Equal Opportunity in Higher Education (“NAFEO”) is the nation’s only membership and advocacy association representing all of the nation’s Historically Black Colleges and Universities (“HBCUs”) and the emerging Predominantly Black Institutions (“PBIs”). NAFEO has members located in thirty-five states, the District of Columbia, and the Virgin Islands. NAFEO member institutions enroll 700,000 students, employ some 73,000 faculty, and have approximately 7 million alumni. Presidents and chancellors of HBCUs founded NAFEO in 1969. Indeed, the presidents of Maryland HBCUs were among the founding members of NAFEO. To this day, the presidents of the Maryland HBCUs remain actively engaged in key leadership positions in NAFEO.

Given that states are required under the law to desegregate the entire higher education system, not just Traditionally White Institutions (“TWIs”), *amicus* NAFEO respectfully submits this brief to show that policies like program duplication between TWIs and HBCUs and inadequate funding at HBCUs foster segregation by perpetuating dual and unequal higher education. Correcting those practices is critical to advancing the success of HBCUs; having a well-prepared, diverse citizenry, workforce, entrepreneur corps, and services corps in the State; obtaining robust participation in the civic, cultural, political, and ecumenical life of the State; and fueling a thriving State economy.

All parties to the appeal have consented to the filing of this brief in accordance with FRAP 29 and Local Rule 29(a)(2). No party or party counsel authored this brief, nor contributed funding to it. No third-party has contributed funding to it.

### **SUMMARY OF ARGUMENT**

States, like Maryland, must live up to their legal obligation to desegregate the entire higher education system. Desegregating only TWIs is not enough. Maryland is obligated to avoid policies that lead to segregation of HBCUs, including unnecessary program duplication and the persistent inadequate funding of HBCUs. Failure to do so fosters segregation at HBCUs, crippling their chances of success and depriving the residents of the State of the intellectual, research, economic, moral, spiritual, and social benefits that prosperous HBCUs provide.

Avoiding those practices is important for ensuring that all of the students and families of the State enjoy the educational value of diversity. The Supreme Court has recognized attaining the benefits of diversity in higher education as a compelling state interest. Through institutional diversity, students benefit from the intellectual, cultural, civic, religious, and personal experiences of a range of students, reflecting the richness of our heterogeneous, pluralistic states and society.

## ARGUMENT

A state must eradicate all policies and practices that “perpetuate[] its formerly *de jure* segregation in any facet of its institutional system.” *United States v. Fordice* 505 U.S. 717, 728 (1992). When considering whether any state policies and practices “continue to foster segregation” at HBCUs, the segregation or desegregation of TWIs is not conclusive. Maryland is obligated to eliminate all policies and practices that foster or exacerbate segregation within its higher education system as a whole, HBCUs included.

### **I. Maryland Must Avoid Policies Leading to Segregation at Its HBCUs Even After Its TWIs Have Been Desegregated.**

The State of Maryland has made clear that one of its goals is to “remedy past discrimination and to remove any vestiges of the *de jure* system that provided dual and unequal educational experiences to the State’s residents.” ECF 174-4 at 22. But the evidence shows that Maryland has a long way to go to ensure “equal opportunity for Maryland’s diverse citizenry.” *Id.*

Research suggests that both white and black Americans hold widespread misperceptions of “race-based economic equality in the United States.” Michael W. Kraus, Julian M. Rucker & Jennifer A. Richeson, *Americans misperceive racial economic equality*, 114 PNAS 10324, 10324 (Sept. 26, 2017).<sup>1</sup> A recent study found that Americans across the national income distribution “overestimated

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<sup>1</sup> <http://www.pnas.org/content/pnas/114/39/10324.full.pdf>.

progress toward Black–White economic equality, largely driven by estimates of greater current equality than actually exists according to national statistics.” *Id.* Specifically, perceptions of economic equality “outstripped reality by roughly 25%.” *Id.* Despite the perceived progress toward economic equality, gaps in income and earnings between white and black households have “remained largely constant or even widened between 1967 and 2015.” *Id.*

A significant educational achievement gulf also remains. Maryland has recognized that “persistent retention and graduation rate gaps exist between African-American and Hispanic students and their white and Asian peers” and that such gaps cause significant harm. ECF 174-4 at 3. A study cited by the 2009 Maryland State Plan concluded: “the persistence of these educational achievement gaps imposes on the United States the economic equivalent of a persistent national recession.” *Id.* (citing McKinsey and Co., *The Economic Impact of the Achievement Gap in the United States: A Summary Report* (2009)).

In light of such realities, states must understand that ending *de jure* segregation, or even fully desegregating TWIs, is not sufficient to eradicate the effects of segregation or to ensure an equal higher education system. States must also put an end to policies that foster segregation at HBCUs, such as continuing program duplication between HBCUs and TWIs and inadequate funding at HBCUs.

**A. HBCUs historically and today welcome students regardless of race.**

During the era of *de jure* segregation, the vast majority of colleges and universities denied admission to black students and other minorities. Although they were nearly the *only* institutions of higher education available to black students, HBCUs opened their doors to students of all races. *See* M. Christopher Brown II & Ronyelle Bertrand Ricard, *The Honorable Past and Uncertain Future of the Nation's HBCUs*, NEA HIGHER EDUC. J., 117 (Fall 2007) (“In the early years, rather than follow the trend of elite institutions that limited access to only a small segment of society, HBCUs opened their doors to anyone who was interested.”).<sup>2</sup> HBCUs sought to increase access to education for all, and in so doing they “invented the practice if not the concept of open enrollment.” *Id.* at 122.

Maryland’s HBCUs, in fact, have historically welcomed students of all races, and this practice continues today. Maryland HBCUs manifest their interest in broadening their student populations to non-black, non-minority students in numerous ways, such as maintaining a policy of inclusiveness, hiring diverse faculty and staff, targeting high schools with high concentrations of non-minority students, tailoring student programming and extracurricular activities to a diverse student body, and ensuring that university publications and marketing materials

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<sup>2</sup> [http://www.nea.org/assets/img/PubThoughtAndAction/TAA\\_07\\_12.pdf](http://www.nea.org/assets/img/PubThoughtAndAction/TAA_07_12.pdf).

reflect the desired diversity, among others. Despite this inclusive history and active efforts to attract a racially diverse student body, the percentage of white students at Maryland HBCUs has actually *declined* since 1991. PTX 069 at 18.

**B. Program duplication between HBCUs and TWIs and inadequate funding at HBCUs have the practical effect of continuing segregation at HBCUs.**

While many HBCUs in Maryland and throughout the United States offer unique academic programming (e.g., non-core subject, high-demand, industry-specific majors, masters programs, and doctoral opportunities), these programs are often unnecessarily duplicated within the State at the expense of HBCUs' admission and attendance figures. In *Fordice*, the Supreme Court explained that the unnecessary duplication of academic programs at HBCUs and TWIs "was part and parcel of the prior dual system of higher education" and that "present unnecessary duplication is a continuation of that practice." 505 U.S. at 738.

The lack of unique academic programs, sometimes caused by unnecessary program duplication, has a direct and negative impact on student diversity at HBCUs. Dr. Clifton F. Conrad, one of the nation's leading experts on desegregation, testified that he found unnecessary program duplication between Maryland's HBCUs and TWIs to be prevalent. ECF 355 at 273 ¶ 520. Specifically, more than half of the HBCU programs in Maryland were identified as unnecessarily duplicated by programs at public TWIs. *Id.* This duplication

negatively affects the percentage of white students at HBCUs. *Id.* ¶ 521. In a report submitted by Dr. Conrad, he noted that, when Maryland's HBCUs began offering graduate programs in the 1960s and 1970s, those HBCUs were able to attract substantial numbers of white graduate students to enroll in their programs. PTX 069 at 18. Over the past 30 years, however, public TWIs have duplicated the historically unique offerings at HBCUs in the State and the trend of white enrollment has subsided. *Id.* The population of white graduate students at HBCUs in Maryland reached a high of 1,254 students in 1973, but that number has since drastically declined. *Id.* It is nothing short of alarming that, while there were 444 white graduate students enrolled at Morgan State in 1973, by 2008 that same number (444) of white graduate students was enrolled at all four Maryland HBCUs combined. *Id.*

An oft-cited example of unnecessary program duplication, and one of the impetuses for this litigation, stems from the Maryland Higher Education Commission's ("MHEC") approval of the Towson and University of Baltimore joint MBA program, a program that had been offered since 1964 and was continuing to flourish at nearby Morgan State University, an HBCU. Not only has Morgan State acknowledged this program duplication, but so has the Office of Civil Rights, the Office of the Maryland Attorney General, and MHEC's former Chair. It was evident that, if Morgan State had been given the requisite resources

for faculty and student fellowships and stipends, “Morgan alone could absorb the projected enrollments in the proposed program.” ECF 174 at 19 (citing Nov. 6, 2004 Letter from E. Richardson to MHEC).

Recognizing the pernicious effects of such program duplication, the District Court ruled that MHEC was barred from allowing the State’s TWIs to duplicate unnecessarily the HBCUs’ unique, high-demand academic programs created to boost diversity on their campuses, such as the programs for engineering and bioscience. This decision was supported by the fact that, although black students now make up nearly 12% of students at Maryland TWIs, the number of white students at HBCUs continues to plummet as more students choose to attend newly-established high-demand programs that copy those offered by the State’s HBCUs. *Which way forward for Md.’s HBCUs?*, THE BALTIMORE SUN, November 17, 2017.<sup>3</sup> There seems to be a direct correlation between the decrease in white students applying and enrolling at Maryland HBCUs and the increase in unique academic programming at Maryland’s TWIs.

The fact that program duplication fosters and perpetuates racial segregation has even been acknowledged by the MHEC’s former Chairman. Mr. John Oliver stated that program duplication “is a practice that will perpetuate the separation or the lack of diversity, because when you duplicate . . . you more or less promote

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<sup>3</sup> <http://www.baltimoresun.com/news/opinion/editorial/bs-ed-hbcu-20171115-story.html>.

separate and too often not equal.” ECF 174 at 22 (citing Mar. 19, 2010 John Oliver Deposition Transcript at 75:17–76:7). He continued by saying that “our experience shows when you do have duplication, that [w]hite students go to the [w]hite schools and the African Americans go to the [b]lack schools.” *Id.*

The problems associated with program duplication are further exacerbated by persistent underfunding of HBCUs—which, in turn, results in fewer funds to develop and support unique, high-demand programs, creating an endless destructive cycle. Sufficient funding is necessary for HBCUs to compete with TWIs to attract and retain black students, as well as non-black and non-minority students, attract and retain quality faculty, secure government grants, and build and sustain corporate relationships. HBCUs, however, have been plagued by inadequate funding since their inception, preventing them from building necessary infrastructure—constructing high-quality facilities, developing stronger reputations, and supporting academic programs. The State’s failure to take this cumulative underfunding into account in allocating current financing perpetuates the funding gap and thereby fosters segregation of HBCUs.

The inadequate funding of HBCUs is evidenced by numerous studies. With respect to state funding, for example, a report by the Association of Public Land-grant Universities found that from 2010 to 2012 states failed “to meet the required 100 percent match of federal funding to 1890 land-grant institutions (all public

HBCUs).” *Funding at HBCUs Continues to be Separate and Unequal*, DIVERSE ISSUES IN HIGHER EDUC., May 31, 2015.<sup>4</sup> As a result of the states’ failure, those 18 HBCUs missed out on receiving nearly \$57 million in extension or research fees. *Id.* Federal funding for HBCUs has been affected by similar deficiencies. Federal trend data from a 2008 Congressional Research Service report indicated, “research-performing HBCUs have not shared proportionately in the distribution of federal research and development (R&D) dollars going to colleges and universities.” Marybeth Gasman, *Comprehensive Funding Approaches for Historically Black Colleges and Universities*, GSE PUBLICATIONS, 1 (2010).<sup>5</sup> The funding shortage created by inadequate state and federal funding is compounded by historical underfunding from foundations and corporations, which have traditionally provided significantly more funds to TWIs in the form of grants and partnerships. *Id.* at 3. In addition, “[d]ecades of lower funding, along with alumni with less access to wealth, have resulted in HBCUs having smaller endowments and fewer operating dollars.” *Id.*

States like Maryland continue to inadequately fund HBCUs, even where they provide funds at a rate equal to or slightly more than TWIs on a per student basis, because they fail to account for this overwhelming historic underfunding and

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<sup>4</sup> <http://diverseeducation.com/article/73463/>.

<sup>5</sup> [https://repository.upenn.edu/cgi/viewcontent.cgi?article=1400&context=gse\\_pubs.](https://repository.upenn.edu/cgi/viewcontent.cgi?article=1400&context=gse_pubs.)

the institutional wealth gap. Such funding practices are perhaps fostered by the misperceptions—held by Americans of all races—as to the economic and wealth equality of white and black Americans. But states cannot allow their policies to be driven by misperceptions—the black-white wealth gap is real and significant, as is the cumulative funding gap between HBCUs and TWIs. To ignore those gaps and the impact they have on the operation and attractiveness of HBCUs’ perpetuates, and indeed fosters, segregation at HBCUs. It is therefore critical for the Fourth Circuit to uphold the District Court’s liability order that unnecessary program duplication in Maryland is a Constitutional violation under *Fordice*, and enforce the court-ordered remedy of developing new unique, academic programs at HBCUs.

**C. Diversity at HBCUs has benefits comparable to diversity at TWIs.**

As the Supreme Court has recognized on numerous occasions, diversity is essential to the ability of colleges and universities to meet their educational objectives. This principle applies to HBCUs with the same force as TWIs. Both have a compelling interest in the educational benefits that flow from a diverse student body.

In *Regents of University of California v. Bakke*, the Supreme Court explained that a qualified student with “a particular background—whether it be ethnic, geographic, culturally advantaged or disadvantaged—may bring to a

professional school . . . experiences, outlooks, and ideas that enrich the training of its student body and better equip its graduates to render with understanding their vital service to humanity.” 438 U.S. 265, 314 (1978). The Court reiterated this principle in 2013, asserting that a “diverse student body . . . serves values beyond race alone, including enhanced classroom dialogue and the lessening of racial isolation and stereotypes.” *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 308 (2013). Studies confirm that student body diversity “better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals.” *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003) (citing multiple studies on the impacts of diversity on educational institutions).

Of course, the educational benefits that flow from a diverse student body are not limited to TWIs. Students at HBCUs likewise benefit from vigorous classroom exchanges between students with diverse perspectives and from diverse backgrounds. In today’s increasingly global and diverse marketplace, it is crucial for students at HBCUs—like their counterparts at TWIs—to have “exposure to widely diverse people, cultures, ideas, and viewpoints” in order to succeed. *Id.*

**D. Students of all races who attend HBCUs should not be forced to accept segregation as part of the “tradeoff” in their decision about higher education.**

Given the importance of diversity in preparing students for an increasingly heterogeneous society, students attending HBCUs, no matter their race, should not

have to accept segregation as a “tradeoff” when making determinations about higher education.

Students attend HBCUs for a wide variety of reasons, including but certainly not limited to their status as historic pillars of black education in America and as contemporary institutions that graduate disproportionate percentages of African-Americans in the sciences, technology, engineering, mathematics, health professions, and other growth and high need disciplines. *See* Lezli Baskerville, President & CEO, NAFEO, *The Changing Face of STEM and the Vitally Important Roles of HBCUs and MSIs in the Change*, STEMConnector (June 2012).

Others may be drawn to HBCUs because they are the alma mater of family members, conveniently geographically located, or offer programs that are of particular interest. Likewise, some students are drawn to HBCUs for the simple reason that the school offered them a scholarship, whether academic, financial, or sports-related, or it was the best school to which they were admitted. It is neither good law nor good policy to require such students to choose between a quality education and a segregated environment.

Although students may ultimately have a choice of whether to attend an HBCU versus a TWI, Maryland’s practices directly impact that choice and the factors that students consider when making it. In addition to fostering a segregated environment, practices such as program duplication and inadequate funding simply

make HBCUs less attractive to some or many prospective students. Taking into account the impact of Maryland's policies and practices, the State cannot simply write off the segregative effects as a product of "choice" in order to avoid its obligations to eliminate the vestiges of *de jure* segregation.

- E. This case presents an opportunity to increase the educational benefits of diversity as well as enhance race relations by providing non-minority students education in a diverse environment in which they are a minority.**

Social science evidence supports the positive benefits of educating non-minority students at HBCUs and in predominantly black environments. Studies indicate, for example, that non-minority students attending HBCUs have more open attitudes on race.

In the Sum, Light, and King study, the white focus group participants who attended HBCUs had different attitudes about the safety and attractiveness of HBCUs than those who did not. DRE 012 at 21. Another study's participants found that "being temporary minorities allowed for them to gain personal racial understanding and deeper insight into race related issues." Stephanie L. Krah, *The Social Identity Development of White Students Who Attend Historically Black Colleges and Universities*, 3–4 (December 2013) (unpublished Ph.D. dissertation, The Patton College of Education of Ohio University).<sup>6</sup> On a more granular level,

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<sup>6</sup> [https://etd.ohiolink.edu/rws\\_etd/document/get/ohiou1383655450/inline](https://etd.ohiolink.edu/rws_etd/document/get/ohiou1383655450/inline).

one white study participant shared direct experiences of racial inequities, including witnessing black students being treated differently when trying to gain entry to social clubs in the community and racial profiling during police stops. Joelle Davis Carter & Tiffany Patrice Fountaine, *An Analysis of White Student Engagement at Public HBCUs*, EDUCATIONAL FOUNDATIONS, 59 (Summer-Fall 2012).<sup>7</sup>

Plainly, non-black and non-minority students attending an HBCU will have a different experience than those attending a TWI and will gain important understandings about racial identity, existing racial inequities, and what it means to be a minority in this or any society. More citizens educated and informed in that manner will enhance race relations and address issues of implicit bias that are rampant in our society.

## **II. Unique Academic Programs Are Critical to HBCUs and to the Economic Development of the State.**

History and experience show that unique and adequately-funded academic programs attract a diverse and talented student body to HBCUs, which in turn attracts and even creates talented faculty, grants, corporate investment and partnerships, successful and generous alumni, and motivated legacy students. By extension, the local and state economies in which HBCUs are located also reap the considerable economic and social benefits of a successful institution of higher

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<sup>7</sup> <https://files.eric.ed.gov/fulltext/EJ1000230.pdf>.

education in their midst. The remedy ordered by the District Court should therefore be considered an investment by the State—one likely to realize significant long-term benefits for the HBCUs, their communities, and the State.

**A. Unique academic programs at HBCUs create a virtuous cycle that attracts students, faculty, partnerships, and grants.**

In order to position HBCUs on a level playing field with their TWI counterparts, it is essential for HBCUs to maintain and offer unique academic programs to attract a more diverse student population, esteemed faculty, and supporting corporate partnerships and grants. Providing and maintaining these unique, high-demand academic programs has a direct and positive impact on student diversity at HBCUs and funding.

While history demonstrates the adverse impact that program duplication has on HBCU admissions and enrollment, it should be no surprise that an HBCU with a unique, high-demand academic program is able to attract a more diverse student population. In a 2013 interview with NPR, Morgan State University President David Wilson discussed the significance unique high-demand academic programs have had on his school's enrollment. *See All Races Attracted to HBCU Campuses*, NPR, May 13, 2013.<sup>8</sup> While about 16 percent of Morgan State's students overall were non-black, certain high-quality, non-duplicative programs attracted a higher

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<sup>8</sup> <https://www.npr.org/templates/story/story.php?storyId=183628289>.

percentage of white students. For example, in the school's landscape architecture program, 84 percent of the students were white, and in the overall School of Architecture, nearly 20 percent of the students were white. Wilson noted that, because there were only two schools of architecture at public institutions in the State of Maryland, the lack of duplication within the immediate geographic areas of both schools allowed each program to flourish. Morgan State was able to attract a more diverse student population than it may have without the program or with a duplicative program offered at a nearby TWI.

**B. State and local economies benefit when HBCUs prosper.**

HBCUs are invaluable economic drivers in their state and local communities. Whether generating positive economic growth year-after-year, serving as a key source of employment, or playing a major role in the financial success of their graduates, HBCUs have a direct and positive economic impact on their local communities.

A report of the National Center for Education Statistics, updated and augmented by a 2017 study commissioned by the United Negro College Fund, found that the presence of an HBCU lead to a direct boost in economic activity on and off campus. *See HBCUs Make America Strong: The Positive Economic Impact of Historically Black Colleges and Universities Technical Report*, United Negro

College Fund, Inc. (“UNCF Study”).<sup>9</sup> Researchers calculated that total initial spending by the nation’s 100 HBCUs was \$10.3 billion, representing spending for personnel services (wages, salaries, and benefits), operating expenses, and spending by students. UNCF Study, 6, 10–11, 14. In total, the nation’s HBCUs generated \$14.8 billion in short-term economic impact annually, including direct spending by HBCUs on faculty, employees, academic programs and operations, and by students attending the institutions, as well as the follow-on effects of that spending. *Id.* at 6, 11, 12, 14. While this aggregate total is astounding, this figure ultimately means that every dollar spent by an HBCU and its students produces \$1.44 in initial and subsequent spending for its local and regional economies. *Id.* at 6, 11, 14. With many HCBUs located in regions of the country where overall economic activity is lagging, these institutions’ contributions become even more vital to the economic livelihood of their local communities.

HBCUs also have a direct and positive impact on local and national employment. The nation’s HBCUs generate 134,090 jobs in total for their local and regional economies—sizeable enough to fall in the top 50 of the nation’s largest private employers. *Id.* at 13–15. Approximately 43% of such jobs were on-campus, while 57% were off-campus. *Id.* at 13, 15. In other words, for each job created on an HBCU campus, another 1.3 public- and private-sector jobs are

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<sup>9</sup> [www.UNCF.org/HBCUsMakeAmericaStrong](http://www.UNCF.org/HBCUsMakeAmericaStrong).

created off campus. *Id.* at 15. Taken together with the monetary spend of HBCUs, for each \$1 million initially spent by an HBCU and its students, 13 jobs are created. *See* UNCF Study.

In addition, Dr. William E. Spriggs, Professor/Former Chair of the Department of Economics at Howard University, Chief Economist of the AFL-CIO, and Chief Economist of NAFEO, noted that the economic impact of HBCUs must not be measured solely in terms of jobs created and an increase in earnings, but must also be measured in terms of their impact on families, communities, and the nation. Dr. Spriggs' research demonstrates that HBCUs outperform other American universities in moving students from low-income families up the economic ladder into the top 20% of American families. *HBCUs: The Key to Diversifying Tech* (July 19, 2018). With a declining number of white students, and a growing share of low-income students in Maryland and across the country, HBCUs are an under-resourced asset for growing the state and national economies. Increased investments in HBCUs would expand their unreached capacity.

HBCUs play a large role in the economic success of their graduates and the indirect impact that success has in a graduate's local community. The UNCF study found that the more than 50,000 HBCU graduates in 2014 could expect total earnings of \$130 billion over their lifetimes—56% more than they could expect to earn without those college credentials. UNCF Study at 7. Although this statistic

does not necessarily differentiate HBCUs from TWIs, it demonstrates the incredible impact HBCUs have on their students, their graduates, and the local communities that benefit from such value.

Zagros Madjd-Sadjadi, an economics professor at Winston-Salem State University (an HBCU in North Carolina), has noted that the importance of HBCUs goes beyond traditional impact as many of these institutions are opening doors to higher education opportunities that simply would not otherwise be available. Referring to the UNCF Study, Prof. Madjd-Sadjadi said, “[t]hat \$14.8 billion—that’s actually underestimated . . . we’re showing probably somewhere in the neighborhood of four-to-five hundred million dollars impact [for our institution alone]. That’s because you have to also consider the fact that many of the individuals who graduate from an HBCU would never have gotten the opportunity to go to college at all if we weren’t here.” See Lucas Risinger, *Economic impact of HBCUs is almost \$15 billion, study finds*, THE DAILY TAR HEEL, Nov. 27, 2017.<sup>10</sup> To demonstrate Prof. Madjd-Sadjadi’s point, consider that in 1980, Maryland had graduate engineering programs at only three colleges, all TWIs. As a result, in 1981, about 20—less than 1 percent—of the engineers in the State were African-American. By 2010, the comparable figures are about 150 (or 19 percent). Dr. Earl S. Richardson, former President of Morgan State University, attributed this

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<sup>10</sup> <http://www.dailytarheel.com/article/2017/11/hbcu-economic-contributions-1127>.

increase to the establishment of an engineering program at Morgan State in 1984; notably, Morgan State's program graduated about 100 of the 150 African-American engineers. *See* U.S. COMM'N ON CIVIL RIGHTS, THE EDUCATIONAL EFFECTIVENESS OF HISTORICALLY BLACK COLLEGES AND UNIVERSITIES, 35 (Nov. 2010).<sup>11</sup>

Beyond the financial value HBCUs provide to their students and local and state economies, it is important to recognize the quality of the students and graduates that these institutions educate and produce. Although HBCUs represent only 3% of all colleges and universities, HBCUs produce graduates who are 32% of African-Americans in STEM fields, 50% of African-American teachers, and 60% of African-American doctors. *See Historically Black Colleges and Universities & the Research Agenda on the Oil Drilling Disaster and Sustainability in the Gulf*, NAACP, 6 (Sept. 8, 2010).<sup>12</sup> It is truly incredible that such a small number of higher education institutions produce such disproportionately large percentages of professionals in the American workforce. Economics and earnings aside, local communities are reliant on HBCUs for the education and training of diverse professionals in many critical fields.

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<sup>11</sup> <https://files.eric.ed.gov/fulltext/ED513988.pdf>.

<sup>12</sup> <http://www.naacp.org/wp-content/uploads/2016/04/HBCU%20Convening%20FULL%20REPORT--Final.pdf>.

Accordingly, the remedy put forth by the District Court should not be considered a “cost” to Maryland, but rather a long-term investment in a strong economic future for HBCUs and the State itself. Evidence demonstrates that investing in the future prosperity of HBCUs through the development of unique and well-funded academic programs is likely to yield large-scale benefits for the State.

### **CONCLUSION**

States, like Maryland, must continue to eradicate the vestiges of discrimination and to dismantle the dual and unequal higher education system that exists today. Properly funding HBCUs and avoiding unnecessary program duplication are crucial steps to achieving those goals. It is therefore critical for the Fourth Circuit to uphold the District Court’s liability order that unnecessary program duplication in Maryland is a Constitutional violation under *Fordice* and to enforce the District Court’s remedies order to create new unique, academic programs at HBCUs.

This 27<sup>th</sup> day of July, 2018

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**UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**  
**Effective 12/01/2016**

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