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'This is a Big Win!'

Court ruling pushes State into trial this summer

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The federal court judge overseeing the HBCU lawsuit case has decided it will proceed to trial.

In an 11-page memorandum filed June 6, United States District Judge Catherine C. Blake said a six-week bench trial addressing all allegations against the state, except capital funding, will commence as early as July 5.

"We're glad that the case is proceeding on to trial and that the judge agreed with us on the appropriate legal standing," said Jon Greenbaum, co-counsel for the plaintiffs and an attorney for the Lawyers Committee for Civil Rights Under Law. "We're considering our next steps on the issue of capital funding."

In 2006, the Coalition of Equity and Excellence in Maryland Higher Education, group representing students and alumni from the state's four HBCUs, sued the state of Maryland and the Maryland Higher Education Commission, alleging discriminatory policies against the HBCU's, including funding and program duplication. They argue the alleged discrimination hinders the schools' ability to fairly compete with traditionally White institutions (TWI's) and diversify their student base.

The state filed two motions for summary judgment and fought to have the entire case dismissed at a hearing last month that spurred heated debates on local radio shows and prompted an official statement from Maryland Attorney General Douglas F. Gansler.

In her memorandum, Judge Blake summarized the counsel's arguments and outlined pertinent Supreme Court rulings applicable to the case, beginning with the 1954 *Brown v. Board of Education*, which outlawed the "separate but equal" doctrine in public education.

Much of her analysis centered on the 1992 *United States v. Fordice* case – the heart of the plaintiffs’ arguments – in which the Supreme Court ruled that states must dismantle their formerly segregated higher education systems.

In the *Fordice* case, which spanned 15 years, private petitioners and later the United States argued that Mississippi’s eight public institutions were almost entirely segregated and the state’s HBCU’s suffered from disproportionate funding, duplicate programs, binding admission requirements and other factors that perpetuated segregation. They won the suit.

Although several other Supreme Court cases the state presented may have relevance, Blake added, they do not negate the significance of the *Fordice* case.

At trial, the plaintiffs must pinpoint specific state policies that are traceable to the days of segregation. The state then has the opportunity to dispute the claims and prove that the policies do not have “segregative effects,” meaning they don’t discourage White or Black students from attending HBCU’s. State attorneys can also argue that the policies have “sound educational justification” and, therefore, are necessary.

Blake clarified that the plaintiffs cannot merely identify discriminatory practices without showing that they are the result of policies derived from the segregation era. “While it is not sufficient for the State simply to show that current policies are race-neutral, neither is it sufficient for the plaintiffs to show, for example, a present imbalance in resources without identifying a current policy or practice rooted in de jure segregation that allegedly causes that imbalance,” she wrote.

The coalition’s attorneys presented sufficient evidence that the judge will consider regarding the state’s operational funding procedures and its approval of an MBA degree program at Towson University and the University of Baltimore that is similar to a program at Morgan State University. HBCU mission statements will also receive attention at the trial, “despite the State’s position that HBIs, like non-HBIs, have substantial control over determining their own missions,” Blake contended.

The coalition, however, did not present adequate evidence to support its contention that the state’s current capital funding policies are traceable to segregation, the judge said. Nor did they prove that the state’s approval of the MBA program was intentionally discriminating. But Pace McConkey, a practicing attorney and the executive director of the Bell Center for Civil Rights at Morgan State, said he doesn’t believe the plaintiffs have to show intent to prove their case.

“I do not think that it was ever crucial to the coalition’s case to identify intentional discrimination,” he said. “In my opinion, it doesn’t hurt the plaintiff’s case.”

“This is a big win,” he added, although he was disappointed the court decided not to move forward with the capital funding claims. “I think the legal standard is a victory for the coalition.”

Blake suggested July 5 as a start date for the trial, but attorneys have yet to confirm. The trial was originally slated to begin June 27, but was pushed back to accommodate a conflicting criminal case.