

FILED: May 6, 2021

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 17-2418 (L)  
(1:06-cv-02773-CCB)

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THE COALITION FOR EQUITY AND EXCELLENCE IN MARYLAND  
HIGHER EDUCATION, INC., a/k/a Coalition for Equity and Excellence in  
Maryland Higher Education; RASHAAN SIMON, a/k/a Rahsaan Simon; DAVID  
J. BURTON; MURIEL THOMPSON; ANTHONY ROBINSON; DR. CHRIS  
HEIDELBERG; DAMEIN MONTGOMERY; KELLY THOMPSON; J. S.

Plaintiffs - Appellees

and

SALLY C. MCMILLAN; TINA M. VINES; DAVID BUTLER; DAPO  
OLADAPO; NICHOLAS WASHINGTON; DANIELLE WILLIAMS; ZENIA  
WILSON; JESSICA WINSLOW; CRYSTAL MYERS; JOMARI SMITH;  
WAYNE BECKLES

Plaintiffs

v.

MARYLAND HIGHER EDUCATION COMMISSION; ANWER HASAN,  
Chairman of the Maryland Higher Education Commission; JENNIE C. HUNTER-  
CEVERA, Acting Secretary of Higher Education; STATE OF MARYLAND

Defendants - Appellants

and

ROBERT L. EHRLICH, JR., Governor; STATE OF MARYLAND; CALVIN W.  
BURNETT, Secretary of Higher Education

Defendants

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NATIONAL ASSOCIATION FOR EQUAL OPPORTUNITY IN HIGHER  
EDUCATION

Amicus Supporting Appellee

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O R D E R

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Upon consideration of the joint motion for limited remand, the court grants the motion and remands this case to the district court for the limited purpose of effectuating a settlement agreement, which was approved by the district court on an indicative basis on April 29, 2021.

The clerk shall forward a copy of this order, accompanied by a copy of the motion to remand, to the district court. This appeal shall remain on the active docket of this court and the parties shall file a status report on June 4, 2021, and every 30 days thereafter, and shall immediately notify this court when the district court proceedings have concluded.

For the Court

/s/ Patricia S. Connor, Clerk

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, INC., *et al.*,**

*Plaintiffs-Appellees,*

v.

**MARYLAND HIGHER EDUCATION COMMISSION, *et al.*,**

*Defendants-Appellants.*

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On Appeal from the United States District Court  
for the District of Maryland  
Civil Action No. 1:06-cv-02773-CCB

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**JOINT MOTION FOR LIMITED REMAND**

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May 3, 2021

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The parties jointly move the Court, pursuant to Rule 12.1 of the Federal Rules of Appellate Procedure, for a limited remand of this case to the United States District Court for the District of Maryland for the purpose of effectuating a settlement agreement, which was approved by the district court on an indicative basis on April 29, 2021.

Earlier this month, the Maryland General Assembly passed emergency legislation in an effort to settle this dispute, and on March 24, 2021, the Governor of Maryland signed the legislation into law. *See* Historically Black Colleges and Universities – Funding, S.B. 1 (Md. 2021) (the “Legislation”). The parties subsequently executed a conditional settlement agreement on April 27, 2021, to resolve all issues between them in this lawsuit and appeals and to effectuate the terms of the Legislation, which is incorporated therein. The Legislation and the related conditional settlement agreement, however, contemplated that the district court would issue an order providing that the commitments set forth in the settlement agreement fully cure any Maryland policy of unnecessary program duplication traceable to *de jure* segregation.

Pursuant to Rule 62.1 of the Federal Rules of Civil Procedure, the parties filed a motion in the district court for an indicative ruling. On April 29, 2021, the district court granted the motion and stated that, if this Court were to remand the case, the district court would enter an order holding that the commitments in the settlement

agreement “fully cure any policy of unnecessary program duplication traceable to Maryland’s *de jure* system of racially segregated public higher education, thereby fully and finally resolving the above-captioned lawsuit.” A copy of the district court’s order is attached.

Accordingly, pursuant to Federal Rule of Appellate Procedure 12.1, the parties respectfully request that this Court retain jurisdiction of the appeal but grant a limited remand of this case to the district court in order for it to proceed as set forth above. If the case is so remanded and the district court takes the action described in its indicative ruling, all issues presented on appeal will be resolved, and both the appeal and the cross-appeal will be dismissed. If for any reason final approval is denied, or if the settlement is not finalized by the legislative deadline, the parties will notify the Court of the need to move forward with the appeals.

Respectfully submitted,

/s/ Michael D. Jones

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Appellants/Cross-Appellees

**CERTIFICATE OF COMPLIANCE WITH RULE 32(A)**

1. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this motion has been prepared in a proportionally spaced typeface using Times New Roman size 14-point font with Microsoft Word.

/s/ Michael D. Jones  
Michael D. Jones

# ATTACHMENT 1



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

COALITION FOR EQUITY AND  
EXCELLENCE IN MARYLAND HIGHER  
EDUCATION, *et al.*,

Plaintiffs,

v.

MARYLAND HIGHER EDUCATION  
COMMISSION, *et al.*,

Defendants.

Civil Action No. CCB-06-cv-2773

\* \* \* \* \*

~~PROPOSED~~ ORDER

This matter came before the Court upon the joint motion of the parties pursuant to [Federal Rule of Civil Procedure 62.1](#), asking this Court to indicate its willingness to accept a limited remand from the Court of Appeals for the Fourth Circuit and to issue an indicative ruling stating that upon such remand by the Court of Appeals, this Court would issue an order holding that the commitments set forth in the conditional settlement agreement fully cure any policy of unnecessary program duplication traceable to Maryland’s *de jure* system of racially segregated public higher education, thereby fully and finally resolving the above-captioned lawsuit.

Having considered the parties’ motion and the entire record, the Court is of the opinion, and so finds, that if the case is remanded to it by the Court of Appeals for the Fourth Circuit, it will grant the relief requested.

IT IS, THEREFORE, ORDERED BY THE COURT that if this case is remanded to the District Court by the Court of Appeals, this Court will grant the parties’ joint motion pursuant to Rule 62.1 of the Federal Rules of Civil Procedure and will issue an order holding that the

commitments set forth in the conditional settlement agreement fully cure any policy of unnecessary program duplication traceable to Maryland's *de jure* system of racially segregated public higher education, thereby fully and finally resolving the above-captioned lawsuit.

ENTERED and ORDERED this 29th day of April, 2021.

/S/  
Catherine C. Blake  
UNITED STATES DISTRICT COURT JUDGE

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

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No. 17-2418 (L)  
1:06-cv-02773-CCB

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THE COALITION FOR EQUITY AND EXCELLENCE IN MARYLAND  
HIGHER EDUCATION, INC., *ET AL.*,

*Plaintiffs-Appellees,*

v.

MARYLAND HIGHER EDUCATION COMMISSION, *ET AL.*,

*Defendants-Appellants,*

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**[PROPOSED] ORDER**

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In accordance with the conditional settlement agreement reached by the parties, the parties have jointly moved, pursuant to Rule 12.1 of the Federal Rules of Appellate Procedure, to remand this case to the United States District Court for the District of Maryland for the limited purpose of the District Court issuing an order holding that the commitments set forth in the conditional settlement agreement fully cure any policy of unnecessary program duplication traceable to Maryland's *de jure*

system of racially segregated public higher education, thereby fully and finally resolving the lawsuit.

Upon consideration of the motion and further considering the District Court's Order of April 29, 2021, IT IS ORDERED that the motion shall be and is hereby GRANTED. This appeal and cross-appeal are remanded to the District Court for further proceedings. The parties shall notify this Court within 30 days following the District Court's decision and the effect of such decision on the disposition of the appeals.

For the Court

/s/ Patricia S. Connor, Clerk