



EMORY  
LAW

Emory Corporate Governance and Accountability  
Review

---

Volume 10 | Issue 2

---

2023

## 40 Acres and a Mule: Accountability for Corporations to Provide Reparations to Historically Black Colleges and Universities for Profits from Slave Labor

Meghan K. Marks

Follow this and additional works at: <https://scholarlycommons.law.emory.edu/ecgar>



Part of the [Business Organizations Law Commons](#), [Civil Rights and Discrimination Commons](#), [Law and Race Commons](#), and the [Securities Law Commons](#)

---

### Recommended Citation

Meghan K. Marks, *40 Acres and a Mule: Accountability for Corporations to Provide Reparations to Historically Black Colleges and Universities for Profits from Slave Labor*, 10 Emory Corp. Governance & Accountability Rev. 312 (2023).

Available at: <https://scholarlycommons.law.emory.edu/ecgar/vol10/iss2/10>

This Comment is brought to you for free and open access by the Emory Corporate Governance and Accountability Review at Emory Law Scholarly Commons. It has been accepted for inclusion in Emory Corporate Governance and Accountability Review by an authorized editor of Emory Law Scholarly Commons. For more information, please contact [law-scholarly-commons@emory.edu](mailto:law-scholarly-commons@emory.edu).

**40 ACRES AND A MULE: ACCOUNTABILITY FOR  
CORPORATIONS TO PROVIDE REPARATIONS TO  
HISTORICALLY BLACK COLLEGES AND UNIVERSITIES  
FOR PROFITS FROM SLAVE LABOR**

TABLE OF CONTENTS

I. CORPORATIONS MUST ACKNOWLEDGE THEIR PAST TIES TO SLAVERY AND OFFER REMEDIES TO BRIDGE RACIAL GAPS .....	313
A. <i>Corporate Beginnings and Ties to Slavery</i> .....	314
B. <i>Corporate Responsibility and Purpose of Reparations</i> .....	316
II. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES: ESTABLISHMENT, CONTRIBUTIONS, AND DEFICIENT FUNDING .....	320
A. <i>Establishment and Legislation</i> .....	320
B. <i>Importance of HBCUs to the Country and the Black Community</i> .....	321
C. <i>HBCU's Disparity in Funding</i> .....	323
D. <i>HBCU Endowments</i> .....	326
III. IMPORTANCE OF ACCREDITATION AND HBCUS' LEGAL ACTIONS ...	327
A. <i>Accreditation</i> .....	327
B. <i>Bennett Coll. v. S. Ass'n of Colleges &amp; Sch. Comm'n on Colleges, Inc.</i> .....	328
C. <i>Paine Coll. v. S. Ass'n of Colleges &amp; Sch. Comm'n on Colleges, Inc.</i> .....	330
D. <i>Hampton Univ. v. Accreditation Council for Pharmacy Educ.</i> .....	333
E. <i>Coal. for Equity &amp; Excellence in Maryland Higher Educ. v. Maryland Higher Educ. Comm'n.</i> .....	334
F. <i>Legal Efforts Led By Students</i> .....	338
IV. EFFORTS TO INCREASE HBCU FUNDING .....	338
A. <i>Capitol Hill and Other Legislative Efforts to Increase Funding</i> .....	338
B. <i>Current Corporate Partnerships</i> .....	341
CONCLUSION .....	346

“Indeed, in America there is a strange and powerful belief that if you stab a Black person 10 times, the bleeding stops and the healing begins the moment the assailant drops the knife.”

- *Ta-Nehisi Coates*

#### I. CORPORATIONS MUST ACKNOWLEDGE THEIR PAST TIES TO SLAVERY AND OFFER REMEDIES TO BRIDGE RACIAL GAPS

Since their establishment in the late 18<sup>th</sup> century, historically Black Colleges and Universities (“HBCUs”) serve as pillars of support and excellence for the Black community.<sup>1</sup> An HBCU is a higher education institution that was created before 1964 with a sole focus on education for African Americans.<sup>2</sup> After emancipation, such educational opportunities were sparse, which led HBCUs’ establishment.<sup>3</sup> HBCUs paved the way for Black Americans’ education. Prominent figures in the Black community like Dr. Martin Luther King Jr., Oprah Winfrey, and Vice President Kamala Harris matriculated at an HBCU.<sup>4</sup> Despite producing legendary change agents, HBCUs are extremely underfunded, especially compared to predominantly white institutions (“PWIs”). Without adequate funds, HBCUs have deteriorating infrastructures, cannot provide state-of-the-art equipment and technology, provide low salaries for professors, receive small endowments, and lack academic programs for students.<sup>5</sup> Though there are some policies and legislative acts that center on HBCU funding, they lack the funding that prior legislation guaranteed them.<sup>6</sup> After the Black Lives Matter Movement (the “BLMM”), corporations donated large sums to HBCUs to aid the Black Community, but this Comment argues for a shift in messaging when corporations make such donations to acknowledge their past involvement with slavery. Corporations should offer scholarships, donate endowments, and provide job opportunities to HBCU students to increase

---

<sup>1</sup> Hilary Cairns, *The History of Historically Black Colleges and Universities (HBCUs)*, COLLEGE RAPTOR (Dec. 22, 2022), <https://www.collegeraptor.com/find-colleges/articles/college-search/the-history-of-historically-black-colleges-and-universities-hbcus/>.

<sup>2</sup> Christopher A. Burnett, *Diversity under Review: HBCUs and Regional Accreditation Actions*, 45 *Innovative Higher Education* 3, (2020).

<sup>3</sup> Jamie L. Wershbale, *Collaborative Accreditation: Securing the Future of Historically Black Colleges*, 12 *Berkeley J. Afr.-Am. L. & Pol’y* 67 (2010).

<sup>4</sup> Bruce C.T. Wright, *Black History in the Making: HBCU Graduates Who Are Changing the World*, NEWSONE, (Feb. 4, 2021, 9:45 AM), <https://newsone.com/playlist/hbcu-graduates-changing-the-world/item/2>.

<sup>5</sup> Congressional Research Service, *Federal Research and Development Funding at Historically Black Colleges and Universities* (Sept. 25, 2008), <https://www.everycrsreport.com/reports/RL34435.html>.

<sup>6</sup> See Chris Burt, *Reparations for HBCUs? The Disparities in 16 States That Led to Billions in Underfunding*, University Business, COLLEGE RAPTOR, (Oct. 16, 2022), <https://www.collegeraptor.com/find-colleges/articles/college-search/the-history-of-historically-black-colleges-and-universities-hbcus/>.

the pipeline of a diverse workforce and equip Black citizens and slaves' descendants with an exemplary education. In that way, corporations can keep expanding partnerships with HBCUs and institutions founded for former African American slaves. Though this would not forgive their profits off slave labor, it would allow corporations to acknowledge and attempt a remedy for their past harms.

#### A. *Corporate Beginnings and Ties to Slavery*

Many corporations profited off slave labor in their early years. Scholars often consider slavery as the United States' first big business.<sup>7</sup> African American slave labor spurred most of this country's wealth, which enriched its citizens regardless of individual involvement or blame.<sup>8</sup> Companies' profits from slavery came from fee taxes, collections from slave ships, lending fees to slave traders, and slave labor's exploitation.<sup>9</sup> Slaves built this country's infrastructure from railroads to streets to agriculture.<sup>10</sup> Various newspapers insured and sold their lives.<sup>11</sup> For example, Bank of America's and JPMorgan Chase's predecessors accepted enslaved people as collateral for loans.<sup>12</sup> Wells Fargo was one of several banks that also counted enslaved people towards a slave owner's assets.<sup>13</sup> Banks across the country sold securities that allowed slave-operated plantations' growth.<sup>14</sup> Brooks Brothers, one of the country's oldest apparel companies in the country, sold clothing for slaves to slave owners and traders.<sup>15</sup> (Funds from a slave-operated cotton mill founded Tiffany and Company, a renowned jewelry company.<sup>16</sup> Insurance companies across the country provided slave owners with

---

<sup>7</sup> P.R. Lockhart, *How Slavery Became America's First Big Business*, Vox (Aug. 16, 2019, 9:00 AM), <https://www.vox.com/identities/2019/8/16/20806069/slavery-economy-capitalism-violence-cotton-edward-baptist>.

<sup>8</sup> See Susan S. Kuo & Benjamin Means, *supra* note 8, *A Corporate Law Rationale for Reparations*, 62 B.C. L. Rev. 799 (2021).

<sup>9</sup> Claudia I. Janssen, *Addressing Corporate Ties to Slavery: Corporate Apologia in a Discourse of Reconciliation*, 63 Communication Studies 1, 18 (2012).

<sup>10</sup> See Kuo & Means, *supra* note 8 at 25.

<sup>11</sup> *Id.*

<sup>12</sup> Debert Cook, *15 Major Corporations You Never Knew Profited from Slavery*, AFRICAN AMERICAN GOLFER'S DIGEST (May 7, 2014), <https://africanamericangolfersdigest.com/15-major-corporations-you-never-knew-profited-from-slavery/>.

<sup>13</sup> Zoe Thomas, *The Hidden Links Between Slavery and Wall Street*, BBC NEWS (Aug. 29, 2019), <https://www.bbc.com/news/business-49476247>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Vernellia R. Randall, *Shocking List of 10 Companies that Profited from the Slave Trade*, Race, Racism and the Law, (Aug 31, 2013), <https://www.racism.org/index.php/articles/law-and-justice/citizenship-rights/117-slavery-to-reparations/reparations/1697-reparations1001>.

insurance policies for their slaves' deaths or injuries.<sup>17</sup> Norfolk Southern, one of the nation's premier transportation corporations, rented enslaved people to construct railroads.<sup>18</sup> Companies in the United States have a dark past with slavery and they must face their wrongdoings and attempt to provide a remedy for past harms.

JPMorgan, one of the nation's largest banks, was among the first corporations to acknowledge and apologize for its ties to slavery.<sup>19</sup> After Chicago issued an ordinance that requires that companies disclose their ties to slavery, JPMorgan recognized that two predecessor banks had links to slavery.<sup>20</sup> One Louisiana predecessor accepted nearly 13,000 African American slaves as collateral before the Civil War.<sup>21</sup> JPMorgan apologized to the African American slaves' descendants for their predecessors' roles in the tragedy of slavery.<sup>22</sup> After its apology, JPMorgan created Smart Start Louisiana, which will donate \$5 million to undergraduate scholarships for Black students.<sup>23</sup> More companies must not only acknowledge their past involvement for slavery, but also provide a remedy to the Black community.

New York Life, the country's third largest life insurance company, profited significantly from slave labor's exploitation.<sup>24</sup> New York Life issued insurance policies to slave owners that allowed them to regain three quarters of a slave's value on their death.<sup>25</sup> Insurance policies covered the slaves in precarious environments like mines, steamboats, and lumber mills.<sup>26</sup> For example, Policy no. 447 covered Nathan York's life, a slave forced to work in Virginia's dangerous coal mines.<sup>27</sup> Policy no. 1141 covered Warwick's life, a slave who

---

<sup>17</sup> Zoe Thomas, *The Hidden Links Between Slavery and Wall Street*, BBC NEWS (Aug. 29, 2019), <https://www.bbc.com/news/business-49476247>.

<sup>18</sup> *The Incomplete List of US Companies & Universities That Benefited from Black Slavery*, ABAGOND (Jun. 11, 2014), <https://abagond.wordpress.com/2014/06/11/the-incomplete-list-of-us-companies-and-universities-that-benefited-from-black-slavery/>.

<sup>19</sup> *JPMorgan Apologizes for Predecessor Banks' Acceptance of Slaves as Collateral*, DIVERSE EDUCATION (Feb. 9, 2005), <https://www.diverseeducation.com/demographics/disabilities/article/15080615/jpmorgan-apologizes-for-predecessor-banks-acceptance-of-slaves-as-collateral>.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Rachel L. Swarns, *Insurance Policies on Slaves: New York Life's Complicated Past*, N.Y. TIMES (Dec. 18, 2016), <https://www.nytimes.com/2016/12/18/us/insurance-policies-on-slaves-new-york-lifes-complicated-past.html>.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

toiled at the furnaces in the steamboat industry.<sup>28</sup> New York Life apologized for their predecessor company's involvement in slavery and reiterated its dedication to the African American community, including sponsoring the National Museum of African American History.<sup>29</sup> However, companies should do more to help African Americans achieve justice in several areas.

### *B. Corporate Responsibility and Purpose of Reparations*

Society must hold corporations accountable for utilizing slave labor in the past and demand a remedy for their harms. We can hold corporations as a whole responsible under corporate law doctrine because individual involvement or innocence is irrelevant.<sup>30</sup> Additionally, under corporate law, corporations exist in perpetuity and are not limited to its shareholders' power.<sup>31</sup> Corporations should first acknowledge their dark history and profits from slave labor. Then, they must provide reparations to the Black community. Reparations allow a corporation to admit and correct its prior bad actions.<sup>32</sup>

Slavery still has lingering effects. Studies show that white households are worth approximately more than twenty times Black households.<sup>33</sup> Although segregation ended in the 1960s, African Americans remain the most segregated race in the nation.<sup>34</sup> Voter suppression, housing restrictions, the criminal justice system, and educational barriers highlight slavery's lasting effects.<sup>35</sup> White college graduates have approximately seven times more wealth than their Black counterparts.<sup>36</sup> Reparations represent an attempt to make amends with African American slaves' descendants.

---

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> See Kuo & Means, *supra* note 8 at 821.

<sup>31</sup> See *id.* at 826.

<sup>32</sup> *Id.*

<sup>33</sup> Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/>.

<sup>34</sup> *Id.*

<sup>35</sup> Rochelle Riley, *Column: Why America Can't Get Over Slavery its Greatest Shame*, USA TODAY (Feb. 8, 2018, 9:00 PM), <https://www.usatoday.com/story/news/nation-now/2018/02/08/column-why-america-cant-get-over-slavery-its-greatest-shame/1000524001/>.

<sup>36</sup> Rashawn Ray & Andre M. Perry, *Why We Need Reparations for Black Americans*, BROOKINGS (Apr. 15, 2020), <https://www.brookings.edu/policy2020/bigideas/why-we-need-reparations-for-black-americans/>.

In his renowned “I Have a Dream” speech, Dr. Martin Luther King, Jr., argued for reparations as a way for African Americans to achieve justice.<sup>37</sup> A key goal of reparations is to fix the paralyzing damage the Black community faces in the areas that need the most reform and aid, like discriminatory insurance practices and unequal access to social goods (e.g., health care and education).<sup>38</sup> Disparities that are still prevalent in the Black community range from discriminatory insurance practices to unequal access to social goods, such as health care or education.<sup>39</sup> Federal action and law suits seek such reparations. In *Johnson v. MacAdoo*, the earliest lawsuit for reparations, Plaintiff sued the United States Department of the Treasury and alleged the government’s tax on slave-produced raw cotton equated to unjust enrichment from African American labor.<sup>40</sup> Reparation lawsuits’ underlying concept and goal is future initiatives’ creation for racial reconciliation.<sup>41</sup> The implementation of monetary remedies bridge the racial inequality gaps.

Congress proposed that slaves’ descendants should receive reparations.<sup>42</sup> Under the Commission to Study and Develop Reparation Proposals for African Americans Act (the “Commission Bill”), Congress proposed a commission that would study slavery’s and racial discrimination’s effects to create remedies for past harms.<sup>43</sup> The commission analyzes the government’s role in slavery, discrimination against slaves and their descendants, and slavery’s lasting effects on African Americans today.<sup>44</sup> Though its introduction was nearly thirty years ago, the Commission Bill only gained traction after the BLMM.<sup>45</sup> Despite Congress’ stall on the reparations movement, states took independent action, like monetary awards for Black residents’ mortgages.<sup>46</sup> Corporations should follow state legislatures’ leads and offer similar awards to the Black community for their predecessors’ involvement with slavery. There have been various

---

<sup>37</sup> Charles J. Ogletree, Jr., *Repairing the Past: New Efforts in the Reparations Debate in America*, 38 Harv. C.R.-C.L. L. Rev. 279 (2003) (noting King argued for monetary reparations to ensure justice for the Black community after the injustice they have experienced).

<sup>38</sup> *See id.* at 284.

<sup>39</sup> *See id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *H.R. 40—Commission to Study and Develop Reparation Proposals for African-Americans Act*, (2019-2020), <https://www.congress.gov/bill/116th-congress/house-bill/40> [<https://perma.cc/23UY-9S78>].

<sup>43</sup> *See id.*

<sup>44</sup> *Id.*

<sup>45</sup> Jacquelyne Germain, *The Fight for Reparations Has Stalled in Congress. Here’s What They Look Like in State and Local Governments*, CNN, (Jul. 13, 2022, 1:29 PM), <https://www.cnn.com/2022/07/13/us/reparations-state-local-commission-reaj/index.html>.

<sup>46</sup> *Id.*

attempts at justice for African Americans before the reparations movement that the BLMM spurred.

The demand for reparations from corporations had momentum at the beginning of the twenty-first century and shifted some focus away from the government.<sup>47</sup> In 2002, activists nationwide filed lawsuits against corporations that urged them to acknowledge their involvement (e.g., links to the insurance, finance, and transportation industries) with slavery, as they never attempted to correct it.<sup>48</sup> Activists sought acknowledgement for companies' links to the insurance, finance, and transportation industries.<sup>49</sup> While some companies issued public apologies and educational donations, many did not, and sometimes refused to, acknowledge and accept their past ties to slavery, which sparked lawsuits against major corporations, like CSX, Fleet Boston, and Aetna.<sup>50</sup> Lawsuits have been filed against major corporations such as CSX, Fleet Boston, and Aetna.<sup>51</sup> The plaintiffs in such suits incorporated research that found slave labor contributed \$40 million to the American economy (\$1.4 trillion in today's economy).<sup>52</sup> Aetna is one of the few that issued an official apology.<sup>53</sup>

Aetna, one of the country's largest health insurance companies, sold policies in the 1800s that reimbursed slave owners for deceased slaves.<sup>54</sup> In 2000, one of Aetna's spokespeople acknowledged and expressed the company's sincere regret for its involvement with slavery.<sup>55</sup> At an annual shareholder meeting, John Rowe, Aetna's CEO, reiterated that apology and emphasized the company's commitment to racial disparities' elimination in today's healthcare system.<sup>56</sup> Aetna also repeated its present dedication to the African American community and highlighted its diversity initiatives.<sup>57</sup> Apologies should not only recognize past wrongdoings, but "reflect a change in core motivation from defending the individual or collective self-image and interests toward restoring the respect and

---

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 25.

<sup>52</sup> Peter Viles, *Suit Seeks Billions in Slave Reparations*, CNN (Mar. 27, 2002, 11:29 AM), <https://edition.cnn.com/2002/LAW/03/26/slavery.reparations/>.

<sup>53</sup> *Id.*

<sup>54</sup> *Aetna Apologizes for Slave Insurance*, LOS ANGELES TIMES (Mar. 11, 2002, 12:00 AM), <https://www.latimes.com/archives/la-xpm-2000-mar-11-fi-7637-story.html>.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*



well-being of which the Other has been deprived.”<sup>58</sup> Corporations should implement concrete steps and goals to restore the African American community.

In the past, lawsuits for reparations failed. In 2005, Former U.S. District Judge for the Northern District of Illinois, Charles R. Norgle, dismissed a suit that claimed corporations must be responsible for reparations payments for slave labor’s exploitation.<sup>59</sup> In one class action suit against several corporations (from insurance to transportation companies) for slave labor’s exploitation, eighteen Plaintiffs claimed their ancestors’ slave labor enriched corporations.<sup>60</sup> Former Judge Norgle dismissed the case and cited that Plaintiffs did not prove personal injury.<sup>61</sup> However under corporate law doctrine, corporations are entities that can be held responsible for wrongs committed.<sup>62</sup>

Several scholars have offered theories on how to best distribute reparations to the African American community. Borris Bittker, a Yale Law professor, created a formula to calculate reparations: multiply the number of Black citizens in the country by the difference between Black and white per capita income.<sup>63</sup> Charles Ogletree, a Harvard Law professor, argued that career training and programming and various public works for racial justice qualify as reparations.<sup>64</sup>

There are two major issues with reparations. First, the country simply cannot afford to pay them.<sup>65</sup> The monetary value attached to slave labor was approximately \$3 billion in 1860.<sup>66</sup> In 1861, the labor of the cotton industry equated to \$250 million.<sup>67</sup> Second, there are concerns that no dollar amount could ever rectify the years of violence, turmoil, and brutality from slavery. However, reparations should serve as this country’s acceptance of its involvement in slave labor’s exploitation and the lingering racial discrimination present today.<sup>68</sup> Reparations seek to close the gaps that racial injustice caused the Black community today.<sup>69</sup>

---

<sup>58</sup> *Id.* at 30.

<sup>59</sup> K.J. Carillo, *Lawsuit Seeking Reparations Fails in Chicago*, New York Amsterdam News, (Jul. 15, 2005) at 4.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> See Kuo & Means, *supra* note 8 at 21.

<sup>63</sup> See Coates, *supra* note 33.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> See Ray and Perry, *supra* note 36.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

Many corporations promised large donations toward racial injustice and issued statements about their dedication to racial equality during the BLMM after the murders of George Floyd, Ahmaud Arbery, and Breonna Taylor.<sup>70</sup> We must hold corporations accountable for such commitments.<sup>71</sup> While it is critical that corporations champion diversity and support the BLMM, they must also acknowledge their past involvement with slavery and provide remedies for it to the Black community. One such tangible reparation is a donation to HBCUs, which have a long and rich history of providing an otherwise inaccessible education to African Americans.

## II. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES: ESTABLISHMENT, CONTRIBUTIONS, AND DEFICIENT FUNDING

### A. *Establishment and Legislation*

There were two pieces of legislation important to HBCUs: the Morrill Land Grant Act of 1862 (the “Morrill Act I” and the Morrill Land Grant Act of 1890 (the “Morrill Act II,” together with the Morrill Act I, the “Morrill Acts”).<sup>72</sup> The Morrill Act I provided 300,000 acres of land for state universities and colleges, yet excluded people of color from them, which led to the Morrill Act II, which established HBCUs.<sup>73</sup> The Morrill Act II required that states demonstrate that they did not base admission on race and did not create separate institutions for Black student.<sup>74</sup> The Morrill Act II donated money, rather than land, to create institutions allocated to teaching and research and established seventeen HBCUs.<sup>75</sup> Before the Morrill Act II’s passage, African Americans were limited to private HBCUs.<sup>76</sup> The Morrill Acts’ intention was to spark agricultural

---

<sup>70</sup> Laura Morgan Roberts and Megan Grayson, *Businesses Must Be Accountable for Their Promises on Racial Justice*, HARVARD BUSINESS REVIEW (Jun. 1, 2021), <https://hbr.org/2021/06/businesses-must-be-accountable-for-their-promises-on-racial-justice>.

<sup>71</sup> *Id.*

<sup>72</sup> Morrill Land Grant Act of 1862, <https://www.archives.gov/milestone-documents/morrill-act>.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> Margaret Lawrence, *Celebrating the Second Morrill Act of 1890*, NATIONAL INSTITUTE OF FOOD AND AGRICULTURE (Aug. 30, 2022), <https://www.nifa.usda.gov/about-nifa/blogs/celebrating-second-morrill-act-1890>.

<sup>76</sup> John Michael Lee & Samad Wes Keys, *Land Grant but Unequal State One to One Match Funding for 1890 Land Grant Universities*, ASSOCIATION OF PUBLIC AND LAND GRANT UNIVERSITIES (Sept. 2013), <https://www.aplu.org/wp-content/uploads/land-grant-but-unequal-state-one-to-one-match-funding-for-1890-land-grant-universities.pdf>.

innovation and teaching.<sup>77</sup> Since their implementation, Black land grant institutions lacked federal land grant funding until the 1970s.<sup>78</sup>

Former President Lyndon B. Johnson implemented the Higher Education Act, which contained procedures for financial aid, to promote higher education across the country.<sup>79</sup> Congress did not acknowledge HBCUs as a specific class of higher education institutions until 1986 under Title III of the Higher Education Act.<sup>80</sup> Congress recognized that HBCUs contributed to efforts to provide access to higher education for Black students and those from lower socioeconomic backgrounds. HBCUs' exclusion from the Higher Education Act demonstrates discriminatory practices. Since their creation, HBCUs experienced extreme funding inequality.<sup>81</sup>

### *B. Importance of HBCUs to the Country and the Black Community*

HBCUs educate 80% of Black judges, 50% of Black attorneys, 50% of Black doctors, 75% of Black PhDs and 46% of Black business executives; produce 25% of Black science, technology, engineering, and math graduates; confer over 48,000 degrees; award 21% of bachelor's degrees to Black students; and graduate 20% of all Black graduates.<sup>82</sup> In addition to enhancing several career fields' diversity, HBCUs provide a unique and meaningful college experience for Black students. Studies show that students at HBCUs succeed more academically and have higher career goals compared to their peers at PWIs.<sup>83</sup> When minority students attend an HBCU with an environment full of other minority peers and role models, that student is more likely to succeed academically.<sup>84</sup>

---

<sup>77</sup> Hank Tucker, *How America Cheated its Black Colleges*, FORBES (Feb. 1, 2022, 1:00 PM), <https://www.forbes.com/sites/susanadams/2022/02/01/for-hbcus-cheated-out-of-billions-bomb-threats-are-latest-indignity/?sh=292c3a26640c>.

<sup>78</sup> *Id.*

<sup>79</sup> See Wershale, *supra* note 3 at 70.

<sup>80</sup> *Id.* at 73.

<sup>81</sup> See Lee and Keys, *supra* note 76; See Tucker; Valerie R. Wilson, *The Effect of Attending an HBCU on Persistence and Graduation Outcomes of African-American College Students*, 34 THE REVIEW OF BLACK POLITICAL ECONOMY, 11-52 (2007); National Center for Education Statistics, *Historically Black Colleges and Universities*, NCES, <https://nces.ed.gov/fastfacts/display.asp?id=667>; Michael A. Lomax, *Why HBCUs Still Matter*, UNITED NEGRO COLLEGE FUND, <https://uncl.org/the-latest/why-hbcus-still-matter>

<sup>82</sup> See Tucker, *supra* note 77.

<sup>83</sup> See Burnett, *supra* note 2 at 4.

<sup>84</sup> See Wershale, *supra* note 3 at 77.

HBCUs are also critical to the country. HBCUs provided over 134,000 jobs for their local economies, which equates Oracle's numbers, one of the country's top fifty largest employers.<sup>85</sup>

HBCUs also educate in droves students from lower socioeconomic backgrounds, as 70% of HBCU students are Pell Grant eligible (i.e., students who demonstrate exceptional financial need) and 80% use federal loans for tuition.<sup>86</sup> HBCUs also play critical roles in Black economic mobility's advancement. HBCU students have a 3% economic mobility rate, which is approximately double other colleges' rates in the country.<sup>87</sup> McKinsey & Company's study found that strong HBCU networks can increase Black employees' incomes by \$10 billion and strengthen the country's economy by \$1.2 billion, which shows that HBCUs help the nation at large.<sup>88</sup> The report also found that such an HBCU network can decrease \$300 million in student loan debt and provide \$1 billion in consumer expenses.<sup>89</sup> HBCUs also contribute \$14.8 billion to the country's economy, which is equivalent to a top 200 rank on the *Fortune* 500 list of the country's largest corporations.<sup>90</sup>

HBCUs provide educational opportunities for students from underserved populations and areas who might not otherwise receive admission to a state public flagship.<sup>91</sup> HBCUs outperform non-HBCUs in such students' and first-generation students' graduation and retention.<sup>92</sup> Around 70% of HBCUs' students receive the Pell Grant, which is over twice as many as PWIs.<sup>93</sup> HBCUs help student populations from lower socioeconomic backgrounds gain economic mobility.<sup>94</sup> Despite HBCUs' significant contributions to the Black community

---

<sup>85</sup> See Lomax, *supra* note 81.

<sup>86</sup> See Michael A. Lomax, *Six Reasons HBCUs Are More Important than Ever*, UNITED NEGRO COLL. FUND, <https://uncf.org/the-latest/6-reasons-hbcus-are-more-important-than-ever>; Ianne Salvosa, *Pell Grant Increase Will Fall Short of Significant Financial Relief for GW Recipients: Experts*, GW HATCHET (Jan. 17, 2023, 12:37 PM), <https://www.gwhatchet.com/2023/01/17/pell-grant-increase-will-fall-short-of-significant-financial-relief-for-gw-recipients-experts/>.

<sup>87</sup> McKinsey & Co., *How Historically Black Universities and Colleges Are Drivers of U.S. Growth*, WORLD ECON. F. (Aug. 10, 2021), <https://www.weforum.org/agenda/2021/08/mckinsey-report-highlights-importance-of-supporting-hbcus-in-the-united-states/>.

<sup>88</sup> See *id.*

<sup>89</sup> *Id.*

<sup>90</sup> Jeffrey M. Humphreys, *HBCUs Make America Strong: The Positive Economic Impact of Historically Black Colleges and Universities*, UNITED NEGRO COLL. FUND FREDERICK D. PATTERSON RSCH. INST. (2017), [https://cdn.uncf.org/wp-content/uploads/HBCU\\_TechnicalReport\\_5-17L.pdf?\\_ga=2.123315979.1649302735.1669660381-1025609852.1658421543](https://cdn.uncf.org/wp-content/uploads/HBCU_TechnicalReport_5-17L.pdf?_ga=2.123315979.1649302735.1669660381-1025609852.1658421543).

<sup>91</sup> See Wershale, *supra* note 3, at 77.

<sup>92</sup> See Lomax, *supra* note 81.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

and the nation's economy, they do not receive adequate funding, which forces many to close their doors or lose accreditation status. An HBCU's closing denies a Black student the opportunity to learn their history from faculty of color with a community of their peers.

### C. HBCU's Disparity in Funding

HBCUs do not receive the same funding as PWIs. Segregation deprived HBCUs from acquiring proper public funding to which other higher education institutions had guarantees.<sup>95</sup> Public HBCUs have been underfunded \$12.8 billion dollars in the past thirty years.<sup>96</sup> While PWIs receive state allocated funding, HBCUs have not always received the same requisite funding, which caused significant underfunding.<sup>97</sup> For example, North Carolina Agricultural and Technical State University ("NCAT"), the country's largest HBCU, has been underfunded \$2.8 billion.<sup>98</sup> While North Carolina State University, a PWI, received \$79 million, NCAT students received \$9.5 million for research.<sup>99</sup> Without the proper funding, HBCUs cannot repair infrastructure or maintain their buildings. The United Negro College Fund ("UNCF") reports that the average HBCU has \$87 million worth of repairs for their campus infrastructures.<sup>100</sup>

Tennessee State University ("TSU") is a prime example of lack of state funding's deleterious effect. Between 1987 and 2020, TSU students were underfunded \$1.9 billion if it received the same amount of funding as students at the University of Tennessee.<sup>101</sup> The state of Tennessee owes TSU between \$151-544 million in state funding.<sup>102</sup> TSU did not receive any state allocated funding between the fiscal years of 1957 and 2007.<sup>103</sup> However, the University of Tennessee, a PWI, received its state allocated funding during the same fifty-year span.<sup>104</sup> Without sufficient funding, HBCUs' infrastructures suffer. Male

---

<sup>95</sup> Andre Smith & Sudarsan Kant, *Separate and Unequal: Harris-Stowe State University and the Paradox of State Funding in Missouri*, 90 J. OF NEGRO 2 (2021).

<sup>96</sup> See Tucker, *supra* note 77.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> Tony Allen and Glenda Glover, *101 HBCUs get Nearly 7 Times Less Money Than 1 Other School that Must Change*, WASH. POST (June 17, 2022, 7:00 AM), <https://www.washingtonpost.com/opinions/2022/06/17/increase-hbcu-funding/>.

<sup>101</sup> *Id.*

<sup>102</sup> Sarah Weismann, *Tennessee State Owed Millions by State*, INSIDE HIGHER ED (Apr. 8, 2021), <https://www.insidehighered.com/quicktakes/2021/04/08/tennessee-state-owed-millions-state>.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

dorms at TSU have the same heating and cooling units from the 1960s.<sup>105</sup> TSU's president, Dr. Glenda Glover, believes that two thirds of TSU's buildings need maintenance and remodeling.<sup>106</sup> TSU's deferred maintenance equates to \$427 million, yet their operating budget is \$80 million, which cannot cover all the necessary maintenance work.<sup>107</sup> With the proper state funding, the University of Tennessee implemented research centers and a plethora of research opportunities for students.<sup>108</sup> While TSU can only allocate \$2,000 in research per student, University of Tennessee allocates \$10,000 per student.<sup>109</sup>

Harris Stowe University ("HSU") in Missouri also faced financial struggles. Over its more than 150 years, HSU enrolled, and continues to enroll, predominantly minority students.<sup>110</sup> It is one of twelve Missouri university with the highest minority and low-socioeconomic student population.<sup>111</sup> According to one study, HSU enrolls the largest amount of Pell Grant eligible students compared to Missouri's other public institutions and also has the lowest percentage of the state's performance-based funding.<sup>112</sup> Without adequate funding, HSU can neither implement nor develop degree programs because it cannot afford the proper faculty, infrastructure, or materials.<sup>113</sup> Due to meager funding, HSU cannot offer the same competitive degree programs as other state institutions, which can affect enrollment.<sup>114</sup> HSU was among the first HBCUs to desegregate after the Supreme Court overturned the Separate but Equal Doctrine, and continues to increase and provide access to education for minority students, even with its inadequate funding.<sup>115</sup> Insufficient funding creates an unequal environment that reduces student performance due to the programs' and infrastructures' inequality.<sup>116</sup>

Without sufficient funding, HBCU students potentially face a myriad of deplorable living conditions. Students at Bethune Cookman University started planning a protest over adverse living conditions, including mold, rodents, and

---

<sup>105</sup> See Tucker, *supra* note 77.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> See Smith & Kant, *supra* note 95, at 211.

<sup>111</sup> *Id.* at 211.

<sup>112</sup> *Id.* at 216.

<sup>113</sup> *Id.* at 218.

<sup>114</sup> See *id.* at 222.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

no air conditioning or hot water.<sup>117</sup> Students were hospitalized from their mold exposure in their dorm rooms.<sup>118</sup> HBCUs often cannot afford newer technology or recruit faculty and consequently lose students to PWIs without sufficient funding.<sup>119</sup> HBCU infrastructure comes from this inadequate funding. Students at the Atlanta University Center organized a protest and demanded better dorm conditions because of mold and leaky pipes.<sup>120</sup> Howard University students protested because of mold, rodents, and floods in their dorm rooms, which were recurring issues from past and current students.<sup>121</sup> HBCU students directly experience the problems caused by insufficient funding by living in adverse dorm conditions that affect their health and well-being.

Morris Brown College is an HBCU that struggles to remain open. In 2002, it lost its accreditation due to debt and financial mismanagement, as it owed millions of dollars to the Department of Education and filed bankruptcy.<sup>122</sup> The institution owed millions of dollars to the Department of Education and had to file for bankruptcy.<sup>123</sup> The institution remained open and only enrolled between 30-50 students.<sup>124</sup> However, in April 2021, the Transnational Association of Christian Colleges and Schools regranting its accreditation status.<sup>125</sup> With the new accreditation status, students at the institution can use federal funding to finance their education.<sup>126</sup> Leaders there launched a campaign to combat their lack of recruitment funds and use alumni as recruiters to increase enrollment.<sup>127</sup> The president also wants to improve campus infrastructure and noted that renovating its national landmark building will cost approximately \$30

---

<sup>117</sup> Marie Edinger, *Students at Bethune-Cookman University Upset Over Mold, Other Unsafe School Conditions*, FOX 35 ORLANDO (Jan. 22, 2023, 11:13 PM), <https://www.fox35orlando.com/news/students-at-bethune-cookman-university-upset-over-mold-other-unsafe-school-conditions>.

<sup>118</sup> *Id.*

<sup>119</sup> See Wershba, *supra* note 3, at 87.

<sup>120</sup> *Atlanta HBCU Students Demand Better Housing Conditions, More Funding*, CW69 ATLANTA (Oct. 22, 2021, 10:20 AM), <https://www.cbsnews.com/atlanta/news/atlanta-hbcu-students-demand-better-housing-conditions-more-funding/>.

<sup>121</sup> Randi Richardson, *Howard 'U's Housing Issues Aren't New. They've Just Hit a Boiling Point*, NBC NEWS (Oct. 28, 2021, 2:27 PM), <https://www.nbcnews.com/news/nbcblk/howard-us-housing-issues-arent-new-just-hit-boiling-point-rcna3952>.

<sup>122</sup> Amir Vera, *Atlanta HBCU Morris Brown College Has Accreditation Restored After 20 Years*, CNN (May 1, 2022, 3:15 PM), <https://www.cnn.com/2022/04/27/us/morris-brown-college-accreditation-restored/index.html>.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> Sarah Weissman, *'Resurrection' and 'Restoration'*, INSIDE HIGHER ED (May 9, 2022), <https://www.insidehighered.com/news/2022/05/09/morris-brown-college-rebuilds-after-accreditation-restored>.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

million.<sup>128</sup> Despite the ability to reopen as an accredited institution, Morris Brown College still faces enrollment and renovation hurdles.<sup>129</sup>

#### D. HBCU Endowments

Endowments are critical features of higher education institutions. Endowments are comprised of donations that help support an institution's educational mission and provide stability for colleges and universities.<sup>130</sup> Endowments also ensure long term support for institutions contribute to the increase of student financial aid, sponsor research opportunities, and maintain campus infrastructure.<sup>131</sup> While endowments are essential to all higher education institutions, HBCUs have much smaller endowments compared to PWIs.<sup>132</sup> In 2020, public PWIs had an average endowment of \$1.9 billion, whereas for public HBCUs the average HBCU endowment was \$34 million.<sup>133</sup> For example, the average endowment size per student for full time enrollment is \$7,265 for public HBCUs and \$25,390 for PWIs.<sup>134</sup> In 2010, a combined sum of all HBCU endowments in the country was less than one tenth of Harvard University's endowment.<sup>135</sup> Insufficient endowments and other financial struggles pose a variety of issues to HBCUs such as deficient technology and inadequate libraries for students.<sup>136</sup> The broader racial inequality issue in lifetime earning gaps cause, at least partly, these smaller endowments.<sup>137</sup> Alumni from HBCUs may have limited financial capability to give back to their alma maters.<sup>138</sup>

Smaller endowments limit a college or university's ability to offer competitive faculty salaries and student financial aid.<sup>139</sup> Endowments in addition to debt financing also enable institutions to build state of the art facilities for their campuses.<sup>140</sup> For example, the University of Florida, with a \$2.1 billion

---

<sup>128</sup> *Id.*

<sup>129</sup> *See id.*

<sup>130</sup> *Understanding College and University Endowments*, AM. COUNCIL ON ED. (2021), <https://www.acenet.edu/Documents/Understanding-College-and-University-Endowments.pdf>.

<sup>131</sup> *Id.*

<sup>132</sup> *See Tucker, supra note 77.*

<sup>133</sup> *Id.*

<sup>134</sup> Denise A. Smith, *Achieving Financial Equity and Justice for HBCUs*, CENTURY FOUND (Sept. 14, 2021), <https://tcf.org/content/report/achieving-financial-equity-justice-hbcus/?agreed=1>.

<sup>135</sup> *See Wershbae, supra note 3*, at 86.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *See id.*

<sup>139</sup> *See Tucker, supra note 77.*

<sup>140</sup> *Id.*



endowment and \$158 million in debt, has an Olympic standard fitness center.<sup>141</sup> In contrast, Florida Agricultural and Mechanical University (“FAMU”) has \$11 million in debt for facilities and is more dependent on state funding than the University of Florida.<sup>142</sup> FAMU had to close its recreation center and had to use student government funding to reopen the center.<sup>143</sup> Endowments are critical for all higher education institutions as they are a “necessary shelter against the winds of change in higher education.”<sup>144</sup> Due to discriminatory practices in state allocated funding and meager endowments, HBCUs frequently lack the necessary financial stability to remain open.

### III. IMPORTANCE OF ACCREDITATION AND HBCUS’ LEGAL ACTIONS

#### A. Accreditation

Due to the inequitable and discriminatory allocation of state funding, many HBCUs have lost accreditation and been forced to close their doors. Accreditation is essential for all higher education institutions because it is the pathway to over \$120 billion of federal financial aid which is a necessity for most college students and institutions across the country.<sup>145</sup> The Southern Association of Colleges and Schools Commission on Colleges (“SACSCOC”) accredits most HBCUs.<sup>146</sup> A study found that between 1996-2005, 63% of HBCUs experienced SACSCOC’s accreditation penalties.<sup>147</sup> Many penalties centered on financial issues.<sup>148</sup> Accreditation loss is costly for HBCUs, as they rely on federal financial aid due to enrolling financial aid dependent students.<sup>149</sup> HBCUs also need access to federal funds for infrastructure and faculty salaries due to low endowments especially compared to PWIs.<sup>150</sup>

Without accreditation, HBCUs will struggle to remain open. Accreditation is a key component of higher education institutions as it signals a level of integrity and quality.<sup>151</sup> To keep HBCUs functional and operational and sustain

---

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> See Wershale, *supra* note 3, at 86.

<sup>145</sup> See Burnett, *supra* note 2, at 3.

<sup>146</sup> *Id.* at 5.

<sup>147</sup> *Id.* at 6.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> Jerry Crawford II, *HBCUs: Accreditation, Governance and Survival Challenges in an Ever-Increasing Competition for Funding and Students*, 2 J. RSCH. INITIATIVES 1 (2017).

accreditation, the governance and administration play key roles institution's management.<sup>152</sup> Without accreditation, an institution faces a death sentence in the education realm.<sup>153</sup> For example, Saint Paul's College was an HBCU for over a century.<sup>154</sup> During the accreditation renewal process, it received a warning, but never recovered due to financial struggles and issues regarding faculty and its institutional effectiveness.<sup>155</sup> Despite two presidents' attempts to raise the necessary funding, the school failed to raise the capital to stay open.<sup>156</sup> Now, Saint Paul's College is a community and technical college.<sup>157</sup> Without the proper funding, more HBCUs will have to close, which weakens the pillar that HBCUs provide for the Black community and the country at large.

The Secretary of Education recognizes regional accrediting agencies to carry out accreditation.<sup>158</sup> Under federal law, individual accrediting agencies apply and instill their specific accreditation standards.<sup>159</sup> When a higher education institution loses their accreditation, there are no avenues available to immediate or alternatively regain accreditation.<sup>160</sup> After accreditation status loss, HBCUs have filed suit to regain their accreditation statuses.

#### B. *Bennett Coll. v. S. Ass'n of Colleges & Sch. Comm'n on Colleges, Inc.*

In *Bennett College v. Southern Association of Colleges & School Commission on Colleges, Inc.*, Plaintiff, an all-women's HBCU in Greensboro, North Carolina, sued Defendant, an accrediting private and non-profit organization, and challenged its accreditation's revocation.<sup>161</sup> For an institution to be accredited, Defendant requires that the institution have "sound financial resources and a demonstrated, stable financial base to support the mission of the institution and the scope of its programs and services."<sup>162</sup> Defendant reassessed an institution's accreditation status every ten years and the institutions must submit documents that demonstrate its conformity to Defendant's required principles.<sup>163</sup> If Defendant determined that the institution was non-compliant

---

<sup>152</sup> *See id.* at 3.

<sup>153</sup> *Id.* at 5.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *About Us*, SAINT PAUL COLL., (last visited May 11, 2023) <https://www.saintpaul.edu/>.

<sup>158</sup> *See Wershale, supra* note 3, at 80.

<sup>159</sup> *Id.* at 82.

<sup>160</sup> *Id.* at 81.

<sup>161</sup> *Bennett Coll. v. S. Ass'n of Colls. & Sch. Comm'n on Colls., Inc.*, 474 F. Supp. 3d 1297, 1304 (N.D. Ga. 2020).

<sup>162</sup> *Id.* at 1301.

<sup>163</sup> *Id.*

with its principles, the school would receive a warning status and a committee would visit the school for evaluation.<sup>164</sup> Defendant placed Plaintiff on probation due to its financial instability.<sup>165</sup> Defendant eventually removed Plaintiff's probation status, but Defendant requested a report to address its concerns regarding Plaintiff's financial status, as the school had operating deficits and reductions in assets.<sup>166</sup> Plaintiff submitted such reports, however, Defendant's special committee found that Plaintiff lacked stable financial resources to supports its mission or services and subsequently removed Plaintiff's accreditation.<sup>167</sup>

In response to this loss, Plaintiff launched a fundraising campaign with the hashtag #StandwithBennett that raised over \$6 million.<sup>168</sup> In addition, one of its creditors forgave over a \$1 million loan.<sup>169</sup> After efforts to raise money, Plaintiff then appealed Defendant's revocation and cited that Plaintiff submitted new financial information.<sup>170</sup> Defendant affirmed its decision to revoke accreditation because Plaintiff failed to show that they had financial resources stable enough to fulfill its mission and provide support and services for students.<sup>171</sup> Plaintiff then sued and alleged a due process violation and racial discrimination.<sup>172</sup>

The court recognized that Plaintiff has provided vital service as an HBCU for 150 years.<sup>173</sup> The court considered whether Defendant obliged to its own internal rules.<sup>174</sup> The court noted that Defendant's appeals procedures included remanding a case when an institution loses accreditation for purely financial reasons submits new financial information, which should be considered material to the board's decision.<sup>175</sup> The court highlighted the fact that Plaintiff raised over \$6 million and had a \$1 million loan forgiven.<sup>176</sup> The court concluded that, if Plaintiff produced new, verifiable, and material financial information, Defendant should have remanded the case for its Board to reconsider its decision.<sup>177</sup> The court also concluded that the information Plaintiff produced

---

<sup>164</sup> *Id.*

<sup>165</sup> *Id.* at 1302.

<sup>166</sup> *Id.* at 1303.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.* at 1303-04.

<sup>171</sup> *See id.* at 1304.

<sup>172</sup> *Id.* at 1307.

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.* at 1308.

<sup>176</sup> *Id.*

<sup>177</sup> *See id.*

complied with Defendant's requirement and recognized that Defendant did not consider the campaign fundraising or the creditor's forgiveness.<sup>178</sup> The court also noted that the information that Plaintiff submitted was verifiable due to an independent auditor that confirmed the creditor's forgiveness and Plaintiff's fundraising schedule.<sup>179</sup> In regards to the materiality element, the court concluded that the case should be removed due to its limited role in the education arena and awarded deference to Defendant's board.<sup>180</sup> Plaintiff also alleged racial discrimination, and argued that Defendant's procedures unfairly impact HBCUs.<sup>181</sup> Plaintiff alleged that Defendant did not consider that HBCUs experienced unequal funding and systemic discrimination.<sup>182</sup> The court concluded that Defendant had the same standards for HBCUs and non-HBCUs.<sup>183</sup> Despite raising a significant amount of funding and securing forgiveness on a loan, Plaintiff still did not regain its accreditation status, which threatens the an HBCU's closure that is important to the Black Community.

### C. *Paine Coll. v. S. Ass'n of Colleges & Sch. Comm'n on Colleges, Inc.*

In *Paine Coll. v. Southern Association of Colleges & School Commission on Colleges, Inc.*, Plaintiff, Paine College, a small liberal arts college located in Augusta, Georgia and one of the oldest HBCUs in the country, sued Defendant, a nonprofit accreditation organization located in Atlanta, Georgia, after it lost accreditation.<sup>184</sup> Each year defendant reviewed an institution's re-accreditation application based on four distinct areas: "(1) institutional mission, governance, and effectiveness, (2) programs, (3) resources, and (4) institutional responsibility for the Southern Association Policies."<sup>185</sup> Plaintiff's accreditation status and membership with Defendant was last reaffirmed in 2011.<sup>186</sup> A local news outlet published an article that revealed Plaintiff's financial disarray.<sup>187</sup> Specifically, the article detailed Plaintiff's loss of eligibility for student loan program at the federal level, and alleged Plaintiff did not return unused federal financial aid for students who were no longer enrolled, financial aid checks distributed to students bounced, and that Plaintiff did not have adequate

---

<sup>178</sup> *Id.*

<sup>179</sup> *Id.* at 1309.

<sup>180</sup> *Id.* at 1311.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *Id.* at 1328.

<sup>186</sup> *Id.* at 1329.

<sup>187</sup> *Id.*

procedures to manage its loan program.<sup>188</sup> The details in the article were based on Plaintiff's financial statements from 2011.<sup>189</sup>

Defendant became aware of the articles and pursuant to its policies, investigated the allegations and requested that Plaintiff provide documents related to its compliance with Defendant's policies and principles.<sup>190</sup> After reviewing the allegations and documents, Defendant determined that Plaintiff failed to comply with the principle of financial stability and management thus prompting the defendant to place the plaintiff on warning status which led to a special committee visiting the plaintiff.<sup>191</sup> Defendant instructed Plaintiff that it had four years to prove compliance with the principles or be removed from membership.<sup>192</sup>

From 2013-2016, a special committee visited Plaintiff and prepared detailed reports that were made available to Plaintiff.<sup>193</sup> Each year the committee found that the plaintiff failed to conform to Defendant's principles. Due to Defendant's policy that an institution can only be on probation status for two years, but eventually the Board of Trustees found that Plaintiff continued to fail to comply with financial principles and, thus, voted to remove Plaintiff from membership.<sup>194</sup> Plaintiff appealed the Board of Trustees' decision, yet the appeals committee affirmed the decision prompting Plaintiff to file suit.<sup>195</sup> Plaintiff alleged Defendant violated portions of the Higher Education Act.<sup>196</sup> Defendant argued that there was no private right under the Act, with which the court agreed.<sup>197</sup> Plaintiff also alleged violation of common law due process.<sup>198</sup> The court concluded that Defendant's process was fair as Plaintiff could submit financial information to allow Defendant to make an informed decision.<sup>199</sup> The court granted summary judgment for Defendant.<sup>200</sup>

Due to lack of sufficient funding and student enrollment after losing accreditation, Plaintiff was on the brink of closing. However, in October 2020,

---

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *See id.*

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.* at 1330.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.* at 1331.

<sup>196</sup> *Id.* at 1332.

<sup>197</sup> *Id.*

<sup>198</sup> *Id.* at 1334.

<sup>199</sup> *Id.* at 1335.

<sup>200</sup> *Id.* at 1354.

Plaintiff regained its accreditation status after finding a new accrediting organization in Transnational Association of Christian Colleges and Schools.<sup>201</sup> With accreditation restored, Plaintiff qualified for federal grants and financial aid.<sup>202</sup> Prior to the Southern Association of Colleges and Schools removing Plaintiff's accreditation status, Plaintiff had 900 students.<sup>203</sup> However, after it lost accreditation status, Plaintiff had half their original student body, with less than 450 students enrolled.<sup>204</sup> Due to funding struggles, Plaintiff eliminated academic programs such as chemistry based on law student enrollment.<sup>205</sup> After it regained accreditation, Plaintiff hopes to expand academic programming into the areas of cybersecurity as well as increase remote learning opportunities.<sup>206</sup>

A new partnership between Paine College, Bank of America, and Augusta National Golf Club will help strengthen Paine College's financial status and help students.<sup>207</sup> Bank of America has implemented its Leader on Loan program at Paine where Bank of America leaders are placed at other nonprofit organizations or institutions to improve economic and philanthropic opportunities.<sup>208</sup> Recently, Botanical Sciences and the Georgia Access to Medical Cannabis Commission partnered with Paine to offer students research opportunities with the organizations.<sup>209</sup> CEO of Botanical Sciences believes the Paine student body can meet the needs of their growing business.<sup>210</sup> There must be more corporate partnerships to ensure Paine College and other HBCUs do not face closure.

---

<sup>201</sup> Eric Stirgus, *Morris Brown and Paine Colleges Seek New Path After Financial Troubles*, THE ATLANTA JOURNAL CONSTITUTION (Nov. 26, 2020), <https://www.ajc.com/education/morris-brown-and-paine-colleges-seek-new-path-after-financial-troubles/AW4TAPBZI5CJPMLX6KEL7HPDCY/>.

<sup>202</sup> Miguel Legoas, *Paine College Gets Full TRACS Accreditation*, THE AUGUSTA CHRONICLE (Oct. 27, 2020, 10:21 PM), <https://www.augustachronicle.com/story/news/2020/10/28/paine-college-gets-full-tracs-accreditation/114507788/>.

<sup>203</sup> See Stirgus, *supra* note 201.

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> Tiffany Hobbs, *New Partnership Invests in Paine College*, CSRA NEWS (Dec. 7, 2022, 4:42 PM), <https://www.wjbf.com/csra-news/new-partnership-invests-in-paine-college/>.

<sup>208</sup> *Augusta National Golf Club and Bank of America Partner with Paine College to Support Institutional Advancement and Long-Term Success*, AUGUSTA CEO (Nov. 18, 2022), <http://augustaceo.com/news/2022/11/augusta-national-golf-club-and-bank-america-partner-paine-college-support-institutional-advancement-and-long-term-success/>.

<sup>209</sup> See Hobbs, *supra* note 203.

<sup>210</sup> *Id.*

D. Hampton Univ. v. Accreditation Council for Pharmacy Educ.

HBCUs also offer graduate programs for students. Many lose accreditation status because of inadequate funding, which occurred in *Hampton v. Accreditation Council for Pharmacy Education*, where Plaintiff, Hampton University, Defendant, its accrediting agency, and challenged Defendant's decision to place Plaintiff's pharmacy school on probation.<sup>211</sup> In a site visit, Defendant observed a reduction in faculty after recent resignations and an increase in students, which caused more stress for the limited faculty and an increased workload.<sup>212</sup> Defendant requested that Plaintiff address certain areas of concern such as increasing the amount of faculty.<sup>213</sup> Plaintiff improved its faculty recruitment and retention and adjusted the amount of enrolled students, yet Defendant still expressed concern regarding Plaintiff's capacity to deliver parts of the curriculum.<sup>214</sup> In another site visit, Defendant observed that Plaintiff still had inadequate faculty for the experiential program and noted student dissatisfaction of the new faculty.<sup>215</sup> Due to these observations, Defendant granted accreditation status for one additional year only.<sup>216</sup> Defendant requested a detailed plan from Plaintiff concerning the areas of concern Defendant observed.<sup>217</sup> Defendant subsequently placed Plaintiff on probation status.<sup>218</sup> Plaintiff requested an appeal from Defendant, which Defendant denied, and Plaintiff then brought suit to challenge the decision.<sup>219</sup>

The court noted that public interest was a significant factor for Plaintiff as it provides education for licensed medical professionals which involves public health and safety.<sup>220</sup> The court also acknowledged that Plaintiff faced severe issues regarding accreditation, however, on the contrary, there was a matter of life and death is implicated because pharmacists prepare and issue medicines to the public as well as for hospitals.<sup>221</sup> The court noted that Defendant submitted detailed reports of issues and areas of concern that Plaintiff needed to address.<sup>222</sup> One of the court's major areas of concern was the decreasing amount of faculty

---

<sup>211</sup> *Hampton Univ. v. Accreditation Council for Pharmacy Educ.*, No. 4:20CV118 (RCY), 2021 WL 3166380 (E.D. Va. July 27, 2021)

<sup>212</sup> *Id.* at 559.

<sup>213</sup> *Id.*

<sup>214</sup> *Id.* at 560.

<sup>215</sup> *Id.* at 561.

<sup>216</sup> *Id.*

<sup>217</sup> *Id.* at 564.

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

<sup>220</sup> *Id.* at 569.

<sup>221</sup> *Id.* at 570.

<sup>222</sup> *See id.*

and the expanding student enrollment.<sup>223</sup> Due to the significant public health implications and the areas of concern detailed in Defendant’s site visit reports, the court denied Plaintiff’s motion for a preliminary injunction.<sup>224</sup>

Under state law, pharmacists must graduate from a pharmacy school that is accredited by the Accreditation Council for Pharmacy Education (“ACPE”).<sup>225</sup> Plaintiff’s enrollment declined significantly and has the seventh lowest passage rate for the North American Pharmacist Licensure Examination.<sup>226</sup> ACPE noted that Plaintiff was unable to adequately develop or implement a plan to make sure its graduates are equipped to enter the practice of pharmacy.<sup>227</sup> Plaintiff’s pharmacy school is the number one producer of Black pharmacists in Virginia<sup>228</sup> and without accreditation may affect the amount of Black pharmacists in the state.

*E. Coal. for Equity & Excellence in Maryland Higher Educ. v. Maryland Higher Educ. Comm’n.*

In *Coalition for Equity & Excellence in Maryland Higher Education v. Maryland Higher Education Commission*, the Plaintiff, the Coalition for Equity and Excellence in Maryland Higher Education, sued Defendant, the State of Maryland and the Maryland Higher Education Commission, in 2006 under the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964<sup>229</sup> The court held that the Defendant had segregative effects. In 2017, the parties submitted their proposed remedies, which led to another suit.<sup>230</sup> The court considered the admissibility of Plaintiff’s experts’ testimonies.<sup>231</sup> The court noted that the experts considered historical factors, documents, and court records, including documents from the Department of

---

<sup>223</sup> *Id.*

<sup>224</sup> *Id.* at 571-72.

<sup>225</sup> Ellery Jones, *Hampton University Pharmacy Program Loses Accreditation*, DAILY PRESS (Feb. 11, 2020 at 9:55 AM), <https://www.dailypress.com/news/education/dp-nw-hampton-pharmacy-program-accreditation-20200211-wnjemstblncrafiktohy2wohe-story.html>.

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> Lucretia Cunningham, *Hampton University’s School of Pharmacy is No Longer Accredited. Here’s Why*, WILLIAMSBURG YORKTOWN DAILY (Feb. 11, 2020), <https://wydaily.com/news/local/2020/02/11/hampton-universitys-school-of-pharmacy-is-no-longer-accredited-heres-why/>.

<sup>229</sup> *Coal. for Equity & Excellence in Maryland Higher Educ. v. Maryland Higher Educ. Comm’n*, 977 F. Supp. 2d 507, 510-11 (D. Md. 2013).

<sup>230</sup> *Coal. for Equity & Excellence in Maryland Higher Educ. v. Maryland Higher Educ. Comm’n*, 295 F. Supp. 3d 540, 549 (D. Md. 2017)

<sup>231</sup> *Id.* at 552.



Education, the 2009 Maryland State Plan for Higher Education, records regarding higher education desegregation litigation in other states, enrollment data, as well as the experts personal experience.<sup>232</sup> The court also recognized that Plaintiffs' experts were experts, consultants, and academics on higher education desegregation.<sup>233</sup> The court concluded that based on the experts' education, professional experience, and due to the subject matter, their testimony was reliable.<sup>234</sup>

The court also considered the parties' proposed remedies. Defendant proposed remedy consisted of two elements: 1) creating Fund for Collaborative Academic Programs which is a six-year initiative aimed at support collaborative programs between HBCUs and PWIs and 2) establishing a summer academy for high school students at four different HBCUs which would be funded by state expenditures with \$500,000 and \$1,000,000 per HBCU and per year.<sup>235</sup> Defendant then offered a superseding second proposal the state offered to provide \$50 million in funding over a five-year period, to be allocated equally among three HBCUs: Morgan State University, Bowie State University, and Coppin University.<sup>236</sup> The suggested use of funding including enrollment management, student financial aid, inclusion initiatives, and summer academies.<sup>237</sup> Plaintiff proposed different strategies such as programmatic niches at HBCUs and academic enhancements for each HBCU.<sup>238</sup> For the programmatic niches, it includes undergraduate and graduate problems which are in high demand amongst students and Plaintiff requested that the new programs be created at the HBCUs or transfer the programs from PWIs to HBCUs.<sup>239</sup> Plaintiff believed the programs would create distinct institutional identities which will help attract students of other races to HBCUs because of the programs.<sup>240</sup> Academic enhancements include technology, scholarships, and marketing efforts.<sup>241</sup> Plaintiffs also propose reforming the process for creating new academic programs.<sup>242</sup>

---

<sup>232</sup> *Id.*

<sup>233</sup> *Id.* at 556.

<sup>234</sup> *See id.*

<sup>235</sup> *See id.* at 558.

<sup>236</sup> *Id.*

<sup>237</sup> *Id.* at 559.

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

Defendant also proposed unique programming based on each HBCU.<sup>243</sup> At Morgan State University, Defendant proposed the creation of programs in the areas of business, health and environmental sciences and engineering.<sup>244</sup> These programs would be created through new programs and transfer programs established at PWIs.<sup>245</sup> At the University of Maryland Eastern Shore (UMES), Plaintiff proposed three new programs in engineering, environmental sciences, as well as pharmacy and health professions.<sup>246</sup> At Bowie State University, Plaintiff proposed computer science and professional studies that would focus on niche careers such as nursing or education.<sup>247</sup> For this to occur, Plaintiffs proposed transferring a doctorate program that was at the University of Baltimore to UMES.<sup>248</sup> Finally, at Coppin State University, Plaintiffs proposed nursing and criminal justice niche programs and suggest transfer and new programs be created to establish these programs.<sup>249</sup> Plaintiffs also proposed transferring programs from the University of Maryland Global campus to two HBCUs.<sup>250</sup> The court noted that several of the PWI presidents recognized that creating new programs at HBCUs would benefit the state by increasing the number of graduates, but could potentially harm PWIs by taking money meant for all higher education institutions away from PWIs to HBCUs.<sup>251</sup>

The court analyzed whether Defendant discharged its duty to dismantle prior systems of segregation in higher education in the state.<sup>252</sup> The court noted that a three step framework was established in *United States v. Fordice* that should be applied in its analysis: 1) whether state policies are traceable to the former system of segregation 2) whether the policies have continuing segregated impact, and 3) whether the policies have educational justifications and cannot be eliminated.<sup>253</sup> The court recognized that the task was to ensure that Plaintiff did not keep policies in place that are rooted in a prior system of segregation that work to maintain the racial identity of its higher education institutions and if the policies can be eliminated without disrupting sound educational policies.<sup>254</sup>

---

<sup>243</sup> *Id.* at 560.

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

<sup>250</sup> *See id.* at 561.

<sup>251</sup> *Id.*

<sup>252</sup> *Id.* at 581.

<sup>253</sup> *See id.*

<sup>254</sup> *Id.* at 582.

The court noted that PWIs were no longer segregated, as there was a large amount of enrolled Black students.<sup>255</sup> However, the court also acknowledged that certain harm may be inevitable due to the redistribution of funding.<sup>256</sup> The court concluded that based on Plaintiff's experts testimony, the testimony of the HBCUs and PWI presidents, the historical record and prior applications that the creation of new and high demand programs at HBCUs would cause a great amount of reduction in the segregative effects in Maryland's system of higher education.<sup>257</sup> The court noted that although Defendant believed the new programs would not be successful based on numerical analyses, the court recognized that a remedy need not be precisely calculated before a court adopts it.<sup>258</sup> The court also concluded that transferring programs should not be part of the final remedy after considering PWI presidents' concerns of losing partnerships and mixed feedback from HBCU presidents as some believed transfer programs would be beneficial while others noted they were not an optimal remedy.<sup>259</sup> The court required Defendant to provide funding for HBCUs to be contributed towards financial aid, student recruitment purposes, and marketing which would enhance the desegregative effects of the new programs.<sup>260</sup>

In 2021, Maryland's governor Larry Hogan signed legislation after the contingent settlement of *The Coalition for Equity and Excellence in Maryland Higher Education, et al. v. Maryland Higher Education Commission, et al.* that awarded \$544 million to the state's HBCUs.<sup>261</sup> Under the legislation, the state will provide HBCUs \$57.5 million to be divided between the state's four HBCUs based on each institution's student enrollment.<sup>262</sup> The awarded funding is meant to replace state appropriations.<sup>263</sup> The legislation also lists specific areas for the funding to go towards including scholarships, faculty recruitment, improving current academic programs, creating new academic programs, academic support and for marketing purposes.<sup>264</sup> The legislation also established an HBCU reserve fund where unused funds from the HBCUs will be held and

---

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> *Id.*

<sup>258</sup> *Id.* at 583.

<sup>259</sup> *See id.* at 584.

<sup>260</sup> *Id.* at 585.

<sup>261</sup> Danielle Douglas-Gabriel and Ovetta Wiggins, *Hogan Signs off on \$577 Million for Maryland's Historically Black Colleges and Universities*, THE WASHINGTON POST (Mar. 24, 2021, 5:32 PM), <https://www.washingtonpost.com/education/2021/03/24/maryland-hbcus-lawsuit-settlement/>.

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> S.B. 1, 2021 Sess. (Md. 2021).

can be used for the legislation's listed areas.<sup>265</sup> In addition to state allocated funding, corporate partnerships will ensure HBCUs acquire the necessary funds to equip HBCU students with an exemplary education.

#### *F. Legal Efforts Led By Students*

Students have also led efforts to secure more funding for HBCUs. Six FAMU students are suing the state for racial discrimination and allege that local politicians have purposefully denied FAMU the same stand funding as the University of Florida, a PWI.<sup>266</sup> Defendants in the suit are the Board of Governors of Florida's university system.<sup>267</sup> Plaintiffs allege that the state's higher education leaders have duplicated programs specific to FAMU to lure enrollment away from the school.<sup>268</sup> Plaintiffs also accuse the state of failing to implement the 1998 agreement with the US Department of Education's Office of Civil Rights that was aimed at rectifying inequities in colleges and universities.<sup>269</sup> The agreement required leaders to improve FAMU's infrastructure until it was of parity to the state's PWIs. Without the proper funding, FAMU has had to close buildings because of flood and pest damage.<sup>270</sup> Plaintiffs demand the state allocated funding their HBCUs have been deprived of and deserve to be given. HBCU administrations, leaders and students have all taken legal action to secure the funding and accreditation status their institutions deserve and need to remain open.

### IV. EFFORTS TO INCREASE HBCU FUNDING

#### *A. Capitol Hill and Other Legislative Efforts to Increase Funding*

The nation's leaders have noted how important HBCUs are to the country and have attempted to support them through legislation and various initiatives. President Biden created an HBCU Board of advisors consisting of HBCU presidents, an HBCU student, prominent HBCU alumni and officers of corporations to further advance the White House initiative on HBCUs that the

---

<sup>265</sup> *Id.*

<sup>266</sup> Christopher J. Brooks, *Florida A&M Students Sue State, Alleging Racially Biased Funding Gap*, CBS NEWS (Sept. 28, 2022, 11:33 AM), <https://www.cbsnews.com/news/famu-hbcu-underfunding-state-student-lawsuit/>.

<sup>267</sup> Justin Gamble and Nicquel Terry Ellis, *Florida A&M University Students Sue State Alleging Historically Black College is Underfunded*, CNN (Sept. 28, 2022), <https://www.cnn.com/2022/09/28/us/famu-state-funding-lawsuit-reaaj/index.html>.

<sup>268</sup> *Id.*

<sup>269</sup> *Id.*

<sup>270</sup> *Id.*

Carter administration first established.<sup>271</sup> Through this initiative, the President seeks to increase HBCUs' research capacity and work development programs.<sup>272</sup> President Biden and Vice President initially proposed funding of \$45 billion to HBCUs.<sup>273</sup> House representatives have also taken a stand to show support for HBCUs. Representative Alma Adams from North Carolina threatened to not support her party's proposed spending plan unless it expanded federal aid for HBCUs.<sup>274</sup> The representative noted that in the proposed plan, HBCUs would receive \$2 billion out of the \$10 billion budgeted for minority serving institutions ("MSIs"), which is far less than the amount President Biden promised.<sup>275</sup>

In Georgia, Senator Jon Ossoff is committed to strengthening the state's HBCUs and increasing public funding to increase the institutions' endowments.<sup>276</sup> Senator Ossoff and Senator Warnock secured \$3 million in funding for Paine College through the American Rescue Plan.<sup>277</sup> Georgia HBCUs through this plan are to receive \$175 million in funding.<sup>278</sup> The law requires the funding to be distributed in the following manner: 70% based on each institution's enrollment of Pell eligible students, 20% according to each institution's student enrollment at the end of the academic year, and 10% according to each institution's endowment.<sup>279</sup>

In Virginia, a new budget by the governor proposes to redirect \$10 million from state designated financial aid for undocumented students towards HBCU

---

<sup>271</sup> The White House, *President Biden Announces Appointments to Board of Advisors on Historically Black Colleges and Universities*, (Mar. 31, 2021) <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/31/president-biden-announces-appointments-to-board-of-advisors-on-historically-black-colleges-and-universities/>.

<sup>272</sup> Ashleigh Fields, *Exclusive: Biden Administration Announces White House Initiative Targeting HBCUs*, THE HILLTOP (Sept. 3, 2021), <https://thehilltoponline.com/2021/09/03/exclusive-biden-harris-administration-announces-white-house-initiative-targeting-hbcus/>.

<sup>273</sup> Eugene Daniels, *Biden Made Huge Promises to HBCUs. Can He Sell its Students on Compromise?*, POLITICO (Nov. 9, 2021, 4:30 AM), <https://www.politico.com/news/2021/11/09/biden-hbcus-howard-university-protests-520391>.

<sup>274</sup> Aris Folley, *House Democrat Threatens to Vote Against Party's Spending Bill if HBCUs Don't Get More Federal Aid*, THE HILL (Sept. 17, 2021 6:52 PM), <https://thehill.com/policy/finance/572834-house-democrat-threatens-to-vote-against-partys-spending-bill-if-hbcus-dont/>.

<sup>275</sup> See Daniels, *supra* note 273.

<sup>276</sup> Aris Folley, *Ossoff Presses Biden's Budget Nominee on HBCU Funding*, THE HILL (Feb. 11, 2021, 3:18 PM), <https://thehill.com/homenews/senate/538483-ossoff-presses-bidens-budget-nominee-on-hbcu-funding/>.

<sup>277</sup> *Paine College to Get Nearly \$3M From American Rescue Plan*, WRDW NEWS (Aug. 2, 2021, 4:21 PM), <https://www.wrdw.com/2021/08/02/paine-college-get-nearly-3m-american-rescue-plan/>.

<sup>278</sup> *Id.*

<sup>279</sup> *Id.*

students.<sup>280</sup> The governor proposes that the money go towards implementing in state student aid at the state's two public HBCUs and the rest be used towards the state's tuition assistance grants for students attending the states private HBCUs.<sup>281</sup> This legislation strips funding from one disadvantaged group of students to another. Legislators have noted that the proposed budget is devising amongst two communities of color.<sup>282</sup> Financial need is high for both communities as HBCUs have received paltry state funding and enroll large amounts of students from low-income backgrounds and undocumented students are restricted from receiving federal student loans or grants.<sup>283</sup> While this bill benefitted HBCUs, it came at the cost of another student group in need and a group that continues to face systemic inequities. Corporate partnerships and investments are one key way to ensure that state funding is not taken away from one minority group to another.

Congresswoman Alma Adams of North Carolina has initiated the HBCU Partnership Challenge that has partnered with 94 corporations.<sup>284</sup> Through this initiative, companies such as Synchrony recognize the importance of HBCUs and have launched a \$20 million initiative to increase access to education for those in underserved communities.<sup>285</sup> Enact Mortgage Insurance established a mortgage industry development program for HBCU students across the nation.<sup>286</sup> Novartis, a pharmaceutical corporation, has established a ten year and \$33.7 million partnership with over twenty HBCUS and HBCU medical schools to increase diversity.<sup>287</sup> Members of congress note the importance of working with corporations to help HBCUs secure more funding as well as training and job opportunities for students.

Despite efforts from legislators and representatives, HBCUs still remain on the brink of closing due to not receiving the same funding as peer PWIs and empty promises from the nation's leaders. To preserve HBCUs, corporations must step in and provide scholarships, donations, internships, and job

---

<sup>280</sup> Sarah Weissman, *Virginia Redirecting Aid from DACA to HBCU Students*, Inside Higher Ed (Jun. 23, 2022) <https://www.insidehighered.com/quicktakes/2022/06/23/virginia-redirecting-aid-daca-hbcu-students>.

<sup>281</sup> *Id.*

<sup>282</sup> Danielle Douglas Gabriel, *Virginia Budget to Move Funding from DACA Students to State's HBCUs*, THE WASHINGTON POST (Jun. 21, 2022, 6:11 PM), <https://www.washingtonpost.com/education/2022/06/21/virginia-hbcus-undocumented-students-budget/>.

<sup>283</sup> *Id.*

<sup>284</sup> Alma Adams, *Hill Announce HBCU Partnership Challenge Members During HBCU Steam Days of Action* (Mar. 29, 2022), <https://adams.house.gov/media-center/press-releases/adams-hill-announce-new-hbcu-partnership-challenge-members-during-hbcu>.

<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

<sup>287</sup> *Id.*

opportunities to HBCUs and their students as a form of reparations for utilizing enslaved people's labor in their beginning years. After the Black Lives Matter movement, corporate partnerships with HBCUs increased. However, corporations must continue to expand their donations and involvement with HBCUs to cover the deficit in inequitable funding HBCUs have received and to provide reparations for their past involvement with slavery.

### *B. Current Corporate Partnerships*

Although corporations have begun forming partnerships with HBCUs, there is still a large gap in institutional need corporations can fill. Corporations should also not only center their messaging on donating to HBCUs because of the Black Lives Matter Movement, but also to acknowledge and attempt to remedy their past ties to slavery. Current programs should be expanded to ensure HBCU longevity. Boeing has invested \$6 million into their partnership with eight different HBCUs.<sup>288</sup> When considering which HBCU to partner with, Boeing considered which institutions who were well equipped to fit the careers the company offers.<sup>289</sup> Through their partnership with eight different HBCUs, Boeing will provide scholarships, internships, and career opportunities.<sup>290</sup> Boeing is committed to training talent over a duration of a few years instead of just at the entry level position which will allow the HBCU students they work with to develop impactful relationships.<sup>291</sup> Through this partnership, Boeing will increase the number of Black professionals in the STEM field and increase diversity in a field where minorities are underrepresented.<sup>292</sup>

The Atlanta University Center (“AUC”), comprised of Morehouse College, Spelman College, and Clark Atlanta University has received an increase in corporate support and partnerships since the pandemic.<sup>293</sup> The AUC has received 48% of recent corporate investment in HBCUs and serves as an example of what corporations should establish at other HBCUs across the country.<sup>294</sup> Apple and The Southern Company partnered to donate a total of \$50 million to build the ‘Propel Center’ which allows local HBCU students to participate in learning

---

<sup>288</sup> Harry L. Williams, *Boeing Leads the Way in HBCU-Corporate Partnership Cultivation*, THURGOOD MARSHALL COLLEGE FUND, <https://www.tmcf.org/events-media/tmcf-in-the-media/boeing-leads-the-way-in-hbcu-corporate-partnership-cultivation/>.

<sup>289</sup> *See id.*

<sup>290</sup> *Id.*

<sup>291</sup> *Id.*

<sup>292</sup> *See id.*

<sup>293</sup> Brandon Labord and Christa Dilalo, *HBCU & Corporate Partnership Investing in a Diverse Workplace*, Cushman & Wakefield, [https://f.datasrvr.com/fr1/721/24833/Corporate\\_\\_HBCU\\_Partnership.pdf](https://f.datasrvr.com/fr1/721/24833/Corporate__HBCU_Partnership.pdf).

<sup>294</sup> *Id.*

labs with Apple technology as well as have mentorship opportunities.<sup>295</sup> Other corporations and businesses have recognized the diverse and young talent Atlanta offers such as management firms who have launched a ten year and \$90 million initiative to increase diversity in private equity and venture capital industries.<sup>296</sup> Corporations such as Netflix have also recognized the outstanding graduates that the AUC produces which prompted the CEO Reed Hastings and his wife Patty Quillin to donate \$40 million respectively to Spelman College and Morehouse College.<sup>297</sup> The CEO noted that they invested the donation into the institutions to help Black youth acquire a great education and ensure they have a great start to their lives.<sup>298</sup> Corporations' investments into the Atlanta University Center serve as a prime example of how corporations should partner with HBCUs across the country to invest in Black youth and ensure HBCUs' perpetuity.

To increase diversity in corporate America as well as repay Black America after corporate exploitation of enslaved labor, corporations should invest in HBCUs and partner with students. Companies must first acknowledge that they often have a workforce that is not diverse where minority professionals are underrepresented. Solve Advertising agency reflected on this and acknowledged their workforce was predominately white.<sup>299</sup> To remedy this, the company partnered with Morgan State University to create a course that introduced students to the career of advertising.<sup>300</sup> Not only will partnering with HBCUs create a more diverse workforce, but it will also likely increase the number of students attending an HBCU<sup>301</sup> and ensure the longevity of HBCUs. Corporate partnerships are beneficial for students hailing from low socioeconomic backgrounds or first-generation students to develop relationships with corporate employees and recruiters, which offsets the advantages experienced from students from higher socioeconomic classes.<sup>302</sup>

---

<sup>295</sup> *Id.*

<sup>296</sup> *Id.*

<sup>297</sup> Leah Asmelash, *Netflix CEO donates \$120 million to black colleges in an effort to 'reverse generations of inequity'*, CNN (Jun. 17, 2020, 9:30 AM), <https://www.cnn.com/2020/06/17/business/netflix-ceo-hbcus-donate-trnd/index.html>.

<sup>298</sup> *Id.*

<sup>299</sup> Jon Marcus, *To Recruit Workers, Big Employers Team with Historically Black Colleges*, THE WASHINGTON POST (Jun. 3, 2022 at 8:00 AM), <https://www.washingtonpost.com/education/2022/06/03/hbcus-companies-recruitment-partnerships/>.

<sup>300</sup> *Id.*

<sup>301</sup> *Id.*

<sup>302</sup> *Id.*



Corporations recently are investing more than just campus recruiting visits, but now are also investing technology and mentorship opportunities.<sup>303</sup> For example, IBM has invested in cybersecurity centers at six different HBCUs to offer academic lectures as well as an opportunity to recruit more HBCU students.<sup>304</sup> IBM in addition to the Bloomberg foundation have donated \$200 million to HBCUs.<sup>305</sup> Google has launched the Grow With Google HBCU Career Readiness Program which offers a donation and a digital educational program aimed at increasing diversity in their workforce which currently comprises a mere 4.4% of Black employees despite 13.4% of the US population is Black.<sup>306</sup> Corporations such as United Airlines have partnered with different HBCUs to increase the number of Black pilots.<sup>307</sup> It is also critical for corporations to recruit Black students at HBCU graduate and professional schools. For example, the NFL has partnered with different HBCU medical schools to increase the amount of minority physicians in the NFL.<sup>308</sup> Corporations' stakeholders, shareholders, and customers have put pressure to increase corporations' involvement to increase diversity in their respective fields.<sup>309</sup>

While institutions such as Howard University or the AUC have received record donations due to being renowned HBCUs, it is also important to donate to smaller and lesser known HBCUs as remedies for corporations profiting from enslaved labor and allow HBCUs to remain open. There have been some corporate partnerships at HBCUs, but there is vast room for improvement. Wells Fargo has partnered with Harris Stowe State University by creating a Trading Room and an in semester internship and many of the interns are eventually hired.<sup>310</sup> This program can be recreated at HBCU business schools across the country.<sup>311</sup> Central State University has launched the Center of Excellence for HBCU Corporate Engagement which has teamed up with corporations such as Nationwide, Procter and Gamble, Dominion Energy, JP Morgan Chase, Grange

---

<sup>303</sup> *Id.*

<sup>304</sup> *Id.*

<sup>305</sup> Brandon Labord & Christa Dilalo, *HBCU & Corporate Partnership Investing in a Diverse Workplace*, Cushman & Wakefield, [https://f.datasrvr.com/fr1/721/24833/Corporate\\_\\_HBCU\\_Partnership.pdf](https://f.datasrvr.com/fr1/721/24833/Corporate__HBCU_Partnership.pdf).

<sup>306</sup> *Id.*

<sup>307</sup> See Jon Marcus, *To Recruit Workers, Big Employers Team with Historically Black Colleges*, THE WASHINGTON POST (Jun. 3, 2022 at 8:00 AM), <https://www.washingtonpost.com/education/2022/06/03/hbcus-companies-recruitment-partnerships/>.

<sup>308</sup> *Id.*

<sup>309</sup> *Id.*

<sup>310</sup> Alicia Jackson et al., *Connection with Corporations: Strategies for HBCUs*, RACING TOWARD DIVERSITY, <https://www.racingtowarddiversity.com/blog/2019/7/8/connection-with-corporations-strategies-for-hbcus.html>.

<sup>311</sup> *Id.*

Insurance, PNC Bank, and Fifth Third Bank which in total has raised \$2 million.<sup>312</sup> The center focuses on placing students in the corporations it has partnered with as well as placing them in talent development pipeline programs.<sup>313</sup> Corporations that have donated to well-known HBCUs have also invested technology centers and mentoring opportunities and the same should be done for smaller and less renowned HBCUs.

One example of a large corporation who has launched an effective partnership with HBCUs is Salesforce. Salesforce established a three-to-five-year strategic plan with Morehouse College that offers mentorship opportunities and an advisory board.<sup>314</sup> Salesforce has also implemented technical interview sessions and hackathons to increase professional development opportunities for HBCU students.<sup>315</sup> The corporation has also teamed up with philanthropic organizations that center on increasing student enrollment at HBCUs as well as creating a more diverse and inclusive environment in the tech industry.

Ashley Christopher, the founder and CEO of the HBCU Week Foundation highlighted three ways HBCUs and corporations can partner together to build a more inclusive workforce.<sup>316</sup> Christopher advises corporations to support lesser known HBCUs to create a more inclusive campus to corporate pipeline.<sup>317</sup> Christopher also challenges corporations to participate in HBCU week to increase scholarship opportunities for students.<sup>318</sup> Lastly, Christopher calls for a celebration of the value that HBCU graduates have contributed to society ranging from Thurgood Marshall to John W. Thompson who is the chairman of Microsoft and a graduate of Florida A&M University.<sup>319</sup> Corporations should implement these guidelines in order to provide HBCU students with corporate opportunities and mentorships which will ultimately diversify corporate America.

While corporations' donations and investments have been paramount to many HBCUs, corporations should also meet with HBCU leaders to learn how their investment can be better utilized at each individual institution. Cassandra

---

<sup>312</sup> *Center of Excellence HBCU Corporate Engagement*, CENTRAL STATE UNIVERSITY <https://centralstate.edu/centerofexcellence/>.

<sup>313</sup> *Id.*

<sup>314</sup> *Salesforce for HBCUs*, SALESFORCE (2021), <https://www.salesforce.org/wp-content/uploads/2021/03/Salesforce-for-HBCUs.pdf>.

<sup>315</sup> *Id.*

<sup>316</sup> *Id.*

<sup>317</sup> *Id.*

<sup>318</sup> *Id.*

<sup>319</sup> *Id.*

Joseph, the director of Corporate Relations and Partnerships at Spelman College provided meaningful insight into how HBCU and corporations can benefit one another as well as how partnerships can be improved.<sup>320</sup> Corporate partnerships are formed by either the corporation reaching out to an institution or an HBCU reaching out to the corporation.<sup>321</sup> Spelman College specifically considers corporations that want to invest in making the institution better for the community.<sup>322</sup> Johnson also believes the outpouring of corporate donations was spurred by the Black Lives Matter movement for varying reasons: some to check a diversity qualification box, others because they wanted to make a genuine difference in the HBCU space.<sup>323</sup> While some corporate partnerships are more transactional, others embody a true partnership to train and hire students.<sup>324</sup> Some corporations ask and consider what each HBCU needs: ranging from technology or faculty needs.<sup>325</sup> Corporations with an intentional outreach to HBCUs care about their goals and needs are to best effectively help the institution. For example, Spelman and Morehouse work with Bank of America through the Center of Black Entrepreneurship where students can engage in a curriculum centered on entrepreneurship and learn from actual entrepreneurs.<sup>326</sup> Bank of America also donated \$10 million to the AUC. Netflix donated \$40 million to Spelman which went towards Spelman's scholarships, which is a great need for all HBCUs.<sup>327</sup> Recipients of the scholarship were pell eligible.<sup>328</sup>

HBCUs and Spelman are interested in having students graduate career ready and partnering with corporations is one sure way to ensure this goal.<sup>329</sup> Internships are a critical feature of corporate partnerships as students have an opportunity to learn substantive skills. Many of these internship opportunities turn into full time job offers for after graduation.<sup>330</sup> Corporations make restricted donations for a specific GPA or geographic region as well as unrestricted donations which can be used for the greatest need of HBCUs.<sup>331</sup> Joseph recognized that Spelman is particularly focused on increasing their

---

<sup>320</sup> Interview with Cassandra Joseph, Corporate Partnership Director, Spelman College (Oct. 24, 2022).

<sup>321</sup> *Id.*

<sup>322</sup> *Id.*

<sup>323</sup> *Id.*

<sup>324</sup> *Id.*

<sup>325</sup> *Id.*

<sup>326</sup> *Id.*

<sup>327</sup> See Labord & Dilalo, *supra* note 293.

<sup>328</sup> See Joseph, *supra* note 320.

<sup>329</sup> *Id.*

<sup>330</sup> *Id.*

<sup>331</sup> *Id.*

endowment.<sup>332</sup> Joseph also noted that a new president's focus also shapes corporate partnerships.<sup>333</sup> For example, a president focused on STEM will draw in corporate partnerships that will equip students with STEM opportunities and skills.<sup>334</sup>

#### CONCLUSION

Corporations profited off enslaved labor in their beginning years and it was the unpaid and forced labor that laid the foundation for corporations to grow into the giants they are today. No monetary amount will ever cover the pain and tragedy of slavery. However, reparations serve to acknowledge past wrongdoing and provide ways to close racial gaps caused by discrimination. To provide reparations, corporations can tangibly help the descendants of enslaved African Americans by donating to HBCUs, institutions that were the only options once available to newly freed slaves and their descendants. Reparations are aimed at repairing the damage caused by slavery that still has repercussions in the Black community such as access to education.<sup>335</sup> Corporations should partner with HBCUs to learn what each institution's greatest areas of needs are and donate accordingly. Due to the long history of racial discrimination in inequitable funding for HBCUs, there are still large gaps that need to be filled to ensure HBCUs remain pillars of the Black community. Corporations must also donate to smaller and less renowned HBCUs to ensure those students are given the same opportunities. Undoing the harm of slavery will never fully be done, but donating to HBCUs is one essential and tangible way to acknowledge the wrongdoings of the past and offer a remedy to institutions that have helped the Black community and the nation.

MEGHAN K. MARKS

---

<sup>332</sup> *Id.*

<sup>333</sup> *Id.*

<sup>334</sup> *See id.*

<sup>335</sup> *See* Charles J. Ogletree, Jr., Repairing the Past: New Efforts in the Reparations Debate in America, 38 Harv. C.R.-C.L. L. Rev. 279, 285 (2003).