TESTIMONY OF WALTER ALLEN
IN SUPPORT OF HB 1260
MARYLAND HOUSE OF DELEGATES
APPROPRIATIONS COMMITTEE
FEBRUARY 25, 2020

Dear Chair McIntosh, Vice Chair Jackson, and Committee Members:

It is my pleasure and honor to offer testimony in support of House Bill 1260.

I am Walter R. Allen, Distinguished Professor of Education, Sociology and African American Studies and the Allan Murray Carter Professor of Higher Education at the University of California, Los Angeles (UCLA). Previously I was Professor of Sociology and African American Studies at the University of North Carolina, Chapel Hill and at the University of Michigan, Ann Arbor. Since 1976, I have consulted and provided court testimony regarding racially dual and unequal systems of higher education. My expertise involves the assessment of, and proposed remedies for, disparities between Historically Black Colleges and Universities (HBCUs or HBIs) and Traditionally White Institutions (TWIs) in racially segregated state systems of higher education.

I appear today as expert witness for Plaintiffs on liability and remedy in *The Coalition for Equity and Excellence in Maryland Higher Education v. Maryland Higher Education Commission*, United States District Court for the District of Maryland, Civil Action No. MJG-06-2773. In addition to serving as an expert for the *Coalition,* I provided expert testimony in the seminal Supreme Court case *United States v. Fordice* (1992) which unequivocally established the state's obligation to desegregate its higher education system. The *Fordice* litigation ordered Mississippi to eliminate its ongoing segregative practices, including its duplication of HBCU programs. Additionally, I have been an expert in every higher education desegregation case resulting in a remedial plan, including: *United States v. Alabama* (1987) and *Knight v. Alabama* (1991), cases brought to desegregate Alabama colleges and universities; and *Geier v. Sundquist* (1996), involving Tennessee's maintenance of a racially segregated system of higher education. Finally, I served as an expert on issues of diversity in higher education in *Grutter v. Bollinger* (2003) and *Gratz v. Bollinger* (2003), Supreme Court cases which set forth the standards for permissible race-conscious policies to promote diversity.

Based on this experience, I submit my support of House Bill 1260. This bill provides critical funding and additional assistance to Maryland's four HBCUs in the amount of $577 million over ten years. It puts Maryland's four HBCUs on a path towards being competitive and comparable with the state's TWIs. In so doing, HB 1260 provides an opportunity to, at long last, dismantle Maryland's dual system of higher education and fulfill the promise of *Brown v. Board.* As this legislative body is aware, over six years ago Maryland's federal district court concluded Maryland was in ongoing violation of the federal constitution because it "has never dismantled the de jure era of duplication of programs that facilitated segregation—and it has maintained policies

and practices that have even exacerbated this problem."[1] The Court found Maryland's duplication of HBCU programs was "substantial," reaching a level that was as bad as, if not worse than, the situation in Mississippi more than twenty years ago in *Fordice*.[2] The Court found Maryland had denied its HBCUs the type of unique, high-demand programming afforded to TWIs.[3] Unique, high-demand programs allow an institution to cultivate a distinctive academic identity. When clustered together into academic "specialty areas" or "academic niches," unique, high-demand programs are powerful magnets for diverse students and funding. However, program duplication prevented the state's four HBCUs from cultivating a comparable level of unique, high-demand programs. The numbers are stark. The Court's Liability Decision found that in 2010, Maryland's HBCUs only offered 11 unique and high-demand programs compared to 122 such programs at the TWIs.[4] This represents a 10:1 ratio favoring the TWIs. More troubling still, this overall programmatic imbalance increased after the Court's Liability Decision. Leading up to the remedial trial in 2017, our analysis showed that the four HBCUs possessed only 10 unique, high-demand programs versus 171 at the TWIs.

This retrogressive trend is consistent with Maryland's prior conduct. In its Liability Decision, the Court found Maryland's duplication of HBCUs' programs worsened in recent decades, resulting in the "intensification of the HBIs racial identifiability over the past 20 years."[5] Without distinct academic specialty areas, it is unsurprising that the HBCUs remain highly segregated by race. As of 2014, White students comprised roughly 5.4% of total enrollment at the State's four HBCUs.[6]

Given the stark level of duplication and segregation at Maryland's HBCUs today, the Court rightly recognized that a comprehensive remedial plan was required to ensure HBCUs were academically competitive to attract students of all racial backgrounds.[7] As the Court observed, remedying this programmatic imbalance requires the creation of "areas of excellence" at the HBCUs by establishing concentrations of unique, high-demand programs that are not offered at geographically proximate TWIs.[8] A unitary system will be established when the HBCUs have distinctive academic concentrations anchored in a meaningful number of unique, high-demand programs. This strategy has been affirmed by other courts and by Maryland itself.[9] For example, Maryland's Cox Task Force recommended that Maryland's HBCUs should develop their "own specialty areas or programs. . . [to] broaden the appeal of the institution to a more diverse student body."[10] Maryland's 2009 State Plan for Higher Education similarly recognized the need to invest

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[1] *Coalition of Equity and Excellence in Maryland Higher Education v. Maryland Higher Education Commission* (Liability Decision), 977 F. Supp. 2d 507, 538 (D. Md. 2013).
[2] *Id.* at 536-37.
[3] *Id.*
[4] *Id.* at 536.
[5] *Id.* at 540.
[6] "2014 Enrollment by Program by Race for UMS Institutions" and "Enrollment by Program by Race for Morgan State University," Maryland Higher Education Trend Data and Program Inventory, available for download at https://data.mhec.state.md.us/mac_Trend.asp.
[7] *Coalition of Equity and Excellence in Maryland Higher Education v. Maryland Higher Education Commission*, 295 F. Supp. 3d 540 (D. Md. 2017) (Remedy Decision).
[8] Liability Decision, 977 F. Supp. 2d at 544.
[9] *See Ayers v. Fordice*, 111 F.3d 1183, 1213-14 (5th Cir. 1997). *See also* Liability Decision at 977 F. Supp. 2d at 516, 537-538.
[10] Liability Decision, 977 F. Supp. 2d at 516.

"[s]ubstantial additional resources" in the HBCUs in order for them to be "comparable" and "competitive" with the TWIs.[11]

On behalf of the *Coalition,* we recommended three integrated strategies to dismantle Maryland's racially dual system of higher education. *First*, and foremost, Maryland must support the creation of unique and/or high-demand programs which collectively establish distinctive academic specialty areas at each HBCU. These programs should be clustered together to maximize their desegregative potential. *Second*, the Maryland must enhance the strength, quality and capacity of current HBCU programs to support their academic specialty areas. *Finally*, Maryland must provide complimentary supports to strengthen each specialty area, which may include providing funding for faculty, staff, student support services, scholarships, funding for marketing and recruitment, technology upgrades, library or research materials, equipment and capital improvements. Our specific recommendations necessarily varied for each institution. The precise number, characteristics and combination of programs must be designed to build upon existing institutional expertise and capacity. Throughout, however, distinctive programming is a central component for making Maryland's HBCUs comparable and competitive with the state's TWIs. Based on extensive evidence submitted during the seven-week remedial trial, the Court adopted all three of our recommended strategies.

HB 1260 likewise incorporates all three of our recommended strategies. The bill includes a settlement fund of $577 million divided over the four HBCUs for ten years.[12] The bill specifies that such funds may be used for purposes that fit squarely with our three recommendations: supporting the development and implementation of new academic programs; expanding and improving existing academic programs; and providing additional supports in the form of scholarships, financial aid, faculty recruitment, academic support, and marketing. As described above, this type of comprehensive, program-centered approach has been endorsed by the State's own commissions on higher education, courts in other states, and Judge Blake's own remedial order. Funding in the amount of $577 million would allow the HBCUs to develop a number of new, distinctive academic programs of the kind contemplated by the State in its 2000 Agreement with the Office of Civil Rights and as ordered by Judge Blake. Just as importantly, it would provide funds to enhance existing programs and provide necessary supports. Collectively, such interventions would allow the HBCUs to establish distinctive academic specialty areas to attract students of all races and position Maryland as a leader in higher education.

Recommended Amendment

While supportive of HB 1260 overall, I offer a few amendments for consideration. First, HB 1260 encourages the HBCUs to retain a single consultant to advise on programmatic development. Given the potential scale and speed of programmatic development, an HBCU may decide it is beneficial to consult with more than one professional in the field of higher education. Indeed, other state systems that have undergone desegregation efforts have relied on multiple experts, rather than just one. Therefore, I recommend amending HB 1260 to indicate that each

[11] Liability Decision, 977 F. Supp. 2d at 518-19.

[12] This represents approximately $500 million in today's dollars, as discussed in the testimony submitted by David Burton, Jon Greenbaum, and Michael Jones.

campus is encouraged to retain consultants as necessary to assist in the planning and implementation of the programmatic development contemplated by the bill.

Second, the proposed legislation mandates the University of Maryland Global Campus (UMGC) work with the HBCUs with the goal of developing and offering online academic programs. While such a partnership may be beneficial in some circumstances, it should not be a requirement. Online programming presents unique challenges for establishing HBCUs' distinctive academic specialty areas. In today's educational landscape, HBCUs must be able to expand their online portfolios in ways that enhance their institutional identity and prestige. HBCUs are best positioned to evaluate whether online programming should be pursued in partnership with UMGC or independently. Therefore, I recommend HB1260 be amended to stipulate that the UMGC mandate is not intended to restrict or restrain the ability of HBCUs to offer online programs using campus-based delivery platforms.

Finally, I agree with the funding adjustments recommended by David Burton, Jon Greenbaum, and Michael Jones. As detailed in their written testimony, the allocation of funding set forth in Senate Bill 856 is preferable because it guarantees each HBCU at least $10 million per year and it accounts for research classification, not only enrollment. Just as importantly, Senate Bill 856 gives each HBCU a set distribution of funds which allows for better planning. In contrast, HB 1260 adjusts the payments year-to-year based on the past year's enrollment. The problems with this approach are twofold. First, HB 1260's variable funding makes planning for programmatic development difficult because the funding for future years is unknown. Second, variable funding creates an incentive to focus on short-term enrollment rather than long-term sustainability of academic specialties which form the centerpiece of the Court's order and our recommended approach. The table below captures the major differences between HB 1260 and SB 856:

Comparison between HB 1260 and SB 856

School	HB 1260*	SB 856**
Bowie	16,790,700	$12,200,000
Coppin	7,212,500	$10,000,000
Morgan	24,003,200	$23,100,000
UMES	9,693,600	$12,400,000

*Amount fluctuates each year based on each HBCUs percentage of overall HBCU enrollment
** Amount is constant

Thank you for considering these amendments and my testimony for an already strong piece of legislation. Overall, HB 1260 presents a unique opportunity to move toward a new vision for Maryland's higher education system. The proposed legislation would not only dismantle Maryland's dual system of higher education by making Maryland's HBCUs comparable and competitive with the state's TWIs—it would also expand and enhance higher education opportunities for all Maryland residents and greatly increase the number of college graduates prepared to contribute to the state's economy. Greater access, equity and academic excellence will empower Maryland's universities to become greater engines for economic prosperity and the public good.