

ADDRESSING HISTORIC UNDERFUNDING OF HBCUS: LEVERAGING LITIGATION IN MARYLAND

ISSUE BRIEF 2

INTRODUCTION

Over the last decade, there has been a renewed focus on HBCUs and their contributions to their communities and the nation at large. HBCUs serve as engines of [economic mobility for students, prepare students for careers](#) in which Black professionals are underrepresented, and generate [nearly \\$15 billion](#) in economic impact across the United States.

As our [first brief](#) in this three-part series showed, states have historically disinvested in land grant HBCUs since their inception, leaving institutions to figure out who to educate students with minimal resources. Elected officials and institutions have fought for decades to correct these issues to little avail. However, as the positive impacts of HBCUs and their graduate become more visible and publicized, there has been a bipartisan movement to correct remaining funding discrepancies and ensure HBCUs

have the stability and financial investments to ensure their future sustainability.

To fully understand the intricacies of historic underfunding of HBCUs, and the various bipartisan avenues to correct these issues, it is important to explore state-specific case studies. This second brief of the three-part series will explore systemic underfunding of HBCUs in Maryland, and their attempts to correct these challenges, first through the courts and then through legislation. Maryland was one of the first states to reach such a monumental agreement in the sustainability of HBCUs.

The third and final brief will explore Tennessee and its legislative attempts to curb underfunding. It is our hope that these case-studies and the set of briefs provide a blue print for how elected officials in other states can form bipartisan coalitions to support HBCUs and ensure they are equitably funded.

Note: The [Maryland lawsuit](#) uses the term *Historically Black Institutions (HBIs)* and *Traditionally White Institutions (TWIs)*. For this issue brief, The Hunt Institute utilizes the term *Historically Black Colleges and Universities (HBCUs)* and *Predominantly White Institutions (PWIs)* for consistency across written pieces.

MARYLAND'S HBCU LANDSCAPE

Maryland is home to four Historically Black Colleges and Universities, all of which are public universities:

Bowie State University	Coppin State University	Morgan State University	University of Maryland Eastern Shore
			
Founded in 1865	Founded in 1900	Founded in 1867	Founded in 1886
 Prince George's County Bowie	 Baltimore	 Baltimore	 Princess Anne
 81 percent of students are Black*	 81 percent of students are Black*	 80 percent of students are Black*	 46 percent of students are Black*
 89 percent of students receive financial aid	 92 percent of students receive financial aid	 97 percent of students receive financial aid	 96 percent of students receive financial aid
 58 percent receive Pell Grants**	 72 percent receive Pell Grants**	 56 percent receive Pell Grants**	 58 percent receive Pell Grants**

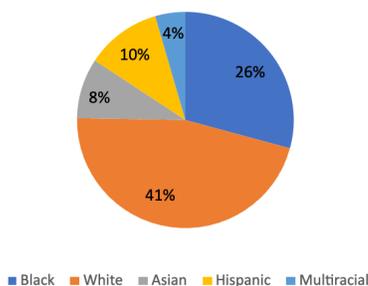
*Fall 2021

**2019-2020; first-time, full-time undergraduate students





Maryland's Higher Education Students



357,032 college students

It is estimated that Maryland's four HBCUs generate \$1 billion of total economic impact. This is particularly important for HBCUs located in regions of the state where economic activity has been slow, making their impact to the community even more essential. This impact can also be felt in the nearly 10,000 individuals employed by a Maryland HBCU. However, the most impact is felt by students; the 3,536 Maryland HBCU graduates from the class of 2014 are estimated to earn \$9.5 billion over their lifetime, or \$985,000 in additional income per graduate due to earning a college credential.

As discussed in the first brief, *The State of Higher Education Funding: Historically Black Colleges and Universities (HBCUs)*, many land-grant institutions were underfunded when states did not provide the one-to-one matching dollars required by the Second Morrill Act. The University of Maryland Eastern

Shore, Maryland's lone land grant HBCU, was found to be underfunded by \$416,599,100 between 1987 and 2020.

Additionally, HBCUs, regardless of land grant distinction, received diminishing funding sources during the same time frame. Between 2003 and 2015, public and private HBCUs experienced steep declines in federal funding per full-time enrolled (FTE) students. While most institutions of higher education (IHEs) have received lower state and local appropriations since the 2008 recession, many studies have found disparities in funding across several states' HBCUs in comparison to their non-HBCU institutions.

As a result, many states are working to remedy historical disinvestment of HBCUs. The remainder of this brief aims to explore how the state of Maryland addressed discrepancies in support between HBCUs and PWIs.

MARYLAND AND ITS ATTEMPT TO RIGHT FUNDING INJUSTICES AT ITS HBCUS.

LAWSUIT: THE COALITION FOR EQUITY AND EXCELLENCE IN MARYLAND HIGHER EDUCATION, ET AL. V. MARYLAND HIGHER EDUCATION COMMISSION, ET AL.

Maryland was one of the first states in the nation to reach a settlement to provide additional funding



to its HBCUs. A lawsuit by a group of students was the catalyst for this work. As you will see below, while a lawsuit was the impetus for this work, it took bipartisan legislation to resolve the funding inequity. Regardless of how it happened though, the \$577 million settlement will provide sustainability and future opportunity for Maryland's 4 HBCUs.

In 2006, The Coalition for Equity and Excellence, a group of graduates and current students from the four Maryland HBCUs, [filed a lawsuit](#) against the state of Maryland and the Maryland Higher Education Commission. The lawsuit asserted that the state "[failed to desegregate](#) Maryland's system of higher education" as required by Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the 14th Amendment of the U.S. Constitution.

The Coalition for Equity and Excellence argued [that since the inception of HBCUs in Maryland, the state did not ensure HBCUs received equal treatment](#), particularly during the time of "separate but equal." Examples of this unequal treatment included the University of Maryland Eastern Shore operating as a college prep school rather than a college campus,

under-supported teacher preparation programs at all HBCUs, and differences in quality of facilities between HBCUs and their PWI counterparts.

[De jure segregation](#): purposeful discrimination according to the law.

[De facto segregation](#): unintentional or fortuitous actions by state and private entities.

While *Brown v. Board of Education* found "separate but equal" unconstitutional in 1954, the Coalition argued that Maryland continued to operate under *de jure* segregation. Examples included in the case were a refusal to develop graduate schools or programs of study at HBCUs and developing a competing PWI campus to Morgan State University in Baltimore. As a result, Maryland was formally notified by the Office of Civil Rights in March of 1969 that it was "[one of ten states operating a racially-segregated system of education](#) in violation of Title VI of the Civil Rights Act."

A 2005 decision to approve a joint MBA program between the University of Baltimore and Towson University sparked the case for the Coalition. Morgan State University argued the joint program would divert students from its program, as it did when the University of Baltimore started its program in the 1970s.

[Source](#)



Over several decades, the state of Maryland worked in accordance with the Office of Civil Rights at the U.S. Department of Education to desegregate their system of higher education. However, this desegregation largely brought [Black students to traditionally white institutions](#) (TWIs), rather than bringing students to Maryland's HBCUs.

Additionally, Maryland's HBCUs continued to receive pushback in developing programs of study. While Morgan State University received the ability to grant doctoral degrees in 1975, the institution was [only approved for one doctoral program](#) until 1994. While the state's goal was to implement [25 new programs across its HBCUs](#), only 13 were implemented by 1985.

PROGRAM DUPLICATION

The Coalition for Equity and Excellence argues that one way Maryland upheld *de jure* segregation was through unnecessary program duplication across IHEs in the state.

Unnecessary program duplication is defined as those instances where two or more institutions offer the same nonessential or noncore program. Under this definition, all duplication at the bachelor's level of non-basic liberal arts and sciences coursework and all duplication at the master's level and above are considered to be unnecessary.

[Ayers & United States v. Fordice](#)

By looking at programs of study across Maryland based on their classifications, the Coalition found that [60 percent](#) of noncore programs at Maryland's HBCUs were unnecessarily duplicated in comparison to only 18 percent at Maryland's PWIs. In particular, [the Court found that:](#)

- Maryland's PWIs have 296 unique, non-core programs while Maryland's HBCUs have 44;
- Maryland's PWIs have 6 more unique masters' programs and 13x more unique doctoral programs;
- Maryland's HBCUs offer 11 non-duplicated, high-demand, noncore programs; Maryland's PWIs offer 122 such programs.

The Coalition argued that by unnecessarily duplicating programs, Maryland's HBCUs had a more difficult time recruiting students. In particular, HBCUs who enroll high percentages of white students do

so because of [recruitment based on unique, high-demand programs](#). The state argued that unnecessary duplication was not a result of segregation, but instead a factor of higher education expansion, as seen by program duplication between PWIs.

However, the Court ruled in favor of the Coalition, stating that while there may be additional factors other than program offerings in maintaining the racial identifiability of HBCUs, program duplication has been [found to have a palpable effect](#) on student choice and therefore the state has a responsibility to eliminate it.

As of 2009, UMES had a student population that was 77.6% black and 13.3% white, making it significantly more desegregated than its three HBI counterparts, which had white populations between roughly 1 and 4%. In light of these figures, it is unsurprising that Dr. Conrad found that only 9% of the programs at UMES were unnecessarily duplicated, "eliminating the dual system ... to a large extent" on the Eastern Shore. This lack of duplication is not an accident; it is the result of a strong collaborative partnership between UMES and Salisbury and it demonstrates that unnecessary duplication can be eliminated. The court finds that, at a minimum, it is more likely than not that the lack of unnecessary duplication at UMES and Salisbury has led to UMES's substantial success in attracting white students, as well as other race students.

[THE COALITION FOR EQUITY AND EXCELLENCE IN MARYLAND HIGHER EDUCATION v. MARYLAND HIGHER EDUCATION COMMISSION](#)

RULING

In 2013, a federal judge found that the four institutions were not underfunded, but that Maryland allowed predominantly white institutions (PWIs) to duplicate specialty academic programs that were first found at HBCUs. As a result, PWIs were able to attract students of all races, making it more difficult for HBCUs to recruit students, [effectively re-segregating HBCUs](#), and therefore receiving lower allocations based on enrollment.

LEGISLATION

While the lawsuit was critical in bringing attention to the underfunding of Maryland's HBCUs, mediation





to reach a settlement failed many times. Lawsuits, and subsequent negotiations, are time consuming, expensive, and further alienate opposing parties from working together. When the lawsuit began in 2005, no one expected it to be litigated for 16 years. To bring a renewed light to the stalled case, the coalition of students created a public campaign in 2019 to bring awareness of the case to lawmakers and the public.

As a result of the public campaign, in February of 2020, a group of 13 Democratic delegates proposed [HB 1260](#) allocating \$577 million to certain HBCUs over 10 years in direct response to the HBCU lawsuit. This \$577 million was nearly three times greater than the \$200 million then Governor Hogan offered at the state's "[final offer](#)" in 2019. HB 1260 of 2020 was ultimately passed by the house through a bipartisan vote of 129 to 2, and then passed the senate unanimously (45-0). While receiving bipartisan support throughout the process, Governor Hogan ultimately vetoed the bill in May of 2020, citing the onset of the Coronavirus pandemic and subsequent economic recession.

At the beginning of the 2021 legislative session Speaker Jones and Sen. Syndor II reintroduced the [Senate Bill/House Bill 1](#) early in the session to provide the legislature time to override the Governor's veto during the same session if necessary. Ultimately 39 senators" co-sponsored the bill, including 7 Republicans, before passing the Senate unanimously, and 120-14 in the House of Delegates. Gov. Hogan

signed the bill into legislation on March 24, 2021, on the campus of Bowie State University. The parties to the lawsuit approved the settlement in the summer of 2021, and money has begun to roll out to schools.

PUTTING FUNDING TO USE

Beginning in July 2022, [Fiscal Year 2023](#), Maryland will pay out the settlement to its four HBCUs over the course of a decade. These HBCUs will receive [annual settlements based on student enrollment](#); Morgan State will receive \$24 million in the first year, Bowie State \$16.8 million, Eastern Shore \$9.7 million, and Coppin State \$9 million.

[The settlement will be allocated to](#) creating new academic programs and enhancing existing ones, bolstering online offerings, boosting financial aid, marketing the institutions, and recruiting and training faculty. In addition, Maryland will be prohibited from using this funding as an excuse to limit, reduce, or otherwise negatively affect the [HBCU budgets](#) in the future.

The legislation establishes a [program evaluation unit](#) within the Maryland Higher Education Commission (MHEC) to re-evaluate its process for approving new programs and substantial program modifications. The bill also requires the University System of Maryland William E. Kirwan Center for Academic Innovation, in collaboration with UMUC Ventures, to work with the state's HBCUs with the goal of developing and offering online academic programs.



CONSIDERATIONS FOR POLICYMAKERS AND ELECTED OFFICIALS

As seen from this case study of Maryland, using the court system to right injustices in education is often slow moving and expensive. The Maryland case was pending for over 15 years and could still be pending today, if not for the work of the Maryland Legislature. In similar cases, such as Alabama and Mississippi, while the courts ordered that the state pay additional support to their HBCUs, it was state lawmakers who played a crucial role in reaching resolutions.

As other states consider how to right systemic

injustices of underfunding HBCUs and other predominately black serving institutions, lawmakers should consider ways they can garner bipartisan support to come to a swift resolution. While lawsuits have been necessary in past cases to bring to light funding inequities, it was elected officials who actually did the work to come to a resolution and ensure that HBCUs received funding that was rightly theirs. This additional funding will not only help HBCUs make capital improvements and provide additional financial aid, but it will also help create financial stability for the future and ensure that HBCUs can continue to be drivers of economic mobility for generations to come.

GUIDING QUESTIONS

- How has program duplication hindered the development of Maryland's HBCUs?
- Why is correcting HBCU funding injustices critical for these school's sustainability and financial independence?
- What role did state legislators play in this lawsuit? What role did the Office of the Governor have?



POLICY RECOMMENDATIONS

- Consider evaluating current and historical policies to determine if program duplication has impacted HBCU success.
- Inclusion of student voices, including HBCU alumni, may play a critical role in garnering public support for litigation and/or legislative avenues to remedy historic underfunding.
- Examine cost and time effectiveness of pursuing litigation as a means to address historical underfunding. Based on results, consider:
 01. Avenues to develop a bipartisan legislative committee to discuss historic underfunding of Historically Black Colleges and Universities, as well as provide recommendations to remedy disinvestment.
 02. Pathways to garner support from the Office of the Governor.

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