

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-2418 (L)

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

Plaintiffs – Appellees,

and

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

Plaintiffs,

v.

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

Defendants – Appellants,

and

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

Defendants.

NATIONAL ASSOCIATION FOR EQUAL OPPORTUNITY IN HIGHER
EDUCATION,

Amicus Supporting Appellee.

Appeals from the United States District Court for the District of Maryland, at Baltimore.
Catherine C. Blake, District Judge. (1:06-cv-02773-CCB)

Argued: December 11, 2018

Decided: January 2, 2019

Before WILKINSON, AGEE and THACKER, Circuit Judges.

Referred to the Office of the Circuit Mediator by unpublished per curiam order.

ARGUED: Adam Dean Snyder, OFFICE OF THE ATTORNEY GENERAL OF MARYLAND, Baltimore, Maryland, for Appellants/Cross-Appellees. Michael D. Jones, KIRKLAND & ELLIS LLP, Washington, D.C.; Jon Marshall Greenbaum, LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW, Washington, D.C., for Appellees/Cross-Appellants. **ON BRIEF:** Brian E. Frosh, Attorney General, Jennifer A. DeRose, Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL OF MARYLAND, Baltimore, Maryland, for Appellants/Cross-Appellees. Brenda Shum, Genevieve Bonadies Torres, LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW, Washington, D.C.; Karen N. Walker, Devin C. Ringger, KIRKLAND & ELLIS LLP, Washington, D.C., for Appellees/Cross-Appellants. Jason S. McCarter, EVERSHEDES SUTHERLAND (US) LLP, Atlanta, Georgia, for Amicus Curiae.

ORDER

PER CURIAM:

The Court considered the arguments of the parties on December 11, 2018, along with the briefs and other items of record, and notes the points and positions raised by all

counsel. Upon mature consideration of all these matters, it appears to the Court that both parties have well-presented arguments, but that *neither* party has a realistic appreciation of the strengths and weaknesses of their respective claims and contentions.

The Court is of the firm conviction that this case can and should be settled. Otherwise, the parties will likely condemn themselves to endless years of acrimonious, divisive and expensive litigation that will only work to the detriment of higher education in Maryland.

Wherefore, upon due and mature consideration, the Court orders the parties to appear before the Circuit Mediator of this Circuit at the date, time, and place such Mediator shall promptly set, and hereby now refers this matter to mediation before such Circuit Mediator pursuant to Rule 33 of the Federal Rules of Appellate Procedure and Local Rule 33. The Court further directs counsel to forthwith consult with their clients and obtain as much authority as feasible to settle this case.

The Court further takes this case under submission, pending mediation, and directs that the orders of the district court in this matter shall remain stayed pending further order of this Court.

The parties are advised to proceed in all good faith to reach a mediated settlement to be submitted to this Court. The Circuit Mediator shall report his view of the good faith progress of this mediation every 30 days, to the extent permitted by the confidentiality provision of Rule 33. This mediation shall conclude no later than **April 30, 2019** and can only be extended by motion of the Chief Mediator for good cause shown.

It is so ordered.