

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

FILED

2009 FEB 18 PM 3:35

U.S. DISTRICT COURT  
MIDDLE DISTRICT OF TN

ANGELA CELA, on behalf of herself and )  
all others similarly situated, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
TENNESSEE STATE UNIVERSITY, )  
DR. IRIS JOHNSON-ARNOLD, )  
DR. TINA SMITH, AND )  
DR. HAROLD R. MITCHELL, )  
 )  
Defendants. )

Case No. 3 09 0173 \*

JURY DEMAND

JUDGE ECHOLS

COMPLAINT

Plaintiff Angela Cela, by and through her attorneys, files this Complaint, individually, and as the proposed representative of a Class, against Defendants Tennessee State University (TSU), Dr. Iris Johnson-Arnold, Dr. Tina Smith and Dr. Harold R. Mitchell, and, for cause of action, would show as follows:

INTRODUCTION

1. This action seeks damages, declaratory and injunctive relief on behalf of Plaintiffs, and the members of the Class, as a result of the Defendants' violation of their civil rights. All of the proposed class members are non-African-American students at TSU during the times alleged herein.

2. Heretofore, this Court entered a Consent Decree in the case of Geier v. Alexander. Pursuant to the Order of the Court, ISU was under a duty not to engage in racial discrimination or practices which discourage enrollment or involvement of other-race persons.

In the Order, other-race persons are defined as non-African Americans. It further imposed a duty upon TSU to develop a plan whereby other-race students would be accorded tuition discounts, loans, scholarships and/or other incentives for purposes of desegregation. As hereinafter shown, the Plaintiff and the proposed class are beneficiaries of the said Order. As further shown herein, the Defendants have breached the requirements of the Order.

3. At all times relevant herein TSU advertised, solicited and gave student grants funded by the State of Tennessee, by and through the Tennessee Department of Education. TSU also receives federal funding through the United States Department of Education.

#### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over this action pursuant to Fed. R. Civ. P. 23(a) and (b)(3) to 42 U. S. C. 1983, *et. seq.*, Title VI of the Civil Rights Act of 1964, 42 U. S. C. §2000d and the United States Constitution.

5. Plaintiffs' claims and the claims of each Class member exceed the jurisdictional minimum of this Court.

6. Venue is proper in the Middle District of Tennessee, inasmuch as TSU transacts business in and is domiciled in Davidson County, Tennessee. Further, most if not all of the acts complained of herein occurred in the Middle District of Tennessee.

#### **THE PARTIES**

7. Plaintiff Angela Cela (Ms. Cela) is an adult citizen who is originally from Guam. She resides within the State of Tennessee on the Ft. Campbell military base. During all relevant times, Ms. Cela was a student at TSU. Ms. Cela is a member of the Class defined herein and seeks to be certified as a Class representative.

8 Defendant TSU is a state-chartered corporation engaged in the business of higher education located in the Middle District of Tennessee. At all times relevant herein, TSU received federal grant monies, including Title VI funds from the Federal Government

9 Dr. Tina Smith and Dr. Iris Johnson-Arnold are professors at TSU who served as advisers to TSU students regarding grant funding

10 Dr. Harold Mitchell was the head of the TSU Department of Speech and Audiology

11 The aforesaid individual Defendants are sued in their individual and official capacities

12 The Defendants were involved in the decisions and discriminatory practices regarding admission, eligibility and awarding of grant funds at issue. The Defendants were also involved in discriminatory practices involving grades and grading procedure.

#### **FACIS RELEVANT TO PLAINTIFFS**

13 Ms. Cela is Guamanian who in 2007 was a student at TSU in her senior year

14 On or about the September 25, 1984, this Court entered a Consent Decree in Geier v. Alexander, 593 F. Supp. 1263, affm'd 6<sup>th</sup> Cir. Sept. 5, 1986, 801 F. 2d 789. In relevant part the Consent Decree guaranteed certain Constitutional rights to students at TSU Plaintiff and the proposed class were and are third party beneficiaries of that order

15 During or about March of 2007, Ms. Cela attended a meeting at TSU during which Defendant, Dr. Iris Johnson-Arnold, instructed those students intending to seek admission into the graduate program to send a letter of intent to the TSU Department of Speech Pathology and Audiology so stating.

16. Dr Johnson-Arnold advised the attendees that financial assistance was available through grant funding but only one funding opportunity was available for the non-African-American attendees.

17. During or about March of 2007, Ms Cela submitted her letter of intent to attend graduate school at TSU in the Speech Pathology and Audiology program. As instructed, Ms Cela's letter of intent requested financial assistance through grant funding

18. In April of 2007, Ms. Cela was accepted to the said Speech Pathology and Audiology graduate program.

19. During August of 2007, Ms Cela graduated from TSU *Summa Cum Laude* and was the valedictorian of her class.

20. During August of 2007, graduate school began but Ms. Cela at that time had received no information regarding her request for financial assistance through grant funding

21. During October 2007, Ms. Cela advised one or more of her TSU professors that she had not received any information regarding her request for financial assistance and that she was suffering extreme financial hardship Ms. Cela was told to allow more time for the grant funding to be approved.

22. Upon information and belief, in October of 2007, the issue of Ms. Cela's grant funding was discussed at a TSU faculty meeting and brought to the attention of Defendant Mitchell, head of the Department of Speech Pathology and Audiology, as well as Defendant Dr Iris Johnson-Arnold

23. After the aforesaid faculty meeting, Defendant Johnson-Arnold told Ms. Cela that she thought she had offered financial assistance to Ms Cela through the BASE-TN grant but recalled that she had not offered it Defendant Johnson-Arnold advised Ms. Cela that BASE-TN

grant funding could not be made retroactive to provide assistance during the Fall semester, but that BASE-TN grant funding would be available to Ms. Cela beginning in the Spring semester.

24. Thereafter, Ms. Cela was advised by various TSU representatives that there must have been some mistake, that it could be corrected, and that she should have additional conversations with Defendant Mitchell. Based upon these representations, Ms. Cela understood that she could receive the grant funding and, based upon her superior qualifications, had no reason to believe that the matter would not be corrected.

25. On or about Saturday, February 16, 2008, Defendant Mitchell called Ms. Cela at her home and left a message requesting that Ms. Cela come to his office.

26. On or about Tuesday, February 19, 2008, Ms. Cela went to Defendant Mitchell's office. Defendant Mitchell stated that Ms. Cela had always been a happy student and that since she began graduate school, she was no longer "a pleasure." Ms. Cela advised Defendant Mitchell that she felt that she should have applied to another university because she had the grades and opportunity to do so. Ms. Cela advised Dr. Mitchell that she chose to remain at TSU because she had a history with the university and considers it her home. Ms. Cela further stated that she felt betrayed because to date she had not received any financial aid through grant funding. Dr. Mitchell stated that he had not received Ms. Cela's financial aid request. Dr. Mitchell then wrote down six or seven grants for which Ms. Cela did not qualify because they were filled. Dr. Mitchell then described the Base-TN grant and advised Ms. Cela that there were currently eight African-American students on this grant.

27. At the aforesaid meeting Defendant Mitchell stated that Ms. Cela did not qualify because she was not African-American. Defendant Mitchell explained that: "the reason we are allowed to give this money to African-Americans is because ASHA (American Speech-

Language-Hearing Association) acknowledges that African-Americans make up a small minority of Speech Language Pathologists.” Ms. Cela informed Dr. Mitchell that she has also been in contact with ASHA and was told that Pacific Islanders make up less than 1%, which is significantly lower than the African-American population. Ms. Cela advised Dr. Mitchell that there were two African-American graduate students that received grant funding that began in the middle of the fall 2007 semester. Ms. Cela stated that she was aware that their GPA’s were less than 3.0 and were currently on academic probation. Ms. Cela stated that she was advised by several of her professors that this entire situation could have been avoided had she announced that she was not white.

28. Then and there Dr. Mitchell stated: “Well, what do you expect? You are at an historically Black university. You have to know the backdrop and understand our professor’s point of view when they converse with white students.” Ms. Cela advised Dr. Mitchell that she was not aware that reverse discrimination was acceptable as a result of an institution’s history. Dr. Mitchell said: “Come on Angela, you know that when people look at you they think you’re white.” Ms. Cela advised Dr. Mitchell that she was offended by that comment and that it is only in this area that races consist of “black and white.” Dr. Mitchell stated “we didn’t think you wanted financial assistance. We thought you were a California girl.” Ms. Cela advised Dr. Mitchell that she was raised in the ghettos and worked her way, against all odds, to be able to sit there that day. Dr. Mitchell said he thought Ms. Cela wanted to go back to California when school ended. Ms. Cela informed him that she was never asked that question and stated that her husband is stationed at Fort Campbell in the 101<sup>st</sup> Airborne Division. Ms. Cela stated that the military has no intention on sending her husband to California. Dr. Mitchell stated that he would find some funding for Ms. Cela.

29 On or about February 25, 2008, Ms. Cela filed a complaint with TSU's Equity, Diversity & Compliance Office alleging racial discrimination based upon the foregoing.

30 On or about February 28, 2008, Dr. Johnson-Arnold pulled Ms. Cela from class into Dr. Johnson-Arnold's office. Dr. Johnson-Arnold denied that she had failed to forward Ms. Cela's financial aid request to Dr. Mitchell. Dr. Johnson-Arnold stated that she assumed that Ms. Cela was not interested in obtaining financial assistance through the BASE-TN grant because she assumed that Ms. Cela would not remain in Tennessee after graduation because her husband is in the military. Dr. Johnson-Arnold advised that the BASE-TN grant is available only to those students who agree to work in Tennessee schools for two years after graduation. Ms. Cela advised Dr. Johnson-Arnold that her assumption was in error and that she had no intention of leaving Tennessee after graduation.

31 On or about March 1, 2008, Ms. Cela filed a complaint with TSU's Equity, Diversity & Compliance Office alleging retaliation.

32 On or about April 7, 2008, Ms. Cela met with Provost Robert Hampton regarding the complaints filed with TSU's Equity, Diversity & Compliance Office. Hampton advised that the behavior of Dr. Mitchell and Dr. Johnson-Arnold was not condoned by the University. Provost Hampton advised Ms. Cela not to discuss the grant issue with Mitchell or Johnson-Arnold.

33 On or about April 15, 2008, Dr. Mitchell requested Ms. Cela to 'step into his office.' Dr. Mitchell presented Ms. Cela with several funding options. Ms. Cela told Dr. Mitchell that Provost Hampton had instructed her not to discuss this matter with him. Ms. Cela then left Dr. Mitchell's office.

34. In late April 2008, Provost Hampton held a meeting in which he interviewed first and second year graduate students. Upon information and belief, the students voiced the same concerns and experiences as Ms. Cela

35. On or about May 27, 2008, Ms. Cela filed a complaint with the United States Department of Education, Office of Civil Rights.

36. On or about June 8, 2008, Dean Kathleen McEnerney called Ms. Cela and sent an email stating that Ms. Cela was qualified for the BASE-TN grant and the University was willing to retroactively award BASE-TN grant funding to Ms. Cela in the amount of sixteen thousand one hundred thirty-three and 10/100 dollars (\$16,133 10). Ms. Cela had to reject the offer because she had secured outside funding for her second year which required repayment through service after graduation

37. To retroactively accept BASE -TN grant funding would likewise require repayment through service after graduation. Upon graduation, it would be difficult, if not impossible, to provide service to repay both the BASE-TN grant as well as the outside funding. Further, Ms. Cela told Dean McEnerney that no action had been taken by the University to address the acts of racial discrimination perpetrated by members of the faculty nor had any action been taken by the university to discourage racial discrimination in the future.

38. On or about June 10, 2008, Ms. Cela wrote a letter to the Tennessee Board of Regents requesting that it intervene due to the fact that TSU's Office of Equity, Diversity & Compliance had failed to comply with its own policies applicable to the investigation of Ms. Cela's complaints filed February 25, 2008 and March 1, 2008 and failed to respond to Ms. Cela's repeated requests for a status report regarding the investigation.

39. On or about June 20, 2008, Ms Cela received a letter from the Tennessee Board of Regents stating that TSU would address the matter and that the Board of Regents would not intervene

40. On or about June 25, 2008, Ms Cela notified Sandra E Keith Director of TSU's Office of Equity, Diversity and Compliance by email that Ms Cela would agree to accept in the amount of sixteen thousand one hundred thirty-three and 10/100 dollars (\$16,133 10) as a refund for her tuition but that she could not accept that amount as BASE-TN grant funding

41. On or about July 3, 2008, Sandra E. Keith notified Ms. Cela that TSU was willing to award BASE-TN grant funding only

42. On or about September 2, 2008, Ms Cela was called into a meeting by Sandra E. Keith At that meeting, Ms. Keith requested that Ms. Cela explain the basis of her complaints Ms. Keith stated that Dr. Johnson-Arnold was led to believe by Ms Cela that Ms Cela did not intend to stay in Tennessee after graduation. Ms. Cela told Ms Keith that no such conversation ever occurred

43. On or about December 9, 2008, Ms. Cela received a copy of a memorandum dated December 4, 2008, from Sandra Keith to Melvin N Johnson, President of TSU, finding that the Department of Speech Pathology and Audiology did not violate TSU policies regarding racial discrimination or harassment in its conduct towards Ms. Cela.

44. On or about December 9, 2008, Ms Cela submitted a request for Melvin N. Johnson, President of TSU, to review the findings contained in the December 4, 2008, memorandum.

45. On or about January 7, 2009, Ms. Cela received a letter from Melvin N. Johnson, President of TSU, denying Ms. Cela's request to review the findings contained in the December 4, 2008, memorandum.

### CLASS ACTION ALLEGATIONS

46. Plaintiffs bring this action against Defendants under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of all members of the following Class:

Plaintiffs seek certification of the following Class:

All TSU non-African-American students, who within the applicable statute of limitations period, were eligible to receive federal grants but were denied financial assistance because they were not African-Americans

47. Plaintiff would submit that a class action is superior to other methods for the fair and efficient adjudication of this controversy. Treatment as a class action will permit a large number of similarly situated students to adjudicate their common claims in a single forum simultaneously, effectively, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of relatively small claims by Class members who otherwise could not afford to litigate an individual claim such as is asserted in this Complaint. This Class action presents no difficulties in management that would preclude maintenance as a class action.

48. Plaintiff submits that membership in the Class is numerous enough as to make it impractical to bring all Class members before the Court. Although Plaintiff is unaware of the exact number of Class members, Plaintiff believes and therefore alleges that there are hundreds of Class members and that their identities can be easily and quickly ascertained from appropriate discovery of TSU books and records which are in the exclusive control of Defendants. Plaintiff

believes Class members are sufficiently numerous and geographically dispersed so that joinder of all Class members is impracticable.

49. There are questions of law or fact common to the proposed Class:

(a) Whether Defendants and their co-conspirators engaged in racial discrimination against non-African-American TSU students;

(b) Whether the conduct of Defendants and their co-conspirators caused injury to Plaintiff and the other members of the Class;

(c) The appropriate measure of damages sustained by Plaintiff and other members of the Class.

50. These questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

51. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has no interests antagonistic to those of the other Class members, and Plaintiff has retained attorneys experienced in class action and complex litigation as counsel.

52. Plaintiff also seeks prospective injunctive relief on behalf of the entire Class to enjoin and prevent TSU from further racial discrimination.

#### **COUNT ONE - DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

53. Plaintiff repeats and realleges the allegations contained in the paragraphs above, as if fully set forth herein.

54. Plaintiff, on behalf of themselves and Class members, seek a judgment declaring that the aforesaid conduct violates the civil rights of non-African-American TSU students.

**COUNT TWO- TITLE VI CIVIL RIGHTS ACT OF 1964, 42 U. S. C. § 2000D ET SEQ.**

55 Plaintiff repeats and realleges the allegations contained in the paragraphs above, as if fully set forth herein

56. The Plaintiff alleges that Defendants, have engaged in a systematic policy of unlawful practices of discrimination by creating a pervasive hostile environment based upon race, color, or national origin with respect to grading practices and in the awarding of grant monies to the Plaintiff and others similarly situated in violation of 42 U S C § 2000d et seq

**COUNT THREE – 42 U. S. C. § 1983, EQUAL PROTECTION AND DUE PROCESS**

57. Plaintiff repeats and realleges the allegations contained in the paragraphs above, as if fully set forth herein.

58. The Defendants have engaged in conduct designed to deny Plaintiff and other similarly situated benefits to which they are entitled in violation of their rights under the 14<sup>th</sup> Amendment of the United States Constitution to due process and equal protection under the law Defendants are liable for damages in an amount to be determined at trial for violations of their constitutional rights and derogation of 42 U S C § 1983 et seq.

**COUNT FOUR – RETALIATION 42 U. S. C. § 1983 AND TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, 42 U. S. C. § 2000D ET SEQ.**

59. Plaintiff repeats and realleges the allegations contained in the paragraphs above, as if fully set forth herein.

60. The Defendants retaliated against the Plaintiff and others similarly situated by creating a pervasive hostile environment in retaliation for the Plaintiff's complaints regarding the award of grant monies and discriminatory hostile environment exercising her rights under Title VI of the Civil Rights Act of 1964 and First Amendment of the United States Constitution Plaintiff has suffered damages as a result of this retaliation to which she is entitled to recover.

**COUNT FIVE- VIOLATION OF THE CONSNET DECREE ENTERED IN GEIER V. ALEXANDER, 593 F. SUPP. 1263, AFFM'D 801 F. 2D 799 (6<sup>TH</sup> CIR. 1986)**

61 Plaintiff repeats and realleges the allegations contained in the paragraphs above, as if fully set forth herein.

62 The Defendants violated the provisions of the Consent Decree entered in Geier v Alexander, *supra* relevant to desegregation by engaging in racial discrimination against non-African-Americans with respect to awarding financial assistance through grant funding and discriminatory grading procedures. The Plaintiffs are entitled to recover damages as third party beneficiaries to the Consent Decree.

**DEMAND FOR JUDGMENT**

63. WHEREFORE, Plaintiff demands that the Court enter judgment in her and the class members favor and against TSU as follows:

a That Defendants' unlawful combination, contract, or conspiracy as alleged in this Complaint be adjudicated and decreed a *per se* violation of the civil rights laws.

b. That the Court certify the Class pursuant to Fed. R. Civ. P. 23(a) and (b)(3), and adjudge Plaintiffs to be adequate representatives thereof;

c. Determining that the action is properly maintained as a class action, certifying an appropriate Class, certifying Plaintiff Cela as Class representative and appointing Plaintiffs' counsel as counsel for the Class;

d. Awarding Plaintiffs and Class members declaratory and injunctive relief, including equitable compensation and all interest as permitted by law or equity; and

e. That Plaintiffs and the Class recover damages against Defendants and their co-conspirators, jointly and severally, in an amount to be trebled

f That Defendants, their affiliates, successors, transferees, assignees, and the

officers, directors, partners, agents and employees thereof and all other persons acting or claiming to act on their behalf, be permanently enjoined and restrained from, in any manner, continuing, maintaining or renewing the agreement, combination or conspiracy alleged herein, or from engaging in any other similar conduct.

g That the Plaintiffs be awarded compensatory damages and other make whole relief in an amount to be determined at trial.

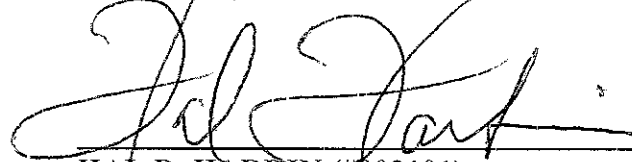
h That Plaintiffs and the Class be awarded pre-judgment and post-judgment interest at the highest legal rate to the extent provided by law; and

i That Plaintiffs be awarded such additional relief as the Court may deem proper.

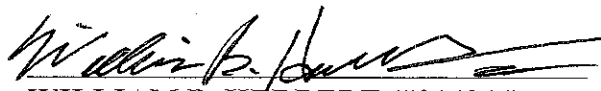
**JURY DEMAND**

Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs demand a trial by jury of all claims in this Complaint so triable

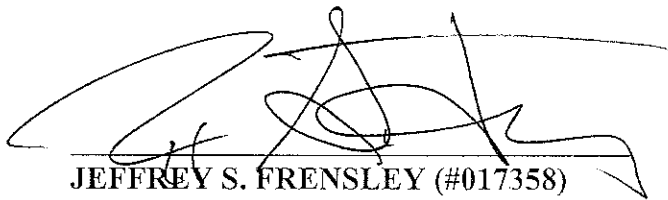
Respectfully submitted,



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Dated: February 18, 2009.