



SEPARATE AND UNEQUAL

Tennessee State University is owed over \$544 million; payment is the first step in addressing gaps in higher education fiscal equity

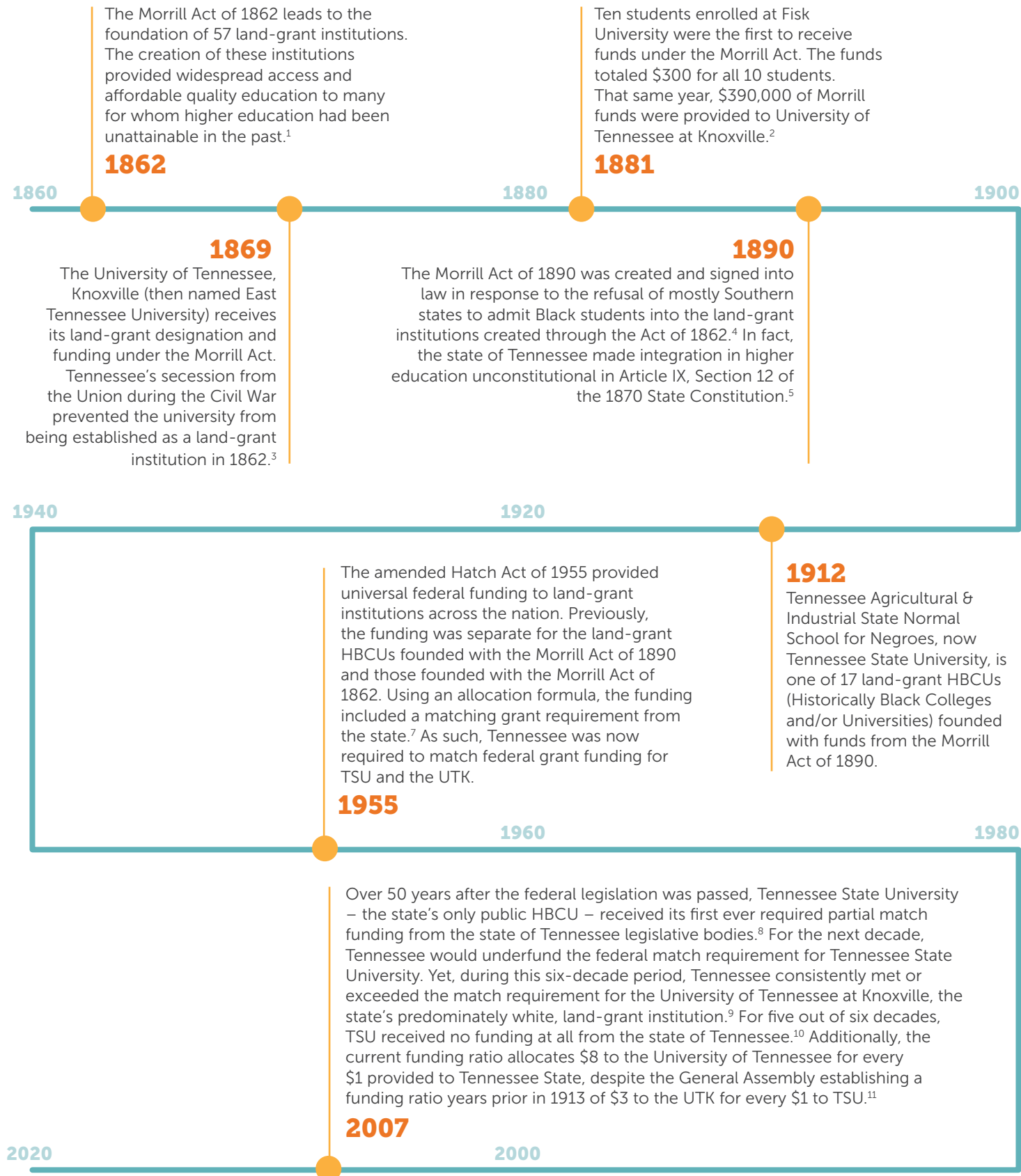
Founded in 1912, Tennessee State University is Tennessee's only public historically Black institution and the only public university in the state's capital. A Tennessee legislative committee report, publicly released on April 5, 2021, determined that the state owes TSU between \$150 million and \$544 million in funding. Funding and educational disparities have persisted in K–12 schools despite the 1954 *Brown v. Board of Education* Supreme Court ruling that the "separate but equal" education doctrine did not provide the equal protection guaranteed by the 14th Amendment. The legislative report acknowledges what many have long known – Tennessee has perpetuated a shameful history of de jure segregation among our higher education institutions into the 21st century, creating a deep chasm of inequity due to systemic non-funding and underfunding of TSU. Here we examine how higher education funding in Tennessee continues to be "separate and unequal," and offer a set of policy remedies to address the gap in funding to TSU.

In 2014, Tennessee became a national leader in higher education access with its bold equity-based initiative for free college, and again in 2017 with the addition of all adults, which made Tennessee the first state to provide a basic level of college education accessible for everyone. Given the state's attention to access and equity in higher education, we hope Tennessee will acknowledge and rectify this funding inequity without a decades-long legal dispute. How Tennessee responds to this is critical to not only addressing the actions taken here but setting a standard in higher education nationally.



TIMELINE

Land-Grant Funding in Tennessee



LOVE'S LEGACY

The History of Funding Disparities at TSU

In 1968, Tennessee state Rep. Harold Love Sr. noticed a funding discrepancy between the two land-grant institutions in Tennessee and started a years-long journey researching the disparity in financial support.¹² Two years later, in 1970, 15 years after the Hatch Act amendment, Rep. Love submitted a report that identified the funding disparities and clearly showed the lack of funding for Tennessee State University.¹³ After his report, there was no corrective action plan for repayment for the 15-year period, nor a referendum to start paying Tennessee State University on the same basis that the state was consistently paying UTK. Despite Rep. Love's evidence of non-payment, the state of Tennessee continued to deny TSU the federally required funding match from 1970 to 2007, denying critical funding to support students, staff and programs for almost another 40 years.

Also in 1968, the same year Rep. Harold Love Sr. began researching funding disparities between TSU and UT, Rita Sanders Geier filed a lawsuit regarding the continued expansion of UTK into the Nashville area. The 28-year-long legal battle that ensued included plans by the state to require TSU to maintain specific percentages of white students and white professors, while no such racial benchmarks existed for any other state schools, including UTK.¹⁴ Moreover, TSU was expected to construct new buildings and create and expand programs, while the state offered no funding for the expected capital and operational improvements, including the refusal to match the Hatch Act funds as federally required. The result of that lawsuit and settlement led to increased enrollment of non-Black students and faculty at TSU at much higher rates than the inclusion of Black students and faculty at state schools across Tennessee.

In 1979, TSU's freshman class was 69.7% Black, while no other state school had percentages of Black students above 10%. Additionally, TSU faculty accounted for nearly 80% of all Black faculty in the Tennessee Board of Regents (TBR) system. Aside from Black faculty at TSU, all other TBR schools combined only had 44 Black faculty members.¹⁵

1979 FRESHMAN CLASS

69.7%

Percentage of Black students at **TSU**

10% OR LESS

Percentage of Black students at **OTHER STATE SCHOOLS**

In the summer of 2020, Rep. Harold Love Jr., Ph.D. (the son of Rep. Harold Love Sr.) continued his father's investigation as chair of the newly created Land Grant Institution Funding History Study Committee. The bipartisan legislative committee includes representation from the state Senate and House, as well as four Republican members and two Democratic members who were commissioned to study any continued funding gaps for Tennessee State University.

The committee found that the absence of matched funds from the state meant that "there were years that TSU had to pull from their own general funds ... to match the funding from the federal government in order to continue operations in a given year."¹⁶

The current figures for funding owed to TSU may exceed \$544 million. There is continued discussion over the amount TSU should be repaid, with estimates ranging from \$150 million to \$544.3 million. The former amount is calculated based on the current funding ratio, which provides TSU with one-eighth of the funding that UTK receives. The latter is based on the funding ratio that was in place until the mid 2000s, which provides TSU one-third what UTK received. Though neither amount addresses inflation or the impact the federally required funding would have had at the time, the state should honor the initial ratio and pay TSU the full \$544.3 million.

What has happened in other HBCU funding inequity cases?

NATIONAL DISPARITIES

Nationally, funding inequities between public HBCUs and predominantly white colleges and universities has been a source of lawsuits, research and calls to action for decades. A 2018 report from the National Education Association's Center for Great Public Schools found funding inequities in the form of waiver denials and federal budget cuts for HBCU land-grant institutions across the nation, in addition to states withholding federally required matching dollars.¹⁷

In 2017, about \$50 million was allocated under the Evans-Allen Act for HBCU land-grant institutions, which included a state funding match requirement.¹⁸ The report indicated that nine of the 19 HBCUs included in the funding filed waivers in 2017, seeking the federal funding despite their state not providing the match funds, potentially making them ineligible, according to the federal requirement to receive the funding under the Evans-Allen Act. The combined loss for that one year was \$10 million due to the matching shortage.¹⁹ The report also noted that six of the 19 schools applied for similar waivers in 2016. In each incident, all predominately white land-grant schools in each state received their match funding or more while the HBCUs in their states did not.

A similar study by the Association of Public Land Grant Universities found that from 2010 to 2012, 61% (11) of the 18 HBCUs studied did not receive a full match, resulting in a total loss of nearly \$60 million to those colleges over a two-year period.²⁰ Conversely, during the same time period, the states involved in these studies consistently met, and often exceeded, the matching fund requirement for all of their land-grant universities that are not HBCUs. For the 2010–2011 fiscal year, total state funding for TSU was \$5,564,300. The required funding match for TSU, was \$6,954,571 leaving a difference of \$1,390,271 the state was obligated to provide TSU but did not. During the 2010–2011 fiscal year, Tennessee provided \$55,899,300 to the University of Tennessee.

MARYLAND

Maryland's state legislature passed a bill that was signed by Maryland Governor Larry Hogan to rectify disparities totaling \$577 million, ending a 15-year lawsuit between four HBCUs in the state and the Maryland Higher Education Commission.²¹ The four HBCUs contended there were disparities in funding and duplication of programming that undercut the enrollment and programmatic funding for Maryland HBCUs. The \$577 million settlement includes the creation of a program evaluation unit to evaluate new programs and to create substantial program modifications for more equitable distribution among the institutions in the state.²² It also provides supports to Bowie State, Morgan State and Coppin State universities and the University of Maryland-Eastern Shore for the creation of more online programming. The settlement will fund scholarships, faculty recruitment and development, and academic programs, as well as marketing.

MISSISSIPPI

In 1975, a lawsuit filed by Jake Ayers Jr. began a decades-long legal battle between HBCUs and the state of Mississippi, ending in 2002 in what is now regularly coined the Ayers settlement. Ayers and many others pointed to systems of inequity between HBCUs in Mississippi and predominately white institutions. The settlement provided more than \$500 million for three colleges in the state: Alcorn State University, Jackson State University and Mississippi Valley State University. However, as the end date of the 17-year settlement approached, there was a great deal of anxiety about continued operations and funding for those same schools. While they received the settlement, these same schools encountered persistent decreases in their general funding, placing them in a fiscal crisis.²³ The Ayers settlement placed contingencies and metrics on the funding repayment that were not required for predominately white state colleges, such as having certain percentages of non-Black enrollment increases.²⁴

RECOMMENDATIONS

As Tennessee legislators and policymakers move forward to rectify decades of inequitable funding policies and payments, the following recommendations are designed to ensure the repayment plan is comprehensive and considers the full context of what the non-funding and underfunding has cost TSU over the past 62 years.

1. Continue Tennessee's status as an exemplar in higher education

In 2014, Tennessee became a leader in higher education across the nation with its bold equity-based initiative for free college for all. The Tennessee Promise guaranteed high school students access to two years of free college, and the 2017 addition of all adults made Tennessee the first state to provide a basic level of college education accessible for everyone.²⁵

With the state's focus on access and equity in higher education, Tennessee should acknowledge and rectify funding disparities and inequities in our higher education system. Given reports from NEA²⁶ and APLU²⁷, there are likely to be several other states that will redress years of missing matching funds. Tennessee's response is critical not only in remedying past underfunding in our state, but in setting a standard in addressing higher education underfunding as we move forward. Tennessee has an opportunity to be an exemplar in redressing disparities promptly and adequately by creating a payment plan to compensate Tennessee State University for their underpayment for the last six decades.

2. Ensure repayment begins swiftly, with no strings attached

The state of Tennessee is in a unique and positive financial position with a rainy day fund near the \$1.5 billion mark. Repayment could begin with a lump sum of \$272.15 million, half of the \$544.3 million owed, with necessary funds coming from the rainy day fund as needed. As the state's rainy day fund has ballooned, Tennessee State University spent years dipping into their own funds to meet a requirement the state was responsible

for, all while Tennessee met, and often exceeded, that same requirement for UTK. The state must begin repayment at levels that allow TSU to respond to critical areas of need in infrastructure, staffing, faculty retention and hiring, and student recruitment. Further, Tennessee should follow Maryland's 10-year repayment plan for its HBCUs and finish repaying TSU by 2032 or sooner.

Additionally, federal land-grant matching funds did not have conditions or mandates attached to them, and as such the entirety of the repayments should be free from any constraints related to outcomes, student or faculty diversity, or performance metrics.

3. Consider the cost of inflation and TSU's influence

While the size of the debt owed to TSU is large, the numbers do not account for the long-term impact that underfunding has had across the institution. Using the numbers provided in the Tennessee legislative committee report on underfunding TSU and accounting for inflation, the fiscal impact of underfunding TSU²⁸ equates to between \$324 million and \$1.035 billion.²⁹ The \$324 million amount utilizes the ratio calculator currently used to fund TSU (1/8 of every dollar given UTK). The 3 to 1 ratio was determined and affirmed by the General Assembly in 1913 based on the number of white students to Black students in the state at the time. In 2008, Tennessee switched to an 8 to 1 ratio, without any change to the 1913 rule and without establishing a new ratio through the General Assembly. According to the ratio that was in place during non-funding, TSU is owed \$1.035 billion.

Despite a chronic lack of adequate funding, Tennessee State University has had a positive economic impact on the state and the region.

A 2017 report by the UNCF determined that Tennessee's five HBCU's produced over 7,000 jobs and generated \$873 million in economic impact across the state in 2014.³⁰ Tennessee State University has a dynamic influence on the state, and with full repayment and a fiscal reset, they are poised to lead in the state and the region, creating opportunities for students and the community.

4. Focus on fiscal adequacy not just fiscal equity

Since the 1970s, Tennessee has used a performance-based funding model for its higher education institutions. In 2010, Tennessee became the first state to allocate its higher ed funding entirely on performance measures related to students' retention, graduation and post-graduation success rates. This once controversial practice³¹ was marketed as a strategy to ensure that state funding would incentivize institutions to improve on the key measures of success.

Tennessee State University was evaluated and held accountable under this new model and held to the same standards as peer institutions that were fully funded and receiving federally mandated matches. Peer institutions used match dollars to support staff, increase salaries, invest in infrastructure and protect the overall university budget. At the same time, TSU

was cutting into their already limited budget to try to maintain basic operations due to five decades of non-funding by the state of Tennessee. This uneven playing field was not evident to the public, creating the illusion of equity and fairness in how schools ranked in the performance models.

Based on the current findings of the Land Grant Institution Funding History Study Committee, it is unjust to continue to hold TSU to the same performance standards as schools that have been fully funded and, in many cases, funded beyond the required match amount. While fiscal equity, or the overall fairness of financial contributions, is critical, fiscal adequacy is equally important and ensures that Tennessee is providing the appropriate amount of funding to produce the desired outcomes for students.³²

Thus, the Tennessee Higher Education Commission should review the outcomes-based funding formula and consider placing a funding adequacy element in the formula to produce the desired results in retention, graduation and post-graduation career attainment. This change in the structure will account for the historical void of funding and recognize that Tennessee State University not only has failed to receive the funding they were due but has only started receiving full funding in recent years.

CONCLUSION

TSU has demonstrated resilience and persistence by continuing to serve students and manage operations despite missing nearly half a billion dollars of required funding from the state. An ambitious and just repayment plan will be an important step forward, but we must acknowledge the immeasurable impact that the non-funding and underfunding has had on TSU's students, faculty and staff over the long term. Tennessee's legislature has an opportunity to act swiftly and comprehensively to correct past errors and ensure there is equity and adequacy in higher education funding across the state's colleges and universities. The state of Tennessee must address decades of disparate and unlawful treatment imposed upon TSU, its students and community and send a clear signal we will no longer tolerate unequal treatment of our own institutions. It is imperative that repayment of the full \$544.3 million is done in a timely manner and with careful consideration to existing and future funding policies to eliminate the possibility of future disparities.

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