

Nos. 20-1199 & 21-707

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IN THE

Supreme Court of the United States

STUDENTS FOR FAIR ADMISSIONS, INC.,

*Petitioner,*

*v.*

PRESIDENT AND FELLOWS OF HARVARD COLLEGE,

*Respondent.*

STUDENTS FOR FAIR ADMISSIONS, INC.,

*Petitioner,*

*v.*

UNIVERSITY OF NORTH CAROLINA, et al.,

*Respondents.*

ON WRITS OF CERTIORARI TO THE UNITED STATES  
COURTS OF APPEALS FOR THE FIRST AND  
FOURTH CIRCUITS

**BRIEF OF THE LAW FIRM ANTIRACISM ALLIANCE  
AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS**

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**INTERESTS OF *AMICUS CURIAE*<sup>1</sup>**

The Law Firm Antiracism Alliance (“LFAA”) was formed after law enforcement officers unlawfully killed George Floyd in 2020. The private bar, which comprises the substantial majority of lawyers in the United States, organized to respond in support of racial justice and to promote racial diversity within its ranks. The LFAA’s alliance firms include more than 300 law firms ranging from international and national firms to small local firms. There are alliance firms headquartered in all fifty states. The LFAA is the only national alliance of law firms focused on promoting racial justice and eliminating systemic racism. The Appendix to this brief lists the LFAA’s member firms.

The LFAA’s purpose under its charter is to “leverage the resources of the private bar in partnership with legal services organizations to amplify the voices of communities and individuals oppressed by racism, to better use the law as a vehicle for change that benefits communities of color and to promote racial equity in the law.” *Charter*, Law Firm Antiracism All. (2022), <https://tinyurl.com/3m2ejvt3>.

The LFAA focuses on working with established legal services organizations nationwide “to create large-scale, coordinated *pro bono* projects that are both immediate and long-term in scope.” *Id.* Alliance

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<sup>1</sup> Blanket consent for *amici* filings has been granted in these cases, and this brief is timely filed within seven days after the merits briefs it is supporting. R. 37.6. The brief was solely authored by, and its preparation and submission were solely funded by, *amicus* and its counsel.

firms commit to “dedicate substantial *pro bono* resources to initiatives that address systemic racism.” *Id.* In addition, the LFAA focuses on facilitating dialogue and training within the legal profession and private bar through summits and programs, and is building a library of research, white papers, and resources on issues of racial justice.

The cases before the Court implicate LFAA’s core goal of amplifying the voices of individuals and communities of color in efforts to achieve racial justice. Higher education—whether at a community college, a small liberal arts school, a state school like UNC, an Ivy League college like Harvard, or a professional school—is the gateway to many opportunities in America, including professional opportunities. Our diverse society needs diversity in its professional leadership, which means it needs diversity in higher education.

Given its membership, the LFAA has a particular interest in racial justice and diversity within the legal profession. As the LFAA Charter elaborates:

Law firms also acknowledge their ongoing responsibility to increase diversity, equitable access to opportunities and inclusion of people of color within their ranks and, in tandem with the LFAA’s *pro bono* efforts, the leaders of the LFAA law firms are committed to examining and eliminating internal policies and practices that may perpetuate racial inequities within law firm structures.

*Id.*



Recruiting, promoting, and empowering more racially diverse lawyers in the private bar is essential to amplifying and empowering racially diverse voices in the institutions of power in America, and essential for law firms to excel and meet the needs and expectations of their clients. To achieve those goals, law firms need a racially diverse “pipeline” of talent from colleges and universities. Both as corporate citizens and as recruiters of young talent, the LFAA therefore strongly supports efforts to promote racial diversity in higher education.

### **SUMMARY OF ARGUMENT**

Racial diversity is essential to the success of the private bar and to the legal profession as a whole. Such diversity can only be achieved if the private bar and the legal profession have a racially diverse pool of talent from which to recruit. Just as firms and the profession need and want to consider race as one among many factors in evaluating the credentials of candidates, so too should colleges, universities, and law schools be permitted to do so.

Since the Founding, lawyers have played an outsized and extremely influential role in our country’s institutions of power and government. From Washington, DC to small rural towns, lawyers exercise power over our society. In a racially diverse society, justice and public confidence demand that that power be exercised by a racially diverse profession. The legal profession, including the private bar, which constitutes the vast majority of its

membership, must promote racial diversity to achieve racial justice.

Racial diversity is crucial at not only the societal level, but also the firm level. To succeed in today's world, law firms need the best talent, broadly defined and recognized, both to excel in their work and to earn and retain the trust and confidence of clients and other participants in the legal system. Law firms cannot succeed without racially diverse lawyers. Diverse firms produce better work informed by broader perspectives; they have the cultural competency to handle a wider range of issues for a broader range of clients; and they enjoy more trust from clients, juries, judges, and arbitrators. Clients throughout America expect and trust diverse legal teams. The market has spoken, very clearly.

LFAA members and other law firms have responded. After a long history of miserably failing to achieve racial diversity, the private bar and law firms across America—large and small—have become active and innovative in seeking to achieve racial diversity. Law firms today understand that racial diversity (along with other forms of diversity) matters to success in the legal profession, to fairness and objectivity in our legal processes, and to public confidence in the justice system and the rule of law.

Decades, indeed centuries, of history demonstrate that racial diversity in the private bar will not be achieved solely through socio-economic, race-neutral, or “color-blind” measures. Evaluating “talent” or “merit” in the practice of law is not just about law school grades or membership on law review; it is about

judging potential and intangibles, especially for those from diverse backgrounds. Law firms must build diverse, cohesive, innovative, and successful professional teams. As in sports and other contexts that go out into the field and actively “scout talent,” such proactive efforts require judgments that cannot be reduced to quotas, algorithms, or judicially enforceable rules. The incomparable Buck O’Neil<sup>2</sup> did not rely on numbers, formulas, or quotas; instead, he had the wisdom born of decades of experience in the Negro Leagues, experience that requires judgment which includes consideration of candidates’ non-calculable talents, ability to grow, and potential to add something new to an existing team.

In our society today, where racial disparities remain palpable and undeniable in life experiences and perspectives, race is an essential element, albeit one of many, that merits consideration in making those judgments. That is true for law firms, and it is true for colleges, universities, and law schools as they admit students to build the classes that law firms rely on to supply a diverse talent pool.

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<sup>2</sup> Inducted into the Baseball Hall of Fame in July 2022. Buck O’Neil was a star player and manager in the Negro Leagues for many years; solely because of his race he was given no opportunity to play in the Major Leagues. He became the first Black coach in Major League Baseball in 1962 and later was a famous talent scout for Major League Baseball for many years. *Buck O’Neil*, National Baseball Hall of Fame, <https://baseballhall.org/oneil> (last visited July 31, 2022); see also Joe Posnanski, *The Soul of Baseball: A Road Trip Through Buck O’Neil’s America* (Wm. Morrow 2007).

Our clients need a diverse and talented legal profession. As law firms, we need a diverse and talented pool of candidates to recruit and train in that profession. Many of those lawyers will become national, state, and local leaders in our institutions of government and other situations of power and influence. The LFAA therefore strongly supports efforts to achieve racial diversity in higher education.

### **ARGUMENT**

#### **I. Racial Diversity in Law Firms and the Private Bar Is Essential for a Racially Just Society, and Requires a Racially Diverse “Pipeline.”**

##### **A. Since the Founding Lawyers Have Wielded Disproportionate Influence and Power at All Levels and in All Branches of Government.**

Lawyers always have wielded outsized influence and power in the American system of government and in our Nation more generally. No other profession has been as involved in the control and exercise of public power and private rights. Because of the crucial role lawyers play as public leaders and private legal advisors, continued racial-diversity efforts in universities, colleges, and law schools are imperative to continue the racial diversification of the legal profession. Only such racial diversification can ultimately achieve and ensure racial justice in the American legal system and in American society more broadly.

As the Court has recognized, “by virtue of their professional aptitudes and natural interests, lawyers have been leaders in government throughout the history of our country.” *Application of Griffiths*, 413 U.S. 717, 729 (1973). These leadership roles encompass every level and reach of government, from the very pinnacle of the Country to the day-to-day operations of towns and cities across America.

At the federal level, no less than 60% of U.S. Presidents have been lawyers, and in the 117th Congress, 50% of the Senate and 32.7% of the House have law degrees. Jennifer E. Manning, Cong. Rsch. Serv., R46705, *Membership of the 117th Congress: A Profile* 5 (July 13, 2022), <https://tinyurl.com/5unh7e5u>. President Biden’s cabinet is comprised of 23 individuals, a majority of whom have law degrees (as does his Chief of Staff and likely many others in the White House).<sup>3</sup> Lawyers hold critical positions throughout federal agencies. And of course every federal judge is a lawyer.

At the state level, lawyers are governors, legislators, judges, attorneys general, and heads of state regulatory agencies. In 2022, 91 of 191 (47.6%) state officials holding the top four state executive official positions hold law degrees: 32% of governors; 18% of lieutenant governors; 100% of attorneys

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<sup>3</sup> Of the 23 cabinet members, 13 (56.5%) hold law degrees, and 1—Linda Thomas-Greenfield, the United States Ambassador to the United Nations—holds an honorary law degree. Of the heads of the 15 executive departments, 9 (60%) hold law degrees. See generally *The Cabinet, The White House*, <https://tinyurl.com/3nbdrhwx> (last visited July 31, 2022).

general; and 36% of secretaries of state. *Governors and State Executives by Higher Education Background*, Ballotpedia, <https://tinyurl.com/36jv83ew> (last visited July 31, 2022).

At the local level, lawyers act as mayors, city council members, county supervisors, school board members, prosecutors, judges, and serve on various other local government boards and commissions. In the 50 most populous cities, 40% of mayors hold law degrees. *List of Current Mayors of the Top 100 Cities in the United States*, Ballotpedia, <https://tinyurl.com/8kqv4vm8> (last visited July 31, 2022). In the top 5 most populous counties, approximately one-third (33.8%) of county supervisors or commissioners hold law degrees.<sup>4</sup>

In a country as racially and culturally diverse as America, these positions of power should be filled by a diverse set of talented individuals. It is essential to justice, public confidence, and social cohesion that our Nation's leaders, state leaders, and local leaders reflect the diversity of our country, including the racial diversity, of those whom they serve. When that happens, discussions in Congress, in state legislatures, and in city commissions will be robust, well-rounded, and informed; important decisions will consider a wide range of views and perspectives; most

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<sup>4</sup> Los Angeles County, California – 20% (1/5); Cook County, Illinois – 29% (5/17); Harris County, Texas – 60% (3/5); Maricopa County, Arizona – 40% (2/5); San Diego County, California – 20% (1/5).

critically, issues of racial justice will not be ignored. This is an essential element of the racially just and harmonious society the LFAA and its alliance firms aspire to build.

### **B. The Influence and Power of Lawyers Extends Beyond Government.**

As the Court knows well, the arc of justice is not shaped just by Ivy League or government lawyers. Many of the most important precedents in this Court's canon were established by a brilliant lawyer who was denied the opportunity to study at the University of Maryland School of Law, and attended instead the then unaccredited Howard University School of Law. He was a private solo practitioner in Baltimore when he won his first major constitutional case, *Murray v. Pearson*, 182 A. 590 (1936), desegregating the University of Maryland School of Law. He was in private practice, leading a legal services organization, the NAACP Legal Defense Fund, when the legal team he led won his most famous case, *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954). See generally Juan Williams, *Thurgood Marshall: American Revolutionary* 52-55, 61-62, 75-78, 195-227 (1998). Had Howard University, an institution necessarily founded on distinctly race-conscious principles, not created a pathway into the legal profession for a young Black man named Thurgood Marshall, he might never have had the opportunity to dramatically alter the course of constitutional law and racial justice in our Nation.

Private sector lawyers are, if anything, more influential today than they were when Justice

Marshall entered the profession. Lawyers exercise significant power as CEOs and General Counsels of America's leading companies. For-profit and non-profit boards are filled with lawyers. Lawyers are thought-leaders and public educators. Legal services organizations and private law firms like the LFAA's alliance firms, through their *pro bono* work, provide services that are essential to the most vulnerable members of our society. To effectively serve and inspire confidence in our racially diverse society, the private bar, like the government, must be racially diverse and truly representative.

Every powerful lawyer in America started out in a college or university, then attended law school, be it Justice Marshall at Howard or President Biden at Syracuse University College of Law. The law schools are, as this Court recognized, "the training ground for a large number of our Nation's leaders." *Grutter v. Bollinger*, 539 U.S. 306, 332 (2003). And the Nation's colleges and universities are the training ground for its law schools. Higher education is the essential pipeline to the legal profession and the opportunities it holds. Notwithstanding Justice Marshall's success in eliminating formal racial bars to education, profound racial disparities in access remain, reflecting disparities in wealth, school systems, parental educational opportunities, alumni status, and other factors. For the legal profession to meet the needs, and enjoy the confidence, of our racially diverse society, the pipeline must deliver to it a racially diverse, talented, and well-educated pool of candidates.



## **II. Law Firms Must Be Racially Diverse to Serve Their Clients, to Succeed in the Marketplace, and to Gain the Confidence and Trust of the General Public.**

### **A. Clients Seek, Encourage, and Need Racial Diversity in Legal Representation.**

In our diverse society, clients today, both corporate and non-corporate, need and want diverse lawyers to represent their interests. These client expectations arise for various reasons—because clients want lawyers who share their clients’ commitment to racial justice, because diverse teams produce better legal work and have broader cultural competency, and because some clients simply feel more comfortable being advised and represented by lawyers who share their background. For all these reasons, the market has spoken in favor of racial diversity, and law firms are responding.

Many corporate clients are committed to playing an active and vocal role in support of racial justice. Clients recognize the long history of racial discrimination in America, and the racial disparities that persist in our society. And in our interconnected, competitive global economy, corporate clients recognize that diverse teams provide better service, informed by broader perspectives and providing cultural competencies that are important to serve and transact with diverse and international customers, suppliers, and vendors. Corporations today emphasize hiring employees who mirror the backgrounds of and understand the needs of their clients, who can speak

their language, literally and figuratively. The Ass'n of Legal Adm'r's, *The Ass'n of Legal Adm'rs Diversity Toolkit*, IILP Review 2017: The State of Diversity and Inclusion in the Legal Profession, Inst. for Inclusion in the Legal Pro. 42 (2017), <https://tinyurl.com/bdedwr2k>.

Corporate clients expect the same from their lawyers. They seek out racially diverse legal teams for at least two reasons: (1) racially diverse legal teams make business sense; and (2) it is a socially just request.

The business reasoning is clear. Racially and culturally diverse legal teams improve the quality of legal representation. Multi-racial, multi-cultural, and multi-lingual attorneys can do far more for clients than a homogenous group of lawyers, no matter how smart, when clients have needs and interests that involve different countries, races, languages, and cultures.

Corporations and companies also recognize the justice in promoting racial diversity in a country with a long history of racial discrimination and inequality. The legal profession has been notoriously slow to break down barriers to entry and to embrace racial diversity. It is now just beginning to seriously address the problem. In August 2016, the American Bar Association passed Resolution 113, which had the following goals:

- Increase diversity at all levels within the legal profession which will make the legal field a

more appealing profession for diverse individuals;

- Increase in the number of diverse attorneys and remediate the issues of implicit bias in the legal profession; and
- Encourage corporate clients to use a Model Diversity Survey in procuring and evaluating legal service providers.

*Resolution 113 (and How it Created the Model Diversity Survey)*, in ABA Model Diversity Survey, Am. Bar Ass'n <https://tinyurl.com/yfmk5y2a>. Resolution 113 also urges clients “to assist in the facilitation of opportunities for diverse attorneys, and to direct a greater percentage of the legal services they purchase, both currently and in the future, to diverse attorneys.” *Resolution 113*, Am. Bar Ass'n (Aug. 8-9, 2016), <https://tinyurl.com/2vvrjre>.

Clients strongly support that long over-due effort. Close to 200 Fortune 1000 companies have pledged to implement ABA Resolution 113. *Model Diversity Survey Signatories*, Am. Bar Ass'n, <https://tinyurl.com/4y772cv8> (last visited July 31, 2022). And in 2019, general counsel and chief legal officers of more than 170 companies signed an open letter to law firms to express their concerns about lack of progress in achieving racial diversity in the legal profession. Christine Simmons, *170 GCs Pen Open Letter to Law Firms: Improve on Diversity or Lose Our Business*, The Am. Law. (Jan. 27, 2019), <https://tinyurl.com/yjcdudkc>. In the letter, they point out that the racial composition of law firm partnership

is disproportionate to the entering associate class as partners “remain largely male and largely white.” *Id.* They also express frustration at the many diverse attorneys “who are no doubt equally deserving, but are not equally rewarded.” *Id.* They further “expect the outside law firms [they] retain to reflect the diversity of . . . the companies and the customers [they] serve” and that if law firms do not, they will be taking their business elsewhere. *Id.*

In 2020, leaders of the legal departments of large banks wrote an open letter to the global legal community. Dan Clark, *12 Global Services General Counsel Call for Greater Diversity & Inclusion in Legal Profession*, *The Am. Law.* (Sept. 30, 2020), <https://tinyurl.com/2p8hw9nw>. Shaken by episodes of violence against Black Americans that had occurred in the U.S. at the time, these global finance leaders called for increased efforts in the legal community to commit to making real progress in advancing racially and ethnically diverse attorneys. *Id.* These important potential clients also committed to increasing engagement with law firms with racially and ethnically diverse ownership.

Major corporate clients are in fact taking concrete actions towards law firms in order to promote and encourage racial diversity in the firms they retain. Here are just a few of the many examples:

- HP Inc. (“HP”): In 2017, HP’s general counsel told law firms it will withhold up to 10% of bills from outside counsel unless outside counsel has (1) at least one diverse firm relationship partner or (2) at least one woman and one

racially/ethnically diverse lawyer, each performing or managing at least 10% of the billable hours worked on HP matters. Letter from Kim M. Rivera, Chief Legal Officer and General Counsel of HP, Inc. (Feb. 8, 2017), *Diversity Mandate to Partner Law Firms*, <https://tinyurl.com/mr2ppdct>; *HP Actions Regarding Supplier Diversity*, HP Inc. (July 26, 2021), <https://tinyurl.com/2jnw8act> (“Promoting diversity with our legal partners”).

- MetLife, Inc. (“MetLife”): In 2017, MetLife’s general counsel delivered to outside counsel a formal plan that will require law firms to develop a talent development plan to promote and retain diverse lawyers. Casey Sullivan, *Deadline for Diversity Issued by Top MetLife Lawyer*, BL (Apr. 3, 2017), <https://tinyurl.com/bdamz4s4>. If the plan is not acceptable (even after giving the law firm one chance to revise), MetLife will take the firm off its approved law firm list. *Id.*
- Novartis AG (“Novartis”): In 2020, Novartis demanded outside counsel ensure at least 30% of billable associate time and 20% partner time was from diverse attorneys, or it would withhold 15% of the total amount billed. Varsha Patel, *One Year Since Novartis Required Diverse Legal Teams, Did it Work?*, The Am. Law. (Feb. 15, 2021), <https://tinyurl.com/56ea66w7>; *Novartis Launches New Preferred Firm Program for*

*Legal Services*, Novartis AG (Feb. 12, 2020), <https://tinyurl.com/yef7jp44>.

Corporate expectations are a significant economic driver underlying the legal profession's attention to racial diversity. But in many respects, the need for diverse representation is even more urgent for individual clients. Immigration law is one area in which diversity and cultural competency are at a premium. Many legal immigrants and applicants for legal immigrant and visa status need assistance from lawyers who literally and figuratively speak their language and understand their circumstances. The lawyer who assists them may be a *pro bono* lawyer at a large law firm or a solo immigration practitioner, but in either case, racial and national diversity among lawyers adds significant value for clients. Diverse immigration attorneys thrive in serving diverse clients. For example, one attorney from Colombia, inspired by her own asylum application experience, is today an immigration lawyer. It is no surprise that she and her team of first generation immigration lawyers are able to "relate to [the clients] . . . put themselves in the client's shoes . . . [and] help clients see themselves in [their attorneys]." Jesse Canales, *Central Florida Immigration Attorney Works to Inspire More Women of Color to Join the Field*, Spectrum News (Mar. 23, 2022), <https://tinyurl.com/2kx3jka6>.

According to a 2015 U.S. Census Bureau report, the United States is home to over 350 languages, with over 13.3% of the population born outside the United States. Aastha Madaan, *Cultural Competency and the*

*Practice of Law in the 21st Century*, Am. Bar Ass'n (Mar. 1, 2017), <https://tinyurl.com/ykp8xs5b>. Racially diverse attorneys equipped with cultural competency are in the best position to serve these clients.

The criminal justice system is another example. Criminal defendants in this country are disproportionately non-white, and yet frequently are given white, court-appointed attorneys. Experience teaches that racially diverse lawyers may be both more trusted by such clients and more willing to provide high-caliber *pro bono* representation to such defendants, including those facing the most severe punishments such as death sentences. *E.g.*, Bryan Stevenson, *Just Mercy: A Story of Justice and Redemption* (2015); see also Equal Justice Initiative, <https://eji.org/>.

Simply put, many clients are passionate about diversity and frustrated with the legal profession's slow pace of achieving racial diversity. Other clients simply need and want lawyers who reflect their own experiences, background, and race in order to have confidence in seeking representation and approaching a system that can be intimidating and inaccessible. A homogeneous white legal profession cannot meet the needs of, and inspire the confidence of, a racially diverse, multi-cultural client base and broader society.

**B. Juries, Judges, and ADR Professionals  
Want and Expect Racially Diverse  
Lawyers in the Legal Systems.**

In addition to clients, those who decide cases and disputes such as judges, jurors, and alternative dispute resolution (“ADR”) professionals expect and want the involvement of diverse attorneys in these essential legal processes. A system that depends on judgment by one’s peers cannot succeed if one’s peers do not participate in it.

The Court long has recognized that race matters in jury selection. Over 80 years ago, Justice Black wrote that the Constitution prohibits racial discrimination in the selection of grand juries because such discrimination is “at war with our basic concepts of a democratic society and a representative government.” *Smith v. Texas*, 311 U.S. 128, 130 (1940).

Fifty years ago, Justice Marshall made clear what is at stake in jury selection cases: different racial groups do not vote as blocs, but they do come to jury service with different life experiences and different perspectives that inform their judgments:

When any large and identifiable segment of the community is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable. It is not necessary to assume that the excluded group will consistently vote as a class in order to



conclude, as we do, that its exclusion deprives the jury of a perspective on human events that may have unsuspected importance in any case that may be presented.

*Peters v. Kiff*, 407 U.S. 493, 503-04 (1972). Every lawyer who has ever participated in jury selection in a case involving an alleged crime by a member of one race against another race is familiar with the “qualities of human nature” of which Justice Marshall spoke.

We continue to struggle nationwide with racial diversity on juries. Washington and California have adopted procedures for judges to treat peremptory strikes as presumptively invalid because they have been “associated with improper discrimination in jury selection.” *Chapter 6, What Needs to Happen, in Race and the Jury: Illegal Discrimination in Jury Selection, Equal Justice Initiative* (2021) (“Examples from Across the Country”), <https://tinyurl.com/3ee3h6ww>. Connecticut, Massachusetts, and New Jersey courts are considering similar reforms. *Id.* In Iowa, African-American representation on the master jury list falling more than one standard deviation below the representation of such citizens in the local population is a constitutional violation. *Id.* In Louisiana federal court, African-American citizens excluded from jury service were permitted to pursue damages claims against the Caddo Parish District Attorney, an office that has a record of race-based exclusion in jury selection. *Id.*

Diversity matters for the lawyers who appear before juries just as it matters for the juries themselves. In a jury trial, defense counsel is, to a substantial extent, the face and the voice of the defendant. Litigating a jury trial is not an academic exercise; relating to the jury and the client is key. With respect to lawyers, as for jurors, acknowledging that race matters does not, as Justice Marshall explained, entail the offensive assumption that races vote as a bloc. Instead, it is human nature: just as no client would choose a legal team with thick Boston accents to represent them on trial in rural Mississippi (or vice versa), many clients will seek out racially diverse legal teams to represent them before racially diverse juries. Diverse trial attorneys have the life experience to connect with a diverse audience and present their clients' cases. As a former DLA Piper partner commented, "[h]aving members of the team with different world and life views increases the chances of formulating a trial strategy that communicates the client's story in a way that has more universal appeal." Anthony P. Ashton, *Popular Culture and Diversity in the Courtroom*, *The Jury Expert: The Art and Sci. of Litig. Advoc.* (July 31, 2012), <https://tinyurl.com/26jy5pr4>. And that universal appeal is not just a strategy to win; it also provides diverse jurors with information in ways that permit them to make an informed and fair decision.

Judges across the country expect and demand diversity in the bar. In 2020, the Conference of Chief Justices and the Conference of State Court Administrators agreed to "intensify efforts to combat

racial prejudice within the justice system . . . and to recommit to examine what systemic change is needed to make equality under the law an enduring reality for all, so that justice is not only fair to all but also is recognized by all to be fair.” *Resolution 1: In Support of Racial Equality and Justice for All*, Conf. of Chief Justices and Conf. of State Ct. Adm’rs (July 30, 2020), <https://tinyurl.com/kjpevsep>. Their resolution calls for courts to “develop career pathways to improve the racial and ethnic diversity of . . . the legal community.” *Id.*; see also Kathryn Rubino, *Hero Federal Judge Takes Steps To Increase Meaningful Experience For Diverse Lawyers*, *Above the Law* (Aug. 24, 2017), <https://tinyurl.com/c5kjfbjr> (describing initiatives taken by judges to increase courtroom opportunities for diverse attorneys).

Federal judges have spoken out on this issue. U.S. District Judge Carlton Reeves said that diversity allows courts to “better understand the complexity of the American experience embedded in every case that comes before them” and “reinforce public trust in our system of government.” Jacqueline Thomsen, *‘A Time for Boldness’: Judges, Sharing Their Own Experiences, Call for a More Diverse Judiciary*, *The Am. Law.* (Mar. 25, 2021), <https://tinyurl.com/23dj6zct>. According to Gerald Bruce Lee, retired U.S. District Judge of the U.S. District Court for the Eastern District of Virginia, judges “think young, black associates have ideas” because “young, black associates have had to improvise and have had to learn how to think creatively on their feet.” Aaron Gleaton Clay, *May It*

*Please the Court—Maximizing Black Attorneys in the Courtroom: A Judge’s Perspective*, GC Mag. (Mar. 2021), <https://tinyurl.com/j587rdf5>.

The ADR community has grown increasingly frustrated with the lack of racial diversity in ADR. In 2021, the American Association for Justice reported that for the American Arbitration Association (“AAA”) and JAMS—the two largest consumer and employment arbitration providers in the country—88% of arbitrators are white and 77% are male. *Where White Men Rule: How the Secretive System of Forced Arbitration Hurts Women and Minorities*, Am. Ass’n for Just. (June 2021), <https://tinyurl.com/4efes8mb>. The late William K. Slate II, former President of the AAA, made diversity in ADR a priority. William K. Slate II, *Diversity at the American Arbitration Association*, Disp. Resol. J. (Feb. – Apr. 2008), <https://tinyurl.com/yckpvpj>. He explained that “exclusion of different groups from meaningful and active participation in ADR is insupportable as a matter of justice,” and that “having able and competent professionals who are members of these excluded groups will most assuredly strengthen the field.” *Id.* JAMS has called for firms and corporations to select diverse ADR professionals and published a sample clause that could be inserted into contracts to promote diversity in the selection of an arbitrator or arbitration panel. *Diversity, Equity, and Inclusion at JAMS*, JAMS, <https://www.jamsadr.com/diversity/>; *JAMS Diversity and Inclusion Arbitration Clause*, JAMS, <https://www.jamsadr.com/inclusion-clause>.

ADR's lack of racially diverse arbitrators and mediators poses risks to public confidence. Millions of Americans are bound by arbitration agreements, and more than half of all American workers are forced to arbitrate to settle disputes with their employers. Megan Leonhardt, *The Huge Diversity Issue Hiding in Companies' Forced Arbitration Agreements*, CNBC (June 7, 2021), <https://tinyurl.com/2w6u4wby>. Many of these Americans are of diverse backgrounds, and women and minorities are "disproportionately forced into a dispute resolution system." Am. Ass'n for Justice, *supra*. One observer commented: "When you think about the lack of diversity compounded with the lack of transparency [in ADR], you can see the likelihood of inequity is exponentially higher." Leonhardt, *supra*. While arbitrators need not be lawyers, most are. Again, a more racially diverse legal profession will support diversifying the pool of arbitrators and mediators. Some diverse individuals in the ADR community have taken action. Marcie Dickson founded Alterity ADR, the largest female and minority-owned national dispute resolution firm in the country. *About Us*, Alterity ADR, <https://alterityadr.com/about-us/>. Many in the business community have supported her efforts by joining the Alterity advisory board, including Atleen Kaur (Assistant General Counsel of ZF Group), Bradley Gayton (Former General Counsel, Ford Motor Company & The Coca Cola Company), and Rodney Williams (President & CEO, Belvedere Vodka). Ms. Dickson has noted: "We've heard from a number of corporate clients . . . [they] have been saying for years that they're looking for diverse neutrals and can't find

them.” Hassan Kanu, *Black Woman-Owned Arbitration Firm Confronts Industry’s Lack of Diversity*, Reuters (Aug. 24, 2021), <https://tinyurl.com/4by6357x>. Increasing the number of diverse lawyers at law firms will result in more diverse lawyers in ADR, which will strengthen and improve the public’s faith in the ADR system.

In short, racial diversity in the legal profession is essential for law firms to succeed in the marketplace, for legal processes and systems to function to their full potential, and for the general public to have confidence in legal services and the entire legal system, including the rule of law.

### **III. Law Firms and the Private Bar Must Be Able to Recruit and Hire from a Wide Pool of Well-Educated Racially Diverse Talent in Order to Succeed.**

The legal profession is making progress, but there remains work to do. To achieve success, the private bar needs a talented, well-educated, racially diverse pool of law school graduates. That “pipeline” has improved in recent years because of initiatives that colleges and universities like UNC, Harvard, and so many others have undertaken, in reliance on *Grutter*. Without such ground-level, day-to-day efforts, our society likely cannot and will not make progress towards racial justice.

#### **A. Racial Diversity Is Essential to Law Firms’ Long-Term Success.**

1. Law firms across the country have reached a nationwide consensus on prioritizing racial diversity

within their ranks. Empirical evidence reflects that racially diverse lawyer teams outperform racially homogenous teams. *Diversity Report*, Acritas at 8, 10 (2016), <https://tinyurl.com/337mvwcs> (“Very diverse teams deliver a significantly higher performance across key aspects of the client experience.”); Sundiatu Dixon-Fyle *et al.*, *Diversity Wins: How Inclusion Matters*, McKinsey & Co. 4 (May 2020), <https://tinyurl.com/2p8djfmb> (“In the case of ethnic and cultural diversity, our business-case findings are equally compelling: in 2019, top-quartile companies outperformed those in the fourth one [quartile] by 36 percent in profitability, slightly up from 33 percent in 2017 and 35 percent in 2014. As we have previously found, the likelihood of outperformance continues to be higher for diversity in ethnicity than for gender.”).

Diverse legal teams are “smarter,” Kanu, *supra*, and “better.” Dev Stahlkopf, *Why Diversity Matters in the Selection and Engagement of Outside Counsel: An In-House Counsel’s Perspective*, *Litigation Journal* (Spring 2020), <https://tinyurl.com/2p89szdy>; Karin Portlock & Jabari Julien, *In Internal Investigations, Diverse Teams Are Better*, *Glob. Investigations Rev.* (Nov. 12, 2021), <https://tinyurl.com/nhk8yk2e>.

As discussed above, clients recognize the value of diverse legal teams. Corporate clients spend 25% more money with diverse legal teams; “a lack of diversity is detrimental to long-term financial success for law firms.” *Diversity Report*, Acritas at 8, 10 (2016), <https://tinyurl.com/337mvwcs>. Clients also call on law firms with proven commitments to diversity for additional services, including, for example, assisting

in anti-bias and anti-racist training for the clients' employees. Dan Clark, *'It's a Real Business Issue': How Clients Are Making Firms Embrace Diversity Goals*, *The Am. Law.* (June 25, 2021), available at <https://tinyurl.com/33t2afy9>.<sup>5</sup>

The practice of law is at its core a relationship business, and law firms exist primarily as a service industry to serve the needs of their clients. Clients are making their mandate for diverse legal teams loud and clear; they are strongly encouraging racial diversity in law firm composition, leadership, and representation.). Initiatives like the *Mansfield Rule* are the result of clients realizing that having diverse leadership at law firms and transparency about efforts to increase diversity at law firms benefits not only the parties involved, but society as a whole. *Mansfield Rule 5.0 & UK Expansion (2021-2022)*, *Diversity Lab* (June 28, 2021), <https://tinyurl.com/47dvb4xh>.<sup>6</sup>

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<sup>5</sup> Clients realize that many law firms can provide training and experience beyond simply a legal perspective precisely because those firms have engaged in successful efforts to hire, retain, and promote racially diverse attorneys, creating successful internal cultures. *Id.*

<sup>6</sup> “The goal of the Mansfield Rule is to boost the representation of historically underrepresented lawyers in law firm leadership. Now entering its fifth year, the Mansfield Rule has become the standard by which law firms track and measure that they have affirmatively considered at least thirty percent women, lawyers from underrepresented racial/ethnic groups, lawyers with disabilities, and LGBTQ+ lawyers for top leadership roles, senior-level lateral hiring, promotions into the equity partnership, and participation in client pitch meetings.” *Id.*



Moreover, diversity itself is a vital recruitment tool. Many highly educated young professionals—*i.e.*, the same individuals law firms are trying to recruit—prioritize a diverse and inclusive workplace environment and culture in choosing where to work. Jennifer Miller, *For Younger Job Seekers, Diversity and Inclusion in the Workplace aren't a Preference. They're a Requirement*, Wash. Post (Feb. 18, 2021), <https://tinyurl.com/2p8dnfca>; see also *Utilizing Diversity and Inclusion Efforts to Attract Talent: An Employer's 6-Step Guide for Navigating the Workforce Shortage*, Fisher & Phillips (Mar. 1, 2022), <https://tinyurl.com/mu27ruwm>.

2. Recognizing that diversity is essential to their success, law firms have made Diversity and Inclusion officers and programs a priority. *2021 State of the Industry Survey: Results and Analysis*, Corp. Legal Operations Consortium (2021), <https://tinyurl.com/y9ju8tmw> (finding that “[i]mplementing a Diversity and Inclusion program was the top-ranked issue in the list of priorities for 2021”). One in every five of the highest grossing U.S. law firms now have an in house “chief” diversity professional, and that percentage is growing. Arriana McLymore & Caroline Spiezio, *Law Firm Diversity Chiefs Gain Numbers – And Influence*, Reuters (July 7, 2021), <https://tinyurl.com/268p97b4>. Often, these professionals report directly to the managing partner or CEO of the firm. *Id.*

More generally, while internal law-firm infrastructures take many forms, 94% of law-firm respondents to the 2021 Vault Law Firm Diversity

Survey reported having a diversity committee in place, and two-thirds of those law firms responded that partners were held accountable for diversity. *Vault Law Firm DEI Survey: 2021 Highlights*, Vault 3-4 (2022), <https://tinyurl.com/e68xvdaw>. Combined, and as the LFAA's alliance firms exemplify, these efforts encompass every state, and firms of international, national, state, and local stature (with affiliations reflecting viewpoints and perspectives from across the political spectrum). See Appendix; *List of Alliance Firms*, Law Firm Antiracism All., <https://tinyurl.com/yc7butyv> (last visited July 31, 2022).

Common law-firm initiatives include recognizing Juneteenth as a firm holiday (before it was declared a federal holiday) and counting up to 50 hours per year of diversity-and-inclusion-related work as billable hours for attorneys. Allie Reed, *More Big Law Firms Opt to Observe Juneteenth at Offices*, BL (June 15, 2020), <https://tinyurl.com/j6xxc43u>; David Lat, *Some Reflections on the Importance of Today, Juneteenth*, Lateral Link (June 19, 2020), <https://tinyurl.com/bdemrapb>; Staci Zaretsky, *Biglaw Firm Affirms Its Commitment to Diversity & Inclusion with New Billable Hours Policy*, Above the Law (Oct. 20, 2021), <https://tinyurl.com/mr4cuzvb>. Many law firms have innovated in other ways to further racial-diversity goals, such as having attorneys volunteer to teach "Street Law" classes and reaching out to recruit pre-college students to consider law as a career in the first place.

In short, the private bar has recognized the value of racial diversity and committed, albeit belatedly, to creating and retaining diverse and inclusive legal teams.

### **B. Law Firms Must Be Able to Recruit and Hire Racially Diverse Talent.**

The private bar has strides yet to make in order to achieve its goals, and it needs a pipeline of diverse talent to do so.

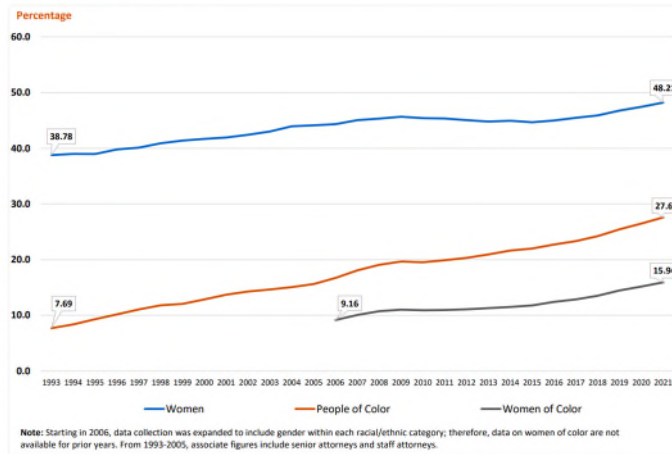
1. The legal profession remains overwhelmingly white. *2021 ABA Model Diversity Survey*, Am. Bar Ass'n 21, 25, 29, 33 (2021), <https://tinyurl.com/2p862muj> (finding white attorneys made up 81% to 93% of equity partners, 70% to 90% of non-equity partners, 72% to 89% of counsel attorneys, and 70% to 79% of associates across all firms in 2020). The American Bar Association's key findings from its most recent Model Diversity Survey are stark:

- “Firm leadership is disproportionately made up of White male attorneys.”
- “The top 10% of the highest paid attorneys in firms are disproportionately made up of White male attorneys.”
- “White attorneys, male attorneys, non-LGBTQ+ attorneys, and attorneys without disabilities dominate in representation within law firms and therefore in hires, promotions, leadership, and compensation.”

*Id.* at 8.<sup>7</sup> It may be a slow process to change a profession that “has long struggled with ensuring that lawyers in law firms who are of diverse backgrounds have the same opportunities, including economic, afforded them to the same extent as their counterparts,” *2020 ABA Model Diversity Survey*, Am. Bar Ass’n 3 (2020), <https://tinyurl.com/4yjiw3dj>, but there are positive signs for the future.

Since *Grutter* was decided in 2003, the percentage of associates who are people of color at law firms has nearly doubled, reaching historic highs. See *2021 Report on Diversity in U.S. Law Firms*, Nat’l Ass’n for L. Placement, Inc. (NALP) 9, 14, 16 (Jan. 2022), <https://tinyurl.com/2yb5nkhn>.

**Percentage of Associates Who are Women and People of Color at Law Firms, 1993–2021**



<sup>7</sup> The survey received responses from 287 law firms accounting for over 100,000 attorneys. *Id.* at 13.

*Id.* at 16. It stands to reason that, as universities have admitted more racially diverse student bodies, law-schools have done the same. And, as more diverse law-school graduates have been hired to the legal profession, law firms and the private bar have become more diverse, as demonstrated in the table above. As a result, while the pipeline to higher education still shows huge racial disparities,<sup>8</sup> law schools and law firms are achieving real-world success in reducing those disparities. *Id.* However, at 27.6%, the representation of people of color at law firms remains far below the 40.7% of the United States population who are people of color, according to census data. See *QuickFacts*, U.S. Census Bureau (2021), <https://tinyurl.com/2p8wk6jw>.

Moreover, the hiring of racially diverse lawyers is only the beginning. Equally critical is the retention and promotion of these lawyers.<sup>9</sup> Racially diverse

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<sup>8</sup> Racial disparities are exacerbated by alumni and donor preferences. Pet. Br. 16-17 (noting that 30% of Harvard’s admitted class represents the children of Harvard alumni, recruited athletes, the children and relatives of large donors, and the children of Harvard faculty and staff (“ALDCs”)—all of whom are “overwhelmingly white”).

<sup>9</sup> “Firm attrition is higher among racially and ethnically underrepresented—i.e., non-White—attorneys.” *2021 ABA Model Diversity Survey*, Am. Bar Ass’n at 8 (2021), <https://tinyurl.com/2p862muj>. But see *Vault Law Firm DEI Survey: 2021 Highlights*, *supra* at 3 (finding “[a] considerable majority (85%) of firms have internal affinity groups,” which include lawyers / employees who have come together because of shared backgrounds and experiences and not only create

attorneys must become practice-area leaders and partners, with diverse thought leadership and potential public service in prominent roles a natural by-product of such advancement. Innovation in leadership is always critical to law firm success. In a competitive profession, racial diversity in management will contribute to such innovation and leadership success. Rocío Lorenzo *et al.*, *The Mix That Matters: Innovation Through Diversity*, Bos. Consulting Grp. 3 (Apr. 26, 2017), <https://tinyurl.com/2zjbdnks> (“The positive relationship between management diversity and innovation is statistically significant, meaning that companies with higher levels of diversity get more revenue from new products and services.”).

2. Critically, the progress being made to create a more diverse legal profession and law-firm workplace cannot continue if the lawyer talent pool available to law firms is not racially diverse. The current state of the legal profession demonstrates that consideration of race in university admissions is working, *not* that it is no longer needed.

This is an issue of the utmost importance to the LFAA. Because the 300-plus alliance firms are headquartered in all fifty states, they recruit legal talent from law schools across the entire country.

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community within law firms, but also provide opportunities for networking and training, especially for non-white attorneys).

After all, only about 4,660<sup>10</sup> of the more than 35,000 total law-school graduates in the Class of 2021 came from the top-ranked fourteen (“T14”) law schools. *Employment Outcomes as of April 2022 (Class of 2021 Graduates)*, Am. Bar Ass’n, <https://tinyurl.com/ypuby8tk> (updated April 18, 2022). As a result, the LFAA’s alliance firms recruit from not only the largest schools, but also the smallest schools; both private schools and public schools; and from the oldest schools, like Harvard and North Carolina, and the more recently established schools, like Belmont.

Whatever their differences, these law schools share a common interest in racially diverse classes that produce a diverse group of graduates and alumni. The Court repeatedly has recognized that “law schools ‘cannot be effective in isolation from the individuals and institutions with which the law interacts.’” *Grutter*, 539 U.S. at 332 (quoting *Sweatt v. Painter*, 339 U.S. 629, 634 (1950)). “Access to legal education (and thus the legal profession) must be inclusive of talented and qualified individuals of every race and ethnicity, so that all members of our heterogeneous society may participate in the educational institutions that provide the training and education necessary to succeed in America.” *Id.* at 332-33. To achieve that goal, higher education must continue to exercise

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<sup>10</sup> This estimate was derived by dividing the reported full-time enrollment by three for the top fourteen schools, as reported in the most current *U.S. News & World Report* ranking of American law schools. *2023 Best Law Schools*, U.S. News & World Rep., <https://tinyurl.com/5n8avirc> (last visited July 31, 2022).

judgment when evaluating talent for admission to its classes. *Id.* at 328-29.

Racial diversity is just as critical to law firms and the private bar as it is to higher education. Law firms and so many other employers need graduates who are able to work as part of a multi-racial team, provide excellent service, and inspire confidence in an environment where their colleagues, their clients, and the broader society they serve are racially diverse and embrace racial diversity. The benefits of educational diversity for aspiring legal professionals continue to be “not theoretical but real.” *Id.* The private bar—the legal profession as a whole—requires a wide pool of well-educated racially diverse talent in our colleges, universities, and law schools for so many obvious and noble reasons.

## CONCLUSION

*Amicus curiae* the Law Firm Antiracist Alliance respectfully submits that the Court should affirm the rulings below.

Respectfully submitted,

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August 1, 2022

## **APPENDIX**

**List of LFAA Alliance Firms**

Akerman LLP  
Akin Gump  
Allen & Overy LLP  
Alston & Bird LLP  
Altior Law, P.C.  
Arent Fox LLP  
Armstrong Teasdale LLP  
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Ashurst  
The Axelrod Firm, PC  
Axinn, Veltrop & Harkrider LLP  
Baker & Hostetler LLP  
Baker Botts L.L.P.  
Baker, Donelson, Bearman, Caldwell & Berkowitz,  
PC  
Baker McKenzie LLP  
Ballard Spahr LLP  
Banner Witcoff  
Barclay Damon LLP  
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Benesch, Friedlander, Coplan & Aronoff, LLP

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Bousquet Holstein PLLC

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Freshfields Bruckhaus Deringer LLP

Friday, Eldredge & Clark, LLP

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The Geller Law Group, PLLC

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Hanson Bridgett LLP  
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Hecht Partners LLP  
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K&L Gates LLP  
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Lowenstein Sandler LLP

Manatt, Phelps & Phillips, LLP

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Maron Marvel Bradley Anderson & Tardy LLC

Marten Law LLP

Mattos Filho, Veiga Filho, Marrey Jr. e Quiroga  
Advogados

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Mayer LLP

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McElroy, Deutsch, Mulvaney & Carpenter, LLP

McGuireWoods LLP

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Miller & Chevalier Chartered

Miller Canfield Paddock and Stone PLC

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Modrall, Sperling, Roehl, Harris & Sisk, PA.

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Murtha Cullina LLP

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Patterson Thuente IP

Paul Hastings LLP

Paul, Weiss, Rifkind, Wharton & Garrison LLP

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Pinheiro Neto Advogados

Polsinelli

Porter Hedges LLP

Porzio, Bromberg & Newman, P.C.

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Reavis Page Jump LLP  
Reed Smith LLP  
Riley Safer Holmes & Cancila LLP  
Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP  
Robins Kaplan LLP  
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Roth Jackson Gibbons Conklin, PLC  
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SBM and Associates Inc  
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Sheppard, Mullin, Richter & Hampton LLP

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Sidley Austin LLP

Simpson Thacher & Bartlett LLP

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Skadden, Arps, Slate, Meagher & Flom LLP and  
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Taft Stettinius & Hollister LLP  
Tarter Krinsky & Drogin LLP  
Tenenbaum Law Group PLLC  
The Law Offices of Susan P. Witkin, PLLC  
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Varnum LLP  
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Venable LLP  
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Vinson & Elkins LLP  
Wachtell, Lipton, Rosen & Katz  
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