
IN THE

Supreme Court of the United States

STUDENTS FOR FAIR ADMISSIONS, INC.,
Petitioner,

v.

PRESIDENT AND FELLOWS OF HARVARD COLLEGE,
Respondent.

*On Writ of Certiorari to the
United States Court of Appeals for the First Circuit*

**MOTION FOR AMICI CURIAE 25 HARVARD STUDENT AND ALUMNI
ORGANIZATIONS FOR DIVIDED ARGUMENT AND AN ENLARGEMENT
OF ORAL ARGUMENT TIME**

Amici curiae 25 Harvard student and alumni organizations (“Amici Organizations”)¹—which are comprised of more than 18,000 Asian American, Black,

¹ Amici Organizations include Coalition for a Diverse Harvard, Association of Black Harvard Women, First Generation Harvard Alumni, Fuerza Latina of Harvard, Harvard Asian American Alumni Alliance, Harvard Asian American Brotherhood, Harvard Black Alumni Society, Harvard Islamic Society, Harvard Japan Society, Harvard Korean Association, Harvard Latino Alumni Alliance, Harvard Minority Association of Pre-Medical Students, Harvard Phillips Brooks House Association, Harvard Progressive Jewish Alumni, Harvard South Asian Association, Harvard University Muslim Alumni, Harvard Vietnamese Association, Harvard-Radcliffe Asian American Association, Harvard-Radcliffe Asian American Women’s Association, Harvard-Radcliffe Black Students Association, Harvard-Radcliffe Chinese Students Association, Kuumba Singers of Harvard College, Native American Alumni of Harvard University, Natives at Harvard College, and Task Force for Asian American Progressive Advocacy and Studies at Harvard College. See Mot. to

Latinx,² Native American, and white Harvard students and alumni—respectfully move for leave to participate in oral argument in support of Respondent, that the time allotted to each side be enlarged by 10 minutes, and that Amici Organizations be granted 10 minutes of oral argument time. Alternatively, Amici Organizations respectfully move to be granted up to 10 minutes of Respondent’s oral argument time. Respondent takes no position on this motion. Petitioner opposes this motion.

I. Amici Organizations’ Participation Is Necessary for a Complete and Plenary Presentation of the Issues Since Amici Organizations’ Substantial Interests Are Not Otherwise Represented Before the Court.

Amici Organizations will be directly impacted by the Court’s resolution of the questions presented in this case, which concern whether Harvard may continue to consider race, as one of hundreds of factors, in admissions. The very existence of some Amici Organizations hangs in the balance. Should Petitioner prevail, many Amici Organizations and their sub-groups would suffer such a sharp decline in their membership ranks that they either would cease to exist or would be so weakened that they could no longer fulfill their missions. Because collaboration across Amici Organizations is essential, even Amici Organizations whose membership ranks are not decimated would no longer be able to promote cross-racial understanding as effectively. *See, e.g.*, JA938–40 (Ho). With some Amici

Participate as Amici Curiae, *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* (“SFFA v. Harvard”), No. 1:14-cv-14176 (D. Mass. 2018), ECF No. 455 (describing 21 amici); Mot. of Additional Harvard Student & Alumni Organizations to Participate as Amici Curiae, *SFFA v. Harvard*, No. 1:14-cv-14176 (D. Mass. 2018), ECF No. 503 (describing four amici).

² The gender-neutral term “Latinx” is used herein to refer collectively to Latinos, Latinas, and non-binary persons of Latin American background.

Organizations extinct, and others seriously diminished, the Amici Organizations collectively would no longer have the capacity to effectively provide support to students of color—jeopardizing the health and safety of the very students who, individually and collectively via Amici Organizations, provide the Harvard community with the educational benefits of diversity. Br. of Amici Organizations 21–22, 28–30.

Furthermore, Amici Organizations’ members have a direct and substantial interest in rebutting harmful, divisive stereotypes advanced or implied by Petitioner and its amici, including that Black and Latinx students are unqualified and Asian American students are a monolithic model minority whose interests do not align with their Black, Latinx, and Native American peers. Amici Organizations have a unique capacity to present this Court with the perspectives of a multiracial cohort of students whose lives have been enhanced by the educational benefits of diversity and who would be harmed by the denial of equal educational opportunities and racial isolation that would result if Petitioner prevails. Despite the existential threat this case presents to Amici Organizations and the acute harm this case may inflict on the thousands of current Harvard students who count themselves among Amici Organizations’ ranks, none of the Parties before the Court represent their interests.

II. This Court Should Have the Full Benefit of Amici Organizations’ Vast Institutional Knowledge, Just as the District Court and First Circuit Did.

Not only are Amici Organizations the only entities seeking to weigh in on behalf of current Harvard students (let alone thousands of current Harvard students)

who support Harvard's limited consideration of race in pursuit of the educational benefits of diversity, but they are also uniquely well-positioned to assist the Court. Amici Organizations include many longstanding organizations, some of whom have served the Harvard community for more than a century. *See, e.g.*, Decl. of Jesper Ke (Phillips Brooks House Association) at 1, *SFFA v. Harvard*, No. 1:14-cv-14176 (D. Mass. 2018), ECF No. 455-11. Amici Organizations' alumni members have graduation years that span at least eight decades. All of Amici Organizations' members personally experienced Harvard's admissions process, and many have served as alumni interviewers. Amici Organizations' first-hand experience with the admissions process and the educational benefits of diversity at Harvard are not otherwise represented by the parties or movant United States.

In recognition of Amici Organizations' stake in the matter and their vast institutional knowledge, the District Court and First Circuit granted Amici Organizations enhanced amici status. *See Order, SFFA v. Harvard*, No. 1:14-cv-14176 (D. Mass. July 31, 2018), ECF No. 465; *Order, SFFA v. Harvard*, No. 1:14-cv-14176 (D. Mass. Aug. 31, 2018), ECF No. 516; *Order, SFFA v. Harvard*, No. 1:14-cv-14176 (D. Mass. Oct. 3, 2018), ECF No. 575; *Order, SFFA v. Harvard*, No. 19-2005 (1st Cir. Aug. 3, 2020), ECF No. 0117623635. In addition to submitting two briefs at the summary judgment stage in the District Court, *see Br. of Amici Organizations in Supp. of Defs.' Mot. For Summ. J., SFFA v. Harvard*, No. 1:14-cv-14176 (D. Mass. 2018), ECF No. 471; *Br. of Amici Organizations in Opp. to SFFA's Mot. For Summ. J., SFFA v. Harvard*, No. 1:14-cv-14176 (D. Mass. 2018), ECF No. 517, Amici

Organizations were granted leave to participate directly in the trial by presenting opening and closing arguments, providing the live testimony of four witnesses, introducing evidence, and submitting post-trial briefing and argument. Amici Organizations also submitted a brief and presented oral argument in the First Circuit.

Both of the courts below found Amici Organizations' contributions helpful. *See, e.g., SFFA v. Harvard*, 397 F. Supp. 3d 126, 194–95 (D. Mass. 2019) (citing Amici Organizations' testimony at trial as supporting the fact that eliminating race-conscious admissions would negatively impact some Asian American applicants); *SFFA v. Harvard*, 980 F.3d 157, 195 & n.33 (1st Cir. 2020) (highlighting Amici Organizations' testimony and noting it supported the court's finding that the "meaningful" reduction in African American students that would result if Harvard were to stop considering race altogether "would make Harvard less attractive and hospitable to minority applicants while limiting all students' opportunities to engage with and learn from students with different backgrounds from their own.").

III. Amici Organizations' Counsel, LDF, Litigated *Brown v. Board of Education* and Is Uniquely Positioned to Assist the Court's Consideration of Matters Concerning Civil Rights and Equal Educational Opportunity.

Counsel for Amici Organizations, the NAACP Legal Defense and Educational Fund, Inc. ("LDF"), has a "corporate reputation for expertness in presenting and arguing the difficult questions of law that frequently arise in civil rights litigation." *NAACP v. Button*, 371 U.S. 415, 422 (1963). Founded in 1940 by Thurgood Marshall, LDF is the nation's first civil and human rights law firm. It is a leading

voice in the decades-long struggle for equal educational opportunities. LDF won the landmark case, *Brown v. Board of Education*, 347 U.S. 483 (1954), and has litigated dozens of other educational equity cases throughout the country, both as the parties' counsel and as amicus curiae. See, e.g., *Ass'n for Educ. Fairness v. Montgomery Cnty. Bd. of Educ.*, No. 8:20-CV-02540-PX, 2022 WL 3019762 (D. Md. July 29, 2022); *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, No. 22-1280, 2022 WL 986994 (4th Cir. Mar. 31, 2022); *Arnold v. Barbers Hill Indep. Sch. Dist.*, 479 F. Supp. 3d 511 (S.D. Tex. 2020); *Christa McAuliffe Intermediate Sch. PTO v. De Blasio*, 364 F. Supp. 3d 253 (S.D.N.Y. 2019); *Stout v. Jefferson Cnty. Bd. of Educ.*, 882 F.3d 988 (11th Cir. 2018); *Schuette v. Coal. to Defend Affirmative Action*, 572 U.S. 291 (2014); *Thomas v. Sch. Bd. St. Martin Par.*, 756 F.3d 380 (5th Cir. 2014); *Parents Involved in Comm. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007); *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Sheff v. O'Neill*, 678 A.2d 1267 (1996); *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978); *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).

Indeed, Petitioner urges an interpretation of *Brown v. Board of Education* that would compel decisionmakers to willfully ignore ongoing racial inequality. As the architects of the *Brown* litigation, Counsel for Amici Organizations, LDF, is uniquely qualified to assist the Court in answering questions about the true purpose and correct interpretation of that landmark decision.

Moreover, as the lawyers representing students at oral argument in most of the recent cases involving challenges to race-conscious admissions, counsel for Amici Organizations are uniquely qualified to offer a historical perspective and

deep legal knowledge to assist the Court on the important questions in this case. *See SFFA v. Harvard*, 980 F.3d 157 (1st Cir. 2020); *Fisher v. Univ. of Tex.*, 631 F.3d 213, 216 (5th Cir. 2011) (noting argument by LDF on behalf of the Black Student Alliance at the University of Texas at Austin (“BSA”)), *vacated and remanded*, 570 U.S. 297 (2013); Order, *Fisher v. Univ. of Tex.*, No. 09-50822 (5th Cir. July 19, 2010) (granting the unopposed motion of LDF to participate in oral argument on behalf of the BSA), *considered by Fisher v. Univ. of Tex. at Austin*, 758 F.3d 633 (5th Cir. 2014), *aff’d*, 136 S. Ct. 2198 (2016).

Furthermore, while all students would be harmed if Petitioner prevails in arguing that Harvard should be prohibited from considering race in its pursuit of a diverse student body, Black students, who face the steepest barriers to attaining a quality K-12 education, would see the steepest decline in representation among Harvard admittees even under Petitioner’s proposed race-neutral alternatives. Pet. App 219. Indeed, this case may determine the extent to which future generations of Black students have access to selective colleges and universities and, likewise, the economic and other opportunities open to their graduates. Accordingly, it is imperative that the Court have the full benefit of argument from Amici Organizations’ counsel, who have decades of experience representing tens of thousands of Black students and their parents in lawsuits seeking to advance equal educational opportunity. *See, e.g., Ass’n for Educ. Fairness v. Montgomery Cnty. Bd. of Educ.*, No. 8:20-CV-02540-PX, 2022 WL 3019762 (D. Md. July 29, 2022); *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, No. 22-1280, 2022 WL 986994 (4th Cir. Mar.

31, 2022); *Thomas v. Sch. Bd. St. Martin Par.*, 544 F. Supp. 3d 651 (W.D. La. 2021); *Fisher v. Univ. of Texas*, 579 U.S. 365 (2016); *Grutter v. Bollinger*, 539 U.S. 306 (2003). This should not be yet another case in which the Court discusses the fate of Black students without anyone in the room representing their interests.

IV. Divided, Enlarged Oral Argument Time Is Appropriate Given that Amici Organizations Will Assist the Court in Considering the Issues in this Case, Which Is of Great Public Importance.

This Court has previously granted leave to *amici* to participate in oral argument when doing so promises to enhance the Court’s consideration of the issues. *See, e.g., Dalmazzi v. United States*, 138 S. Ct. 576 (2018) (mem.); *Pac. Bell. Tel. Co. v. Linkline Commc’ns, Inc.*, 555 U.S. 438, 447 (2009); *FCC v. NextWave Pers. Commc’ns Inc.*, 537 U.S. 293, 295 (2003); *Alabama v. Shelton*, 535 U.S. 654, 660–61 (2002); *Hohn v. United States*, 524 U.S. 236, 240–41 (1998).

Likewise, the Court has divided argument and enlarged oral argument time where a case involved issues of extraordinary public importance. *See, e.g., Montgomery v. Louisiana*, 136 S. Ct. 6 (2015) (mem.) (enlarging oral argument time and dividing argument); *United States v. Texas*, 136 S. Ct. 1539 (2016) (mem.) (same); *Collins v. Mnuchin*, 141 S. Ct. 810 (2020) (mem.) (same); *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 565 U.S. 1193 (2012) (mem.) (same). *See also Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 1263 (2021) (mem.) (dividing oral argument); *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm’n*, 138 S. Ct. 466 (2017) (mem.) (same). In this case, at the merits stage alone, 93 amicus briefs were filed on behalf of 40 states and territories; 82 corporations; 172 current and former federal and state legislators; more than 35 former military leaders; more than 100 colleges and

universities (including 57 Catholic universities), various religious organizations, more than 40 civil and human rights organizations, more than 1,350 social scientists, professors, historians, economists, astrophysicists, and quantitative statisticians; and various others. As in other cases of great public interest, this Court should also enlarge and divide the oral argument time here.

Given the unique perspective and arguments that the Amici Organizations and LDF bring to this case, Amici Organizations respectfully submit that oral presentation of their views would materially assist this Court. Amici therefore respectfully request that this Court grant them leave to deliver 10 minutes of oral argument in support of Respondents.

Respectfully submitted,

By: /s/ Michaele N. Turnage Young
NAACP LEGAL DEFENSE &
EDUCATIONAL FUND, INC.
Michaele Turnage Young
Counsel of Record
Jin Hee Lee
700 14th Street NW, 6th Floor
Washington, DC 20005
(202) 682-1300
(202) 682-1312 (fax)
mturnageyoung@naacpldf.org
jlee@naacpldf.org

Janai S. Nelson
Director Counsel
Samuel Spital
Rachel M. Kleinman
Ciara A. Sisco
40 Rector Street, 5th Floor
New York, NY 10006

August 3, 2022

Counsel for Amici Organizations