

No. 21-707

---

---

**In the Supreme Court of the United States**

---

STUDENTS FOR FAIR ADMISSIONS, INC.,  
*Petitioner,*

v.

UNIVERSITY OF NORTH CAROLINA, *et al.*,  
*Respondents.*

---

**ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE  
UNITED STATES COURTS OF APPEALS FOR FOURTH CIRCUIT**

---

**MOTION OF RESPONDENT-STUDENTS FOR DIVIDED ARGUMENT  
AND EXPANSION OF ORAL ARGUMENT**

---

Pursuant to Rule 21, Rule 28.3, and Rule 28.4 of this Court, Respondent-Students Cecilia Polanco, *et al.*, move for divided argument and, if necessary, for expansion of oral argument time.

### Background

1. This Court has allotted one-hour of argument time, each side allocated thirty minutes. Respondent-Students request that this Court divide the argument for respondents' side, granting Respondent University of North Carolina-Chapel Hill ("UNC") twenty minutes of argument time and granting Respondent-Students 10 minutes of oral argument in this case. Dividing oral argument will assist this Court in contemplating the questions presented and is warranted in this case because: Respondent-Students intend to argue specific points that UNC likely will not raise but are relevant and necessary; the parties represent separate governmental entities and private parties and have interests that vary; and the issues are of national importance.

2. In 2014, Students for Fair Admissions ("SFFA") filed this case against UNC under the Fourteenth Amendment and Title VI of the Civil Rights Act. SFFA not only challenges UNC's race-conscious admissions policy as violating strict scrutiny but also seeks to overrule *Grutter v. Bollinger*, 539 U.S. 306 (2003), and, in turn, prohibit all universities from considering race as a tip in admissions for individual applicants from underrepresented racial and ethnic groups.

3. Respondent-Students comprise a racially diverse group of persons who applied to, attended, or graduated from UNC and who filed for intervention in this case in 2015. Pet.App.5. Some Respondent-Students are, or were at the time of applying for admission to UNC, residents of North Carolina and others were from applying out of state as nonresidents.

4. UNC opposed the intervention. ECF 51. Following a brief stay of the proceedings based on this Court's consideration of *Fisher v. University of Texas at Austin*, 579

U.S. 365 (2016), the district court granted intervention to Respondent-Students in 2017, authorizing the intervenors to participate in the case in two areas: the effect of UNC's existing, and SFFA's proposed, admissions processes on the critical mass of underrepresented students at the school; and the history of segregation and discrimination at UNC. Pet.App.5. In granting the intervention, the court noted that the Respondent-Students "may significantly contribute to a full development of the legal and factual issues and ensure that all competing legal arguments are presented." Mem. Op. & Order Granting Intervention, ECF 79 at 12. The court further found that the case would have a "direct and significant impact" on their access to UNC. *Id.* at 13.

5. At trial, Respondent-Students presented eight fact witnesses who testified in person, and two experts and several other witnesses by declaration—pursuant to agreement by the parties. The district court cited convincingly to the evidence of Respondent-Students in its decision upholding UNC's race-conscious program. *See, e.g.*, Pet.App.11 n.5 (finding the testimony of Respondent-Students' expert Dr. Cecelski on UNC's history of racial exclusion provided "an important contribution to the Court's understanding of the context of this case"); Pet.App.18 (crediting Respondent-Students' compelling testimony that racial diversity enriches educational experiences); Pet.App.20-21 (crediting Respondent-Students' testimony that UNC has not yet achieved its diversity goals since students of color frequently feel isolated and tokenized due to low representation); Pet.App.61-62 (same); Pet.App.131-32 (crediting Respondent-Students' testimony that socioeconomic status and race are not interchangeable for the purpose of analyzing race-conscious alternatives).

#### Divided Argument

6. Dividing oral argument time here is particularly necessary as Respondent-Students have sought to emphasize certain legal and factual points distinct from UNC that go to the heart of the issues. *See* Stephen M. Shapiro, *et al.*, Supreme Court Practice 777

(10th ed. 2013) (“Having more than one lawyer argue on a side is justifiable . . . when they represent different parties with different interests or positions.”). This is not surprising as UNC students and alumni are directly impacted by the challenged action in different, though complementary, ways than the University.

7. For example, Respondent-Students have briefed the Court in detail on UNC’s unique context embedded with a history of exclusion and discrimination for over 150 years and impacted by lingering present-day effects that continue to affect student recruitment, enrollment, and retention in significant ways that UNC has not emphasized. *Compare* Respondent-Students Br. at 7-9 (discussing in-depth interrelation of history, present-day effects on UNC campus, and student testimony) *to* UNC Br. at 7 (generally noting challenges with recruitment of underrepresented students of color). In fact, Respondent-Students are the party that introduced supporting evidence at trial on these facts through an expert report on the history of discrimination at UNC, as well as related student and alumni testimony reaching back four decades. *See* JA.1672-97; Respondent-Students Br. at 8-9.

8. Respondent-Students are also uniquely situated to counter the arguments of Petitioner and address points related to *stare decisis*, including: the harmful, consequential effects that banning race-conscious admissions would have on student applications for admissions, affinity groups, and campus climate; the real-world benefits of diversity accruing inside and outside the classroom across ethnic and racial backgrounds; and reliance interests at stake from the perspective students and alumni now working post-graduation. *See, e.g.*, Respondent-Students’ Br. §§ II.B-II.D.

9. In a case that directly targets the qualifications of underrepresented students of color at UNC and across the nation, it is especially imperative that the Court hear from students and alumni of color who will be personally and professionally impacted by this Courts’ decision. This includes future plans of Student-Respondents who plan to apply for

admission to graduate schools, as some still intend to do.

10. Moreover, this Court also grants divided oral arguments where there are governmental entities and private parties appealing on the same side. *See e.g., Trump v. Sierra Club*, 141 S.Ct. 1264 (2021) (mem.); *Trump v. New York*, \_\_ S. Ct. \_\_, 2020 WL 6811251 (Nov. 20, 2020) (mem.); *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020); *Fulton v. City of Philadelphia*, 141 S. Ct. 230 (2020) (mem.); *Dep't of Homeland Security v. Regents of the Univ. of California*, 140 S. Ct. 398 (2019) (mem.); *Dep't of Commerce v. New York*, 139 S. Ct. 1543 (2019) (mem.); *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 466 (2017) (mem.).

11. As noted above, Respondent-Students are private parties and because of their position as such, they have articulated varied interests and arguments from UNC as a state higher education institution.

12. This Court also grants divided argument time where issues of national importance were implicated. *See e.g., Brnovich v. Democratic National Committee*, \_\_ S. Ct. \_\_, 2021 WL 231550 (Jan. 25, 2021) (mem.) (Voting Rights Act litigation); *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 565 U.S. 1193 (2012) (mem.) (validity of the Affordable Care Act's insurance mandate). As the parties and numerous *amici* across multiple sectors who have filed briefs in defense of race-conscious admissions in this case and other cases have shown—including military leaders, professional associations, businesses and multiracial civil rights groups—this Court's decision is like few others as to its national significance.

13. The proposed division of argument time will ensure that both respondents have their interests fully represented, and that the Court receives a full understanding of the perspectives and arguments of all respondents.

#### Enlargement of Time

14. The United States has suggested that it intends to seek leave to participate in

oral argument but will seek 10 minutes of Respondents' time and will seek to enlarge the argument by 5 minutes to permit it a total of 15 minutes. Respondent-Students oppose such division but do not oppose enlarging the oral argument time by 15 minutes to permit the United States to do so for the reasons expressed in its motion. The Court may also grant Petitioner an additional 15 minutes.

15. This Court has granted motions for enlarged oral argument time where additional time is needed in order to ensure governmental parties—in this case, the federal government—are fully heard on complex issues of national importance. *See e.g., United States v. Texas*, 136 S. Ct. 1539 (2016) (mem.) (validity of Deferred Action for Parents of Americans and Lawful Permanent Residents program); *Collins v. Mnuchin*, 141 S.Ct. 810 (2020) (mem.) (considering whether the Housing and Economic Recovery Act violates separation of powers).

16. In other matters of significant and varied interests, this Court has granted motions to both divide arguments allowing multiple parties on a side to argue and to enlarge time. *See, e.g., Montgomery v. Louisiana*, 136 S.Ct. 6 (2015) (mem.)

#### Confer with Other Parties

17. Petitioner SFFA takes no position on the divided argument and opposes the enlargement of time.

18. Respondent UNC takes no position on the divided argument and enlargement of time.

### **Conclusion**

For the reasons stated above, Respondent-Students respectfully urge the Court to divide argument as requested and, if appropriate, to enlarge oral argument time to permit the United States time to argue.

Dated: August 1, 2022

CARLENE MCNULTY  
SARAH LAWS  
NORTH CAROLINA  
JUSTICE CENTER  
224 South Dawson  
Street  
Raleigh, NC 27601

REED N. COLFAX  
SOOHYUN CHOI  
GEMMA DONOFRIO  
RELMAN COLFAX PLLC  
1225 19th Street NW,  
Suite 600  
Washington, DC  
20036

/s/ DAVID HINOJOSA  
DAMON HEWITT\*  
JON GREENBAUM  
DAVID HINOJOSA  
*Counsel of Record*  
GENEVIEVE BONADIES  
TORRES  
TAYLOR DUMPSON\*\*  
LAWYERS' COMMITTEE FOR  
CIVIL RIGHTS UNDER LAW  
1500 K Street, NW  
Suite 900  
Washington, DC 20005  
(202) 662-8603  
dhinojosa@  
lawyerscommittee.org

\*Admitted in Pennsylvania  
only. Practice limited to  
matters before federal courts.

\*\*Admitted in New York only.  
Practice limited to matters  
before federal courts.