

No.

In the Supreme Court of the United States

ASSOCIATION FOR EDUCATION FAIRNESS,

Petitioner,

v.

MONTGOMERY COUNTY BOARD OF EDUCATION;
DR. MONIQUE FELDER, INTERIM SUPERINTENDENT,

Respondents.

*On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit*

**APPLICATION TO THE HONORABLE CHIEF
JUSTICE JOHN G. ROBERTS, JR., FOR AN EXTENSION
OF TIME WITHIN WHICH TO FILE A PETITION
FOR A WRIT OF CERTIORARI TO U.S. COURT
OF APPEALS FOR THE FOURTH CIRCUIT**

GLENN E. ROPER
Pacific Legal Foundation
1745 Shea Center Drive, Suite 400
Highlands Ranch, CO 80129

CHRISTOPHER M. KIESER
Counsel of Record
JOSHUA M. THOMPSON
ERIN E. WILCOX
Pacific Legal Foundation
555 Capitol Mall, Suite 1290
Sacramento, CA 95814
916.419.7111
ckieser@pacificlegal.org

Counsel for Petitioner

To the Honorable Chief Justice John G. Roberts, Jr., of the Supreme Court of the United States, Circuit Justice for the Fourth Circuit.

Pursuant to Supreme Court Rule 13.5, Petitioner Association for Education Fairness respectfully requests an extension of time of 60 days to file its Petition for Writ of Certiorari in this Court up to and including July 3, 2026.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Petitioner has no parent corporations and no publicly held corporation holds any stock in the Petitioner.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is the decision of the U.S. Court of Appeals for the Fourth Circuit in *Association for Education Fairness v. Montgomery County Board of Education, et al.*, No. 23-1068, filed February 3, 2026 (attached as Exhibit 1). Petitioner did not seek rehearing. This means a Petition is presently due on May 4, 2026. This application for an extension of time is filed more than ten days prior to that date.

JURISDICTION

This case arises under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983. It involves a challenge to the criteria for admission to selective public middle school programs, which Petitioner Association for Education Fairness alleges were implemented to limit the enrollment of Asian-Americans students. This Court has jurisdiction over a timely filed petition for writ of certiorari in this case pursuant to 28 U.S.C. § 1254.

REASONS FOR GRANTING EXTENSION OF TIME

Good cause exists for the requested extension. Petitioner's counsel requires extra time for the preparation of a thorough and persuasive petition for a writ of certiorari. Counsel of record Christopher M. Kieser will be counsel of record in a forthcoming petition for a writ of certiorari in *Coalition for Fairness in SoHo & NoHo, Inc. v. City of New York*, __ N.E.3d __, 2026 WL 88133 (N.Y. Jan. 13, 2026), which is due on April 13, 2026. Considering counsel's work on that petition and other workload commitments, a 60-day extension will aid in the preparation of the issues to this Court.

CONCLUSION

For the foregoing reasons, Petitioner requests that the Court grant an extension of 60 days, up to and including July 3, 2026, within which to file a Petition for Writ of Certiorari.

DATED: April 1, 2026.

Respectfully submitted,



CHRISTOPHER M. KIESER

Counsel of Record

Pacific Legal Foundation

555 Capitol Mall, Suite 1290

Sacramento, CA 95814

916.419.7111

ckieser@pacificlegal.org

Counsel for Petitioner

CERTIFICATE OF SERVICE

A copy of this application was served via email and U.S. Mail to counsel listed below in accordance with Supreme Court Rules 22.2 and 29.3:

Steven F. Barley
Hogan Lovells US LLP
Harbor East
100 International Drive, Suite 2000
Baltimore, MD 21202
410.659.2700
steve.barley@hoganlovells.com

Jo-Ann Tamila Sagar
Hogan Lovells US LLP
Columbia Square
555 13th Street, NW
Washington, DC 20004-1109
202.637.5600
jo-ann.sagar@hoganlovells.com

Counsel for Respondents

DATED: April 1, 2026.

Respectfully submitted,



CHRISTOPHER M. KIESER

Counsel of Record

Pacific Legal Foundation
555 Capitol Mall, Suite 1290
Sacramento, CA 95814
916.419.7111
ckieser@pacificlegal.org

Exhibit 1

UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-1068

ASSOCIATION FOR EDUCATION FAIRNESS,

Plaintiff - Appellant,

v.

MONTGOMERY COUNTY BOARD OF EDUCATION; DR. MONIQUE
FELDER, Interim Superintendent,

Defendants - Appellees,

and

ASIAN AMERICAN YOUTH LEADERSHIP EMPOWERMENT AND
DEVELOPMENT; CASA, INC.; MONTGOMERY COUNTY BRANCH OF THE
NAACP; IDENTITY, INC.; MONTGOMERY COUNTY PROGRESSIVE ASIAN
AMERICAN NETWORK,

Amici Supporting Appellees.

Appeal from the United States District Court for the District of Maryland, at Greenbelt.
Paula Xinis, District Judge. (8:20-cv-02540-PX)

Submitted: October 31, 2025

Decided: February 3, 2026

Before RICHARDSON and HEYTENS, Circuit Judges, and FLOYD, Senior Circuit
Judge.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Joshua P. Thompson, Christopher M. Kieser, Erin E. Wilcox, Sacramento, California, Glenn E. Roper, PACIFIC LEGAL FOUNDATION, Highlands Ranch, Colorado, for Appellant. Jo-Ann Tamila Sagar, Nathaniel A.G. Zelinsky, Washington, D.C., Steven F. Barley, HOGAN LOVELLS US LLP, Baltimore, Maryland, for Appellees.

Leslie E. John, Travis J. Watson, Philadelphia, Pennsylvania, Maraya N. Pratt, Baltimore, Maryland, Steven L. Becton II, BALLARD SPAHR LLP, Wilmington, Delaware; Niyati Shah, Shalaka Phadnis, ASIAN AMERICANS ADVANCING JUSTICE-AAJC, Washington, D.C.; Francisca D. Fajana, LATINOJUSTICE PRLDEF, New York, New York; Michael N. Turnage Young, Jin Hee Lee, Michael Skocpol, Washington, D.C., Allison Scharfstein, NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC., New York, New York, for Amici Supporting Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

The Association for Education Fairness (AFEF) brought an amended complaint against the Montgomery County Board of Education and its superintendent (collectively, the Board) under 42 U.S.C. §§ 1981, 1983, claiming that the Board’s then-new admissions policy for selecting students for magnet middle schools unconstitutionally discriminated against Asian American students, in violation of the Equal Protection Clause of the Fourteenth Amendment. The Board moved under Fed. R. Civ. P. 12(b)(6) to dismiss the amended complaint, and the district court granted its motion. The court concluded that the amended complaint failed as a matter of law because it did “not aver plausibly that the” challenged policy “disparately impacts Asian American students.” *Ass’n for Educ. Fairness v. Montgomery Cnty. Bd. of Educ.*, 617 F. Supp. 3d 358, 368 (D. Md. 2022). The court also concluded that the amended complaint contained “no facts [that] give rise to the inference that the” challenged policy was implemented with discriminatory intent. *Id.* Following the district court’s dismissal of the amended complaint, AFEF moved under Fed. R. Civ. P. 60(b)(2) for relief from the dismissal judgment. The district court denied this motion, and AFEF appeals both of the district court’s orders.

We review de novo the district court’s Fed. R. Civ. P. 12(b)(6) dismissal of AFEF’s amended complaint, *Guerrero v. Ollie’s Bargain Outlet, Inc.*, 115 F.4th 349, 353 (4th Cir. 2024), and we review for abuse of discretion the district court’s ruling denying the Rule 60(b)(2) motion, *Aikens v. Ingram*, 652 F.3d 496, 501 (4th Cir. 2011) (en banc).

Upon review of the record and the briefs filed by the parties and the amici, we discern no reversible error in the district court’s rulings. As AFEF concedes, the amended

complaint does not plausibly allege that the challenged policy disparately impacts Asian American students under the applicable standards for assessing disparate impact set forth in *Coal. for TJ vs. Fairfax Cnty. Sch. Bd.*, 68 F.4th 864, 879-81 (4th Cir. 2023). AFEF suggests that *Coal. for TJ* was wrongly decided on the merits of this issue. But, as AFEF concedes, *Coal. for TJ* binds this panel. See *Warfaa v. Ali*, 811 F.3d 653, 661 (4th Cir. 2016). “[E]ven if we agreed [with AFEF], we ‘cannot overrule a decision issued by another panel.’” *United States v. Green*, 67 F.4th 657, 670 (4th Cir. 2023) (quoting *McMellon v. United States*, 387 F.3d 329, 332 (4th Cir. 2004) (en banc)). Under binding precedent, AFEF’s equal protection claim lacks an “essential element,” *Coal. for TJ*, 68 F.4th at 882, and we therefore conclude no reversible error is present in the district court’s Rule 12(b)(6) dismissal ruling.

Turning to the district court’s ruling denying AFEF’s Rule 60(b)(2) motion,^{*} AFEF argues that the district court abused its discretion because, under the “proper legal standard” for disparate impact, the evidence appended to its motion demonstrated that Asian American students were adversely affected by the challenged policy. AFEF, however, has not developed this argument or presented it in accordance with Fed. R. App. P. 28(a)(8)(A). We therefore conclude AFEF has waived appellate review of the Rule

^{*} Rule 60(b)(2) permits a district court to relieve a party from a final judgment or order on account of “newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under [Fed. R. Civ. P.] 59(b).” Fed. R. Civ. P. 60(b)(2).

60(b)(2) denial ruling. *See Misjuns v. City of Lynchburg*, 139 F.4th 378, 386 n.* (4th Cir. 2025); *United States v. Miller*, 41 F.4th 302, 313 (4th Cir. 2022).

Accordingly, we affirm the district court's orders. *Ass'n for Educ. Fairness v. Montgomery Cnty. Bd. of Educ.*, No. 8:20-cv-02540-PX (D. Md. July 29 & Dec. 16, 2022); *Ass'n for Educ. Fairness*, 617 F. Supp. 3d at 373. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED