

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS
BOSTON DIVISION**

STUDENTS FOR FAIR ADMISSIONS, INC,

Plaintiff,

v.

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE (HARVARD
CORPORATION),

Defendant.

Civil Action No. 1:14-cv-14176-ADB

MOTION TO PARTICIPATE AS AMICI CURIAE¹

Proposed Amici Curiae Harvard-Radcliffe Black Students Association (“BSA”), Kuumba Singers of Harvard College (“Kuumba”), Fuerza Latina of Harvard (“Fuerza Latina”), Native Americans at Harvard College (“NAHC”), Harvard-Radcliffe Asian American Association (“AAA”), Harvard-Radcliffe Asian American Women’s Association (“AAWA”), Harvard Asian American Brotherhood (“AAB”), Harvard Vietnamese Association (“HVA”), Harvard-Radcliffe Chinese Students Association (“CSA”), Harvard Korean Association (“HKA”), Harvard Japan Society (“HJS”), Harvard South Asian Association (“SAA”), Harvard Islamic Society (“HIS”), Task Force on Asian and Pacific American Studies at Harvard College (“TAPAS”), Harvard

¹ Local counsel for Amici Curiae in this action, the law firm of Sugarman Rogers Barshak & Cohen, P.C. (“Sugarman Rogers”), also represents the defendant, President and Fellows of Harvard College (“Harvard”), in matters wholly unrelated to the legal and factual issues presented by this action. Neither Harvard nor its litigation counsel in this action have provided any financial support for the preparation of Amici Curiae’s motion or authored this motion in whole or in part.

Phillips Brooks House Association (“PBHA”), Harvard Minority Association of Pre-Medical Students (“MAPS”), Coalition for a Diverse Harvard (“Diverse Harvard”), First Generation Harvard Alumni (“FGHA”), Native American Alumni of Harvard University (“NAAHU”), Harvard University Muslim Alumni (“HUMA”), and Harvard Latino Alumni Alliance (“HLAA”) (collectively, “Proposed Amici Organizations”), hereby move for leave of court to participate in this matter. Proposed Amici Organizations represent the special interests of current Harvard student and alumni organizations in support of race-conscious admissions. Proposed Amici Organizations seek the same amici curiae status as the current individual Amici under the Court’s Order. ECF No. 52 at 23 (“Amici Order”).²

Proposed Amici Organizations include the following student and alumni organizations:

Harvard-Radcliffe Black Students Association (“BSA”): Founded during the 1976-77 academic year, the BSA serves as the leadership voice for Black students at Harvard and coordinates and supports many of the student organizations focused on the interests and needs of Harvard’s Black student population, while also promoting interactions with and awareness of issues facing Black populations in the larger Cambridge and Boston communities. As part of its mission, BSA supports members who experience racial isolation in their classes, extracurricular activities, and other informal settings across the campus.

Kuumba Singers of Harvard College (“Kuumba”): Founded in 1970 in response to a campus still reeling from the assassination of Dr. Martin Luther King, Jr., Kuumba is the oldest

² The court ordered that amici curiae current and prospective students may through their counsel: (1) submit a brief or memorandum of law not to exceed 30 pages (exclusive of exhibits) on any dispositive motion in this case; (2) participate in oral argument on any dispositive motion in this case; and (3) submit personal declarations or affidavits in support of their memorandum of law, which may be accorded evidentiary weight if otherwise proper. Amici Order at 23. *See also* ECF No. 244 (granting individual students J.F. and M.A. leave to participate as amici curiae under the same terms).

undergraduate Black student organization at Harvard. Kuumba, named for the Swahili word for “creativity,” seeks to showcase the rich diversity of Black diasporic music and cultural expression and seeks to be a safe space for Black students and a cultural mecca for all interested in celebrating Black creativity and spirituality. Kuumba has a long history of social activism on campus to highlight the voices of Black students and claim their space on campus.

Fuerza Latina of Harvard (“Fuerza Latina”): Fuerza Latina was founded in 1993. The organization is the umbrella organization for all Latinx³ organizations on campus and strives to promote awareness of issues that affect the Latinx community both at Harvard and in the greater Boston area, enhance the presence of Latinx individuals at Harvard University, and provide a nurturing and caring environment for all of Harvard’s Latinx students. Fuerza Latina aims to support Latinx students academically and socially, and to shield them from all forms of institutional, academic, gender, and social discrimination. It aims to protect the interests of Latinx students by encouraging active participation of Latinx students in campus governance, academic departments, student run organizations, and scholastic endeavors.

Native Americans at Harvard College (“NAHC”): Native Americans at Harvard College seeks to provide social, intellectual and cultural activities for both Native students at Harvard and for other interested members of the Harvard community. NAHC recognizes that Native and indigenous students are small in numbers on campus and foster a sense of community among its members. NAHC also educates the Harvard campus about Native issues and debunk popular misconceptions of Natives through activities and events.

³ This Motion uses the gender-neutral term “Latinx” to refer collectively to Latinos, Latinas, and non-binary persons of Latin American background.

Harvard-Radcliffe Asian American Association (“AAA”): AAA was founded in 1976 to unite Asian American students at Harvard and raise greater awareness of Asian American issues through social, cultural, and political events. AAA is dedicated to embracing the shared identity of Harvard’s Asian American student population and promoting greater awareness of Asian American issues and perspectives; providing a forum for Asian Americans at Harvard to voice their opinions and comfortably explore their culture, identity, and individuality; addressing political, economic, and social issues affecting Asian American communities at Harvard as well as at the local and national levels; celebrating achievements of Asian Americans; developing long-lasting partnerships between students, alumni, community activists, and scholars; and inspiring participants to contemplate their roles and responsibilities in forging the future of Asian Americans.

Harvard-Radcliffe Asian American Women’s Association (“AAWA”): AAWA was created in 2005 as an inclusive, welcoming space for those on campus who identify as Asian American women. By generating discussion about and spreading awareness of issues that pertain to the varied, intersectional identities of its members, AAWA seeks to promote the prominence and concerns of Harvard’s female and non-binary Asian Pacific Islander population in a way that is accessible and pertinent to the greater Harvard community.

Harvard Asian American Brotherhood (“AAB”): Founded in 1999, AAB seeks to forge a stronger sense of unity among Asian Americans in their community and to foster solidarity without coercion. By fostering relationships across ethnic lines, AAB seeks to empower both their members and the communities that they serve. AAB seeks to promote intercultural understanding and social activism at Harvard and beyond. The values of AAB stand upon three pillars: Service, Activism, and Brotherhood. Throughout the years, AAB has been a force of collaborative and

positive change in its community, a tradition of which they are proud and hope to carry on for years to come.

Harvard Vietnamese Association (“HVA”): HVA was founded in the early 1990s, serving as an outlet for Vietnamese students to socialize with one another and to learn more about Vietnamese culture. Since then, HVA has continued to promote culture, community, and educational/political awareness at Harvard. It has become a voice on campus for Vietnamese and Vietnamese Americans and maintains a strong dedication to the needs of the greater Boston and Vietnamese community.

Harvard-Radcliffe Chinese Students Association (“CSA”): Founded in 1969, CSA is one of the largest and most active student organizations at Harvard. As a home to Harvard’s Chinese and Chinese American community, CSA serves as a forum for social, cultural, and educational/political interaction among students of all backgrounds. CSA hosts nearly 80 events each year, including general meetings, speaker series on culture and politics, study breaks, holiday festivals, dim sum runs to Chinatown, parties, and more. As an advocate for its community, CSA believes that any potential discrimination against Asian Americans must be corrected. At the same time, CSA also stands in solidarity with its fellow students of color in defending race conscious admissions. CSA believes that race is an important part of their identity and that racial diversity has greatly benefited the Harvard community.

Harvard Korean Association (“HKA”): HKA was founded in 1998 as the umbrella organization for the merging of smaller Korean organizations. HKA’s central mission is to promote awareness about social, political, and cultural issues regarding Korea. Dedicated to serve the greater community at Harvard, HKA provides a space for open discussions and mentorship

and support for any its members. HKA strives to make meaningful relationships between its members, alumni, and the community at large.

Harvard Japan Society (“HJS”): HJS seeks to spread Japanese cultural awareness throughout the Harvard community, provide Harvard students more opportunities to engage with other Japanese students, be an intermediary contact for Japan-related opportunities and Harvard students, provide support for students seeking postgraduate career opportunities in Japan, provide a platform to discuss critical issues on Japan, and solidify relationships with other Japanese communities and organizations within and outside of Harvard.

Harvard South Asian Association (“SAA”): Founded in 1986, the Harvard South Asian Association was created to meet the political, cultural, academic, and social needs of students who express interest in the region of South Asia and the South Asian diaspora. South Asia includes, but is not limited to, the nations of Bangladesh, Bhutan, India, the Maldives, Myanmar, Nepal, Pakistan, and Sri Lanka. SAA’s primary purpose is to serve as a space for South Asian students and beyond to learn, cultivate, and celebrate a culture rich with history and a thriving future.

Harvard Islamic Society (“HIS”): HIS was founded in 1956 to serve as an organization that provides a space for Muslim students to interact and support one another, as well as learn about Islam and Islamic values. Since then, HIS has been an organization that has also taken up a political side, where they have advocated for issues that are against Islamic values as well as affect members of the Harvard and the Muslim community worldwide.

Task Force on Asian and Pacific American Studies at Harvard College (“TAPAS”): TAPAS was founded in 2016 as a student organization dedicated to establishing a robust ethnic studies curriculum at Harvard. To date, our central mission remains the same, although we have also begun to address other issues relating to Asian American advocacy. Over the past couple of

years, we have coordinated meetings with key administrators at Harvard and organized events related to ethnic studies for students on campus. In 2017, TAPAS released a petition to the Harvard administration that garnered thousands of signatures from students, student groups, and faculty members.

Harvard Phillips Brooks House Association (“PBHA”): PBHA is a community-based, 501(c)(3) non-profit public service organization that is run by Harvard undergraduates. Founded in 1904, PBHA is Harvard University’s largest student-run organization, and its programming is nationally recognized. Though affiliated with Harvard, PBHA is independent. For more than a century, PBHA has worked with community partners to provide services and advocate for structural change in the greater Boston area where 1,500 PBHA volunteers (predominantly Harvard undergraduates) participate in more than 80 programs to serve 10,000 low-income members of Asian, Black, Latinx, and other communities. PBHA’s programs include advocacy, adult education, youth tutoring and mentoring, housing, and summer enrichment. PBHA’s alumni include former U.S. Secretary of Education John King, Jr., former Massachusetts Governor Deval Patrick, philanthropist and pediatrician Priscilla Chan, as well as a former U.S. president, vice president, associate justice of the Supreme Court, and founder of the American Civil Liberties Union.

Harvard Minority Association of Pre-Medical Students (“MAPS”): MAPS is committed to providing an inclusive environment for minority pre-medical students in which members are provided with the tools, opportunities, and resources needed to succeed. Because minorities are underrepresented in medicine, MAPS seeks to educate students about the career, educational, and networking opportunities available to them in the medical field. MAPS works to

provide a space in which the diverse backgrounds and experiences of members can be appreciated, embraced, and valued.

Coalition for a Diverse Harvard (“Diverse Harvard”): Diverse Harvard is a group of over 1,000 Harvard alumni and students of diverse racial and ethnic backgrounds, including approximately 250 Asian American members. Diverse Harvard was launched in 2016 by Harvard and Radcliffe alumni to take a stand against a largely anti-affirmative action slate of candidates for Harvard’s Board of Overseers, the University’s second-highest governing body. Its mission statement is: “Harvard and Radcliffe alumni and students fighting for diversity, equity and inclusion at the University and in higher education at large.” Diverse Harvard believes that assembling a diverse student body and creating an environment where all students can thrive is central to Harvard’s role as a global standard-bearer in education and its mission of creating successful citizens and leaders in a diverse nation and world.

First Generation Harvard Alumni (“FGHA”): Founded in 2012, FGHA is a group of Harvard alumni who are the first members of their families to attend college. Members come from a wide variety of racial, ethnic, and socioeconomic backgrounds and are comprised of individuals who have overcome significant economic and educational barriers to achieve academic success. They began their journeys as everyday Americans, often from immigrant families and/or the working class. FGHA’s mission is to make Harvard a better place for current first-generation students. They achieve this through an alumni mentoring program that helps approximately 100 first-year students each year successfully transition to campus life, advocacy in coordination with the First-Generation Student Union to encourage Harvard to better address the needs of first-generation students, and the provision of career support and networking opportunities.

Native American Alumni of Harvard University (“NAAHU”): NAAHU was created in 2007 to maintain, expand, and promote a network of Harvard Native American, Alaska Native, and Native Hawaiian alumni; to develop a sense of community among alumni, faculty, staff and students; to encourage alumni involvement in University affairs that affect Native American, Alaska Native, and Native Hawaiian communities within the University; to increase alumni participation with and investment in undergraduate and graduate Native American, Alaska Native, and Native Hawaiian student communities; and to assist the University in recruitment and retention of Native American, Alaska Native, and Native Hawaiian candidates for undergraduate and graduate programs, as well as faculty and administrative positions.

Harvard University Muslim Alumni (“HUMA”): HUMA was founded in 2004 with the mission of connecting Harvard Muslim alumni and faculty and supporting Islam and Muslim students at Harvard. HUMA works to accomplish this mission through four pillars: (1) supporting Muslim students at Harvard by providing programming and services and acting as an advocate on their behalf, (2) hosting alumni networking opportunities, (3) increasing resources on campus for the dissemination of knowledge about Islam, and (4) increasing access to Harvard for Muslim students. HUMA has a close relationship with the Harvard Islamic Society, an undergraduate group whose members often join HUMA upon graduation. American Muslims are a multiracial community that is majority minority. Similar proportions of American Muslims are Black, Arab, or South Asian, with a fast-growing Latino population. This multifaceted identity means that religion and race are deeply intertwined for HUMA's constituent community, and HUMA takes keen interest in issues that affect minority racial communities.

Harvard Latino Alumni Alliance (“HLAA”): The mission of the HLAA is to develop a network and sense of community among current and future Harvard alumni who self-identify as

Latino and reside or work in the United States; to increase Latino representation throughout the University; and to encourage Latino alumni involvement in University alumni activities and affairs.

Proposed Amici Organizations have specific interests that are distinct from the interests of the current parties and amici. Proposed Amici Organizations are affinity groups whose organizational mission is to support historically underrepresented and/or disadvantaged students who face particular challenges at Harvard because of their identities or personal backgrounds. Many of the Proposed Amici Organizations exist to improve the recruitment, retention, and quality of life of underrepresented and/or disadvantaged student populations on campus by providing their members with resources to navigate campus life and opportunities to build connections with others who share similar experiences. Others were formed specifically because of their interest in working collectively to fight for diversity and equity at Harvard.

Proposed Amici Organizations have a direct and substantial interest in the continued consideration of race in Harvard's admissions process, as part of a larger need to address the challenges—and, at times, hostility—that underrepresented and/or disadvantaged students experience after they are admitted. Proposed Amici Organizations devote significant time and resources toward fostering a supportive and inclusive environment for their members and for all students.

Moreover, Proposed Amici Organizations have an interest that is distinct from Harvard. Proposed Amici Organizations engage in advocacy that directly challenges Harvard to adopt new policies and programs to actively support underrepresented and/or disadvantaged students beyond its current efforts. Because Proposed Amici Organizations believe that Harvard does not fully

address the needs of current students, Proposed Amici Organizations are compelled to provide support services to address the otherwise unmet needs of their members.

The interests of Proposed Amici Organizations further differ from those of Harvard because of their view that Harvard's admissions policy does not do *enough* to ensure diversity and to admit underrepresented minorities. Despite using a holistic, whole-person admissions model, Harvard still gives tremendous weight to standardized test scores. Proposed Amici Organizations argue that such test scores are tainted by racial bias, and underpredict the potential of many talented and qualified students of color. Further, Proposed Amici Organizations argue that Harvard must take additional steps to counter bias—whether implicit or explicit—not only in test scores, but in other factors affecting the admissions decision, such as interviews, teacher and counselor recommendations, and stereotypical views of student applicants. Harvard itself is unlikely to raise similar concerns in the context of this case, in which its primary objective must be to defend its current admissions process.

Proposed Amici Organizations' interests differ from current amici as well because Proposed Amici Organizations are institutionally affected by any decrease in the diversity of Harvard's student body. Proposed Amici Organizations exist—many for decades—independent of the everchanging student body at Harvard, and intend to provide support to underrepresented and/or marginalized Harvard students pursuant to their organizational missions for generations to come. A decrease in their membership, resulting from the elimination of race-conscious admissions, would not only detrimentally affect their members, but also create additional burdens for Proposed Amici Organizations as they are compelled to provide even more support in what would become an even more hostile student climate. For some Proposed Amici Organizations, their very existence may also be at risk from any substantial decline in membership. Each Proposed

Amici Organization would likewise be harmed from a decline in membership in other Proposed Amici Organizations because cross-racial collaboration and learning would be more difficult to achieve.

Proposed Amici Organizations are further compelled to become involved in this action due to signals from the United States of an intention to support Plaintiff Students for Fair Admissions, Inc. (“SFFA”) and oppose race-conscious admissions. The United States indicated its “substantial interest” in this case and its intention to file a statement of interest on the schedule the Court has set for amicus filings. *See* U.S. Notice of Interest in Public Access to Summ. J. Briefing and Materials (ECF No. 395). On July 3, 2018, the U.S. Department of Justice also rescinded 24 guidance documents, including seven that expressed the United States’ prior support for the voluntary use of race to achieve diversity in education. *See* Press Release 18-883, Dep’t of Justice, Office of Public Affairs, Attorney General Jeff Sessions Rescinds 24 Guidance Documents, July 3, 2018, <https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-rescinds-24-guidance-documents>. This demonstrates a likelihood that the United States will take a position that is directly adverse to the interests of Proposed Amici Organizations. Given that the United States will place its substantial institutional weight behind the argument to end race-conscious admissions practices, it is especially urgent for Proposed Amici Organizations to seek amicus status at this time. Proposed Amici Organizations believe that it is imperative for this Court to hear the views of myriad student and alumni organizations that would be institutionally harmed by the United States’ anticipated position in a manner different from Harvard College or individual students.

While no rule governs the participation of *amicus curiae* in a trial court action, federal district courts “have inherent authority” to appoint amici, *Boston Gas Co. v. Century Indem. Co.*, No. 02–12062–RWZ, 2006 WL 1738312, at *1 n.1 (D. Mass. June 21, 2006), and “a court is

usually delighted to hear additional arguments from able amici that will help the court toward right answers” *Mass. Food Ass’n v. Mass. Alcoholic Beverages Control Comm’n*, 197 F.3d 560, 567 (1st Cir. 1999). Participation as *amicus curiae* is commonly granted “when there is an issue of general public interest, the *amicus* provides supplemental assistance to existing counsel, or the *amicus* insures a complete and plenary presentation of difficult issues so that the court may reach a proper decision.” *All. of Auto. Mfrs. v. Gwadowsky*, 297 F. Supp. 2d 305, 307 (D. Me. 2003) (granting a party permission to act as *amicus curiae* “plus”) (citation and internal quotation marks omitted).

Proposed Amici Organizations are uniquely positioned to inform the court about how the relief sought by SFFA will have damaging repercussions on their organizations and members. The evidence presented by Harvard at summary judgment suggests that eliminating the consideration of race in admissions “would reduce the population of students who self-identify as African-American, Hispanic, or ‘Other’ . . . by nearly 50%.” ECF No. 419, Ex. 36 (Dr. Card’s Report) (relative to Class of 2019, African-American students would decrease from 14% to 6%, and Hispanic students would decrease from 14% to 9%). Furthermore, a race-blind admissions policy would prevent Native Americans and members of certain Asian American/Pacific Islander subgroups, who often face challenges comparable to their Black and Latinx counterparts, from being considered as a specific group at risk of racial isolation within the Harvard community.

Proposed Amici Organizations are deeply concerned that decreasing the presence of Black and Latinx students, as well as potentially other underrepresented and/or disadvantaged students, on campus will negatively impact their organizations. SFFA’s request seeks to threaten the existence of many of the Proposed Amici Organizations, as such a severe reduction in their membership will impact their organizations’ capacity to function and provide programming and

support to their members. At a minimum, it will increase the already existing challenges that their members face at Harvard, thereby creating greater burdens for their respective organizations. SFFA's proposed remedy has the potential to exacerbate the isolation experienced by their members, their ability to organize effectively, and the services that they must provide.

Proposed Amici Organizations are additionally concerned that the elimination of race consciousness in Harvard's admissions policy will significantly degrade the quality of Harvard's educational experience by preventing students from interacting with—and learning from—a wide panoply of people with varied backgrounds and experiences. Exposure to diverse perspectives and opinions is a crucial part of a Harvard education, and student members will be ill-prepared for success beyond Harvard without it.

Moreover, Proposed Amici Organizations have a collective interest in—and commitment to—combating bias, dispelling stereotypes, enhancing mutual respect, and fostering interactions between students that go beyond tokenism and firmly believe that the admission of a diverse array of students is crucial to these efforts. In contrast, a non-diverse educational environment would not be welcoming to—or comfortable for—all students who identify as members of underrepresented and/or disadvantaged groups, not just the Black and Latinx students for whom admissions outcomes will likely be most severely affected. Proposed Amici Organizations are further alarmed by the SFFA's inaccurate portrayal of various racial and ethnic groups having conflicting interests with respect to race-conscious admissions when, in fact, the Proposed Amici Organizations unequivocally believe, in solidarity, that race consciousness is necessary to ensure a more diverse, inclusive, and successful student body at Harvard from which all students benefit.

Proposed Amici Organizations' participation in this action will not delay the Court's schedule, but will provide the Court with greater insight into the perspectives and experiences of

their members on questions critical to this case. *See* Amici Order at 21 (“The role of an amicus curiae, meaning friend of the court, is to assist the court in cases of general public interest by making suggestions to the court, by providing supplementary assistance to existing counsel, and by insuring a complete and plenary presentation of difficult issues so that the court may reach a proper decision.”) (citation and internal quotation marks omitted), *aff’d*, 807 F.3d 472 (1st Cir. 2015). Proposed Amici Organizations, many of whom have been a part of the Harvard community for several decades, have an institutional interest in fostering diversity and inclusion not only for current Harvard students, but also for future Harvard students for generations to come.

WHEREFORE, the Proposed Amici Organizations respectfully request that the Court grant them leave to participate as amici curiae in accordance with its Amici Order. ECF No. 52 at 23.

Dated: July 30, 2018

Respectfully submitted,

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**Pro Hac Vice Admission Pending*

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

I hereby certify that counsel for the above-listed amici curiae conferred with counsel for the defendant, President and Fellows of Harvard College, on July 27, 2018, and with counsel for the plaintiff, Students for Fair Admissions, Inc., on July 29, 2018. Both parties assent to the Proposed Amici Organizations' participation in this action as amicus curiae. The plaintiff, however, indicated that it opposes Proposed Amici Organizations' accompanying submission of declarations from certain of its members.

/s/ Kenneth N. Thayer
Kenneth N. Thayer

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of July, 2018, a copy of the above and foregoing MOTION TO PARTICIPATE AS AMICI CURIAE was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the court's electronic filing system.

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