

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT COURT 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-DJC

MOTION TO PARTICIPATE AS AMICI CURIAE

Movants and Proposed Student *Amici Curiae* (“Proposed *Amici*”), J.F. and M.A., hereby move for leave of court to participate in this matter as *amici curiae* alongside the current *amici curiae* (“Current *Amici*”), who are a group of current and prospective students of Harvard to whom the Court has granted leave to participate in this action as *amici*.¹ Order at 23, June 15, 2015, ECF No. 52. Movants seek to have the same *amici curiae* status as the Current *Amici* under the Court’s Order and to work in unison with the Current *Amici* to advance the special interests of current and prospective students of Harvard. *Id.*

In support of this motion, and as grounds thereof, the Proposed *Amici* would respectfully show the Court the following:

1. Proposed *Amici* include:

¹ The Court specifically granted Current *Amici* leave to participate as follows: (1) *amici curiae* may, through their counsel, submit a brief or memorandum of law not to exceed 30 pages, exclusive of exhibits, on any dispositive motion in this case; (2) *amici curiae* may, through their counsel, participate in oral argument on any dispositive motion in this case; and (3) *amici curiae* may submit personal declarations or affidavits in support of their memorandum of law, which may be accorded evidentiary weight if otherwise proper. Order at 23.

- a. J.F., who is an Asian American high school student who has applied for admission to Harvard College for the 2017-18 school year. *See Ex. 1.* J.F. would be the only Asian American prospective student of the *amici curiae* and can speak directly to Plaintiff Student for Fair Admissions (“SFFA”) claim that Asian American applicants are harmed by Harvard’s race-conscious holistic admissions policy.
- b. M.A., who is half Pacific Islander, one-quarter black, and one-quarter white, is a sophomore in high school, and intends to apply for admission to Harvard College for the 2019-20 school year. *See Ex. 2.* J.D. would be the only Pacific Islander prospective student of the *amici curiae* and thus would contribute to and enhance the unique position of the *amici curiae*.

2. Movants seek to join the Current *Amici* to advance the special interests that the Current *Amici* have in this action, as recognized by the Court in granting them *amici* status. Movants will contribute to and enhance the unique position of the Current *Amici* to inform the court of interests other than those represented by the parties; to expound that one of the many justifications for considering race and ethnicity in college admissions is to remedy the adverse impact that certain admissions practices have on the diversity profile of the admitted class, including “legacy” applicants, Early Action, and reliance on the SAT; and to focus the Court’s attention on the broader implications of various possible rulings. In addition, as Asian Americans and Pacific Islanders, Movants are uniquely positioned to address SFFA’s claims that Asian Americans are harmed by Harvard’s race-conscious holistic admissions policy.

3. Movants will be represented by Asian Americans Advancing Justice – Los Angeles. Counsel for the Proposed *Amici* and Current *Amici* will coordinate and advance a unified, comprehensive presentation of the student *amici curiae*’s special interests to the Court.

4. 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.’” *Sierra Club v. Wagner*, 581 F.Supp.2d 246, 250 n.1 (D.N.H. 2008) (quoting *Newark Branch, N.A.A.C.P. v. Town of Harrison, N.J.*, 940 F.2d 792, 808 (3d Cir. 1991)).

5. While no rule of court governs the participation of *amici curiae* in a trial court action, case law establishes that such participation lies within the sound discretion of the District Court. *Strasser v. Dorley*, 432 F.2d 567, 569 (1st Cir. 1970). While courts in this circuit have had no occasion to enumerate the factors that a District Court should consider in weighing the proffered assistance of a friend of the court, it is well-established that such participation should be permitted where prospective *amici* “provide helpful analysis of the law, they have a special interest in the subject matter of the suit, or existing counsel is in need of assistance.” *Tafas v. Dudas*, 511 F.Supp.2d 652, 659 (E.D. Va. 2007) (quoting *Bryant v. Better Business Bureau*, 923 F.Supp. 720, 727 (D.Md. 1996)). Given the Movants’ unique perspective on Asian American and Pacific Islander admissions to Harvard, which is a central issue in this case, Movants respectfully request that this Court exercise its discretion to allow them to join the Current *Amici* as friends of the court.

6. The Proposed *Amici* will provide information that is both useful and critical to the Court in resolution of this case. Courts have deemed *amicus* participation useful when, for example, a party has a special interest in or is particularly familiar with the issues in a case, a party has expertise in a particular area of law, and a party offers a different approach to resolving a particular issue.

7. This Motion is timely and will not prejudice the parties. The parties are currently in discovery, and the Court did not grant *amici curiae* leave to propound discovery, participate in

depositions, obtain copies of documents requested in discovery, or otherwise participate in discovery in this case. Order at 23. Proposed *Amici*'s participation in this action will not delay the Court's schedule but will provide the Court with greater insight into current and prospective students' special interests in the subject matter of the suit.

WHEREFORE, the Proposed *Amici* respectfully request that the Court grant them leave to participate as *amici curiae* in this matter under the same *amici* status as the Current *Amici*

DATED: December 12, 2016

Respectfully Submitted,

/s/ Nicole K. Ochi

Nicole K. Ochi, Cal. Bar # 268678

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ATTORNEY FOR PROPOSED *AMICI CURIAE*

Certificate of Conference

In accordance with Local Rule 7.1(a), I hereby certify that I conferred with counsel for Plaintiff and counsel for Defendant.

/s/ Matthew Cregor
Matthew Cregor

Certificate of Service

In accordance with Local Rule 5.2(b), I hereby certify that this document filed through the ECF system on December 12, 2016 will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ Lawrence E. Cullen
Lawrence E. Cullen