



AMERICAN ASSOCIATION FOR ACCESS, EQUITY AND DIVERSITY FILES SUPREME COURT AMICUS BRIEF IN CASE AGAINST HARVARD AND THE UNIVERSITY OF NORTH CAROLINA

Organization of Equal Opportunity and Diversity Professionals is Joined by Three Institutions/Organizations in Supporting the Universities' Diversity Admissions Policies

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Washington, DC – August 2, 2022. The American Association for Access, Equity and Diversity (AAAED), a national not-for-profit association of equal opportunity, diversity and affirmative action professionals, filed an *amicus curiae* brief before the U.S. Supreme Court in support of the race-conscious admissions programs of Harvard University and the University of North Carolina.¹ Joining AAAED as *amici* on the brief are the Fund for Leadership, Equity, Access and Diversity (LEAD Fund), the New School, and the National Industry Liaison Group (NILG).

Founded in 1974 as the American Association for Affirmative Action, AAAED is the longest-serving organization of Equal Opportunity Professionals. AAAED provides professional training to members, enabling them to be more successful and productive in their careers as equal opportunity, compliance and diversity practitioners. AAAED also promotes the understanding and advocacy of affirmative action and other equal opportunity laws to enhance the tenets of access, inclusion and equality in employment, economic and educational opportunities.

Carol R. Ashley, Esq., of Counsel at Jackson Lewis PC and a member of the counsel team working pro bono on the brief, stressed the importance of racial diversity. She stated, “Providing an academic experience that exposes students to diverse views and perspectives, including those based in students’ experiences based on their race or ethnicity, remains a key facet of postsecondary institutions’ missions. Likewise, corporate America has championed the economic benefits associated with hiring a workforce educated in diverse, including racially diverse, environments.”

The Fund for Leadership, Equity, Access and Diversity (LEAD Fund) was established to provide thought leadership in promoting inclusive organizations and institutions through research and education on issues related to diversity, social responsibility, human and civil rights. On why the Fund joined the

¹ *Students for Fair Admissions, Inc. v. President and Fellows of Harvard and Student for Fair Admissions, Inc. v. University of North Carolina, et al. Nos. 20-1199 & 21-707. These cases were deconsolidated on June 22, 2022 and will be heard separately.*

brief, Dr. Christopher Metzler, Chair of the LEAD Fund Board, stated: “The Lead Fund realizes the importance of Affirmative Action and Diversity in America. Colleges and universities benefit greatly from critical thinking among a diverse student body. Harvard's and UNC’s holistic, race-conscious admissions policies create an environment from which the world gains conscious citizens and leaders.”

The New School is a private research university in New York City founded in 1919 as The New School for Social Research with an original mission dedicated to academic freedom and intellectual inquiry and a home for progressive thinkers. Since then, the school has grown to house five divisions within the university, including the Parsons School of Design, the Eugene Lang College of Liberal Arts, the College of Performing Arts, The New School for Social Research, and the Schools of Public Engagement. “Exposure to diverse perspectives ensures that students will approach their coursework with a recognition that their life views aren’t the only defining ones and with an understanding that inclusive practice matters. Furthermore, we must strive for equitable access to academic opportunities for all of our students,” said Renée T. White, The New School’s Provost and Executive Vice President for Academic Affairs. “As a university founded on democratic principles and oriented to social justice and creating positive change, we are guided by our academic mission and institutional character to ensure we educate students of all backgrounds,” she added.

The National Industry Liaison Group (NILG) is a non-profit organization formed in 1992 for the main purposes of improving communications between the U.S. Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP) and Industry Liaison Groups (ILGs); and enhancing the quality and overall effectiveness of Industry Liaison Groups. Anthony Kaylin, Chair of the NILG, explained why the NILG joined the brief: “For the NILG employers, it is important to have a diverse pipeline of qualified applicants and employees who have a broad understanding of and commitment to bringing diverse opinion, thought and leadership to the organization. The access to higher educational institutions for diverse students who otherwise wouldn’t have that opportunity is an important part of employers’ pipelines.”

Highlights of the Brief:

In the brief, AAAED *et al.* argue that diversity in higher education admissions should remain a compelling interest under the Constitution. As part of a holistic process in which the students are evaluated as individuals, race should continue to be one of many permissible factors because America is not free from discrimination and institutions of higher education have a “unique and critical role” in eliminating discrimination and its harmful effects on society. The educational benefits of student body diversity are even more compelling today in our politically and socially divided climate than when *Grutter* was decided in 2003. Amici also urge the Court not to substitute its judgement for that of the universities, but to offer a framework within which the academic community can achieve its goals in a matter that is consistent with the Court’s “strict scrutiny” standard of review.

As important, amici urge the Court to adhere to its tradition of *stare decisis*, *i.e.*, respecting past precedents. In doing so, there should be no reason to overturn *Grutter v. Bollinger* (2003) and subsequent decisions in which the Court upheld the notion that diversity is a compelling interest under the U.S. Constitution.² *Grutter* also fully addressed how race could be used as a factor in higher

² In *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978) the Court also enunciated that diversity is a compelling interest in the context of a university’s admissions program.

education admissions. Applying the *Grutter* analysis, *amici* assert that the Harvard and UNC admissions policies and practices should be upheld.

The brief underscores the numerous studies that show sizable reductions in the number of disadvantaged students attending public colleges in states including California, where race-conscious admissions were prohibited, resulting in a marked diminution of students of color. “The unanimous finding has been that the representation of minorities has significantly decreased in the wake of the enactments, and that attempts to enhance diversity by other means have not succeeded.”

The brief also points out that educational disparities at the K-12 levels persist, contributing to the underrepresentation of disadvantaged students of color at the collegiate level. Moreover, race-blind admissions methods including standardized testing, are not race neutral, but instead have a significant adverse impact on African American and Hispanic students. Lastly, the brief explains that socioeconomic status (SES) is not a substitute for race-conscious admissions policies. “As a matter of demographics, the number of non-minority low SES students exceeds the number of disadvantaged students of color and would easily minimize the diversity goals of the institution.”

The brief concludes by citing Justice Blackmun in the *Bakke* decision: “I suspect that it would be impossible to arrange an affirmative-action program in a racially neutral way and have it successful. To ask that this be so is to demand the impossible. In order to get beyond racism, we must first take account of race. There is no other way.”

To view AAAED’s *Amicus Curiae* Brief, click here:

<https://files.constantcontact.com/ebf58109001/80358180-1668-4086-9b49-e2d9c7b837e7.pdf>

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