

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

<hr/> Abigail Noel Fisher and Rachel Multer)	
Michalewicz)	
Plaintiffs-Appellants,)	
)	
v.)	No. 09-50822
)	
University of Texas at Austin, et al.,)	
Defendants-Appellees.)	
)	
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**UNOPPOSED MOTION FOR AMICI CURIAE TO PARTICIPATE AT THE
AUGUST 3, 2010 ORAL ARGUMENT**

Pursuant to Federal Rule of Appellate Procedure 29(g), *Amici Curiae* the Black Student Alliance at the University of Texas at Austin (BSA) and the NAACP Legal Defense and Educational Fund, Inc. (LDF) move this Court for permission to allow their counsel to participate at the upcoming August 3, 2010 oral argument in the above-captioned case. The Defendants-Appellees have agreed to share five minutes of their twenty minute argument with counsel for *Amici*. Granting this motion therefore would not require the Court to enlarge the overall time for argument. *Amici* have also conferred with counsel for Plaintiffs-Appellants who do not oppose this motion.

This appeal is an attempt by Plaintiffs-Appellants to relitigate the principle of constitutional law settled in *Grutter v. Bollinger*, 539 U.S. 306 (2003), that colleges and universities can adopt narrowly-tailored, race-conscious admissions

policies in order to obtain the substantial educational benefits of a critical mass of diverse students. *Amici* seek leave to participate in oral argument to represent the interests of those students whose experiences at the University of Texas at Austin (UT Austin) have been meaningfully enhanced by the campus and classroom diversity that result from the University's race-conscious admissions policy. Given that Plaintiffs-Appellants will provide the Court with the perspective of applicants who claim that they were denied admission as a result of UT Austin's admissions policy, *Amici* believe the Court would benefit measurably from hearing the student perspective on the policy's significant benefits.

Amicus BSA has a strong interest in preserving UT Austin's efforts to promote diversity and address the extreme racial isolation that BSA members and other under-represented minority students experienced during the period between 1997 and 2004 when the University utilized exclusively race-neutral admissions policies. *Amicus* LDF also has a substantial stake in ensuring that UT Austin, as Texas's flagship public university, provides a pathway to leadership in an increasingly diverse state and nation that is "visibly open to talented and qualified individuals of every race and ethnicity." *Grutter*, 539 U.S. at 332. For over six decades, LDF has worked to dismantle racial segregation and ensure equal educational opportunities at the nation's colleges and universities, including through litigation in this Court and the Supreme Court regarding the policies of UT

Austin. *See Sweatt v. Painter*, 339 U.S. 629 (1950); *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996).

Participation by counsel for *Amici* at oral argument is likely to be helpful to the Court in elaborating on the distinctive perspectives set out in their brief.¹ *Amici* would use oral argument to elaborate on the necessity of race-conscious measures to alleviate the racial isolation experienced by students of color at UT Austin, to create a student body that is broadly diverse, and “to cultivate a set of leaders [for Texas and the nation] with legitimacy in the eyes of the citizenry.” *Grutter*, 539 U.S. at 322.

Further, although not a party, *Amici* have been involved in this case since its inception. The district court’s opinion upholding UT Austin’s admissions policy reflects in substantial part arguments made in *Amici*’s district court brief. *See Fisher v. Univ. of Texas at Austin*, 645 F. Supp. 2d 587, 590 (W.D. Tex. 2009); Br. of *Amici* BSA *et al.*, Apr. 12, 2009.

In light of the unique perspective and arguments that the BSA and LDF bring to this appeal, *Amici* respectfully submit that oral presentation of their views would materially assist this Court. *Amici* therefore request that this Court grant them permission to participate in oral argument in support of Defendants-

¹ This Court has recently permitted other private parties to participate as *Amici Curiae* in oral argument. *See, e.g., Morgan v. Swanson*, No. 09-40373, 2010 WL 2598393 (5th Cir. June 30, 2010); *Croft v. Perry*, 562 F.3d 735 (5th Cir. 2009).

Appellees, using five minutes of the twenty minutes of argument time allotted to Defendants-Appellees.

Respectfully submitted,

By: /s/ Joshua Civin

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CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2010, I electronically filed the foregoing motion with the Clerk of the Court for the U.S. Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. I also certify that the following counsel for the parties were served by electronic mail:

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