UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
BOSTON DIVISION

BOSTON PARENT COALITION FOR ACADEMIC EXCELLENCE CORP., Plaintiff, v. BOSTON SCHOOL COMMITTEE and MARY SKIPPER, in her official capacity as Superintendent of the Boston Public Schools, Defendants.	Civil Action No. 1:25-cv-12015-WGY

[PROPOSED] REPLY TO OPPOSITION TO MOTION TO INTERVENE

There is no dispute that proposed intervenors Boston Education Justice Alliance (BEJA) and Asian Pacific Islanders Civic Action Network (APIs CAN) ("Proposed Intervenors") have strong interests at stake in this challenge to Boston's Exam Schools admissions policies, that an unfavorable resolution of the case would impair those interests, and that their motion to intervene is timely. *See* Pl.'s Opp. to Mots. for Leave to Intervene as Defs. ("MTI Opp."), ECF No. 49 at 2. Proposed Intervenors also satisfy the fourth criterion for intervention as of right since Defendants do not adequately represent their interests. Moreover, they readily meet the requirements for permissive intervention, as this Court recognized four years ago when it allowed APIs CAN and other similarly situated organizations to intervene in Plaintiff's first challenge to the Exam Schools admissions process. The Court should once again grant intervention here.

I. Defendants Do Not Adequately Represent Proposed Intervenors' Interests

Plaintiff argues that "so long as the proposed intervenor and the government defendant seek the same 'ultimate goal' in the litigation," the Court must presume adequacy of

representation. MTI Opp. at 3 (quoting *T-Mobile Northeast LLC v. Town of Barnstable*, 969 F.3d 33, 39 (1st Cir. 2020)). From this premise, Plaintiff argues that because Proposed Intervenors "seek the same result" as Defendants, they have "no right to intervene." MTI Opp. at 1. This argument reflects a misunderstanding of the law. When considering whether a defendant adequately represents the interests of a proposed intervenor, courts take a "more discriminating" approach than merely asking whether "they both want the case dismissed." *Driftless Area Land Conservancy v. Huebsch*, 969 F.3d 742, 748 (7th Cir. 2020). "Needless to say, a prospective intervenor must intervene on one side of the 'v.' or the other and will have the same general goal as the party on that side. If that's all it takes to defeat intervention, then intervention as of right will almost always fail." *Id.* As Proposed Intervenors explain in their opening brief, Mem. in Support of BEJA and APIs CAN's Mot. to Intervene ("MTI Mem."), ECF No. 30 at 14, the presumption of adequacy only applies when the government defendant's "interests appear to be aligned with those of the proposed intervenor." *Maine v. Dir., U.S. Fish & Wildlife Serv.*, 262 F.3d 13, 19 (1st Cir. 2001). Even with aligned interests, a proposed intervenor rebuts the presumption by providing "an adequate explanation as to why what is assumed – here adequate representation – is not so," which must be examined "in keeping with a commonsense view of the overall litigation." *Id*. (citation modified). Here, no presumption applies because Proposed Intervenors do *not* have the same interests as Defendants. To the extent the Court may find that the presumption applies, Proposed Intervenors have provided a sufficient explanation to rebut the presumption.

Defendants' interests are not "aligned" with those of Proposed Intervenors. While both Defendants and Proposed Intervenors ultimately seek a decision that affirms the constitutionality of the current process, Proposed Intervenors have a specific, unwavering interest in advocating for equal educational opportunity on behalf of historically underserved Black, Latinx, and Asian

students, and thus seek a decision that preserves their ability to advocate for and benefit from further reforms to the admissions process that would equalize access to the Exam Schools. In contrast, Defendants' objective is to defeat allegations of racial discrimination with respect to the specific challenged admissions policies. *In re Sierra Club*, 945 F.2d 776 (4th Cir. 1991) is illustrative. There, while Sierra Club and the state agency both argued that the challenged regulation was constitutional, Sierra Club represented "a subset of citizens" who opposed permits for hazardous waste facilities and were thus not adequately represented by the agency who necessarily represented the interests of all citizens, including those with views diametrically opposed to those represented by Sierra Club. *Id.* at 780. Similarly here, Proposed Intervenors' objective is to ensure equal access for the students they represent, while Defendants must represent all Boston Public Schools families, including those with contrary goals such as Plaintiff's members, and can (and have) changed the admissions policy to make it less equitable. One of the core organizational activities of Proposed Intervenors—advancing equal educational opportunity—would be frustrated by a ruling that not only invalidates the specific policy at issue here but also precludes Defendants from adopting the types of policies for which Proposed Intervenors advocate. *See, e.g.*, BEJA Decl., ECF 30-1, at ¶¶ 14-21; APIs CAN Decl., ECF 30-2, at ¶¶ 5-8. This is not only a difference in tactics or litigation strategy; it is a different objective altogether. Plaintiff's reliance on *Maine*, MTI Opp. at 3-5, therefore misses the mark. *Cf. Maine*, 262 F.3d at 20 (explaining that proposed intervenor and defendant had "no dissimilar interests . . . only a tactical disagreement").

Far from a "manufacture[d] . . . conflict of interest," MTI Opp. at 5, Defendants' adoption of the most recent Exam Schools admissions policy over BEJA's objections provides direct evidence of these divergent objectives. *See* MTI Mem. at 16-17 (explaining Committee's vote on

November 5, 2025 to adopt the Fifth Tier System). Proposed Intervenors would argue that this policy change, allocating 20 percent of seats to students citywide without regard for socioeconomic background, is a less objective method of identifying qualified students because it unfairly favors applicants with greater resources. Mem. in Support of BEJA and APIs CAN's Proposed Mot. to Dismiss ("MTD Mem."), ECF No. 29-2, at 17-18 (explaining why experts recommend using socioeconomic norms to identify exceptional students). In fact, Defendants' resurrection of what Proposed Intervenors would argue are barriers to equal opportunity provides Plaintiff some of the relief it seeks, *see* Compl. ¶ 120 (urging Defendants to "return[] to a [c]itywide merit-based admissions process") and reflects a potential willingness to settle or moot this litigation on terms at odds with the interests of Proposed Intervenors. *Cf. Conservation L. Found. of New England, Inc. v. Mosbacher*, 966 F.2d 39, 44 (1st Cir. 1992) (finding inadequacy of representation when state agency entered into consent decree providing nearly all the relief sought by plaintiff and observing that this approach, though not improper, "may well appear unsatisfactory" to proposed intervenors).[1] Defendants' adoption of the Fifth Tier System during the pendency of the litigation at the very least indicates that a conflict of interest can be "reasonably predicted." *Daggett* v. *Comm'n on Governmental Ethics & Election Pracs*., 172 F.3d 104, 112 (1st Cir. 1999).

Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 308 F.R.D. 39 (D. Mass. 2015) ("*Harvard*"), does not compel a different result. While the court denied intervention in that case, it did so on the basis that proposed intervenors lacked significant interests in the litigation, and because the required showing of inadequacy varies depending on the strength of the interests at stake, "minor, and very speculative divergences in interests" were not sufficiently compelling as to warrant intervention as of right. *Id.* at 51 (citing *Daggett*, 172 F.3d at 113); *see*

[1] BEJA and APIs CAN cited *Conservation Law Foundation* in their opening brief, *see* MTI Mem. at 9, 16, but Plaintiff failed to address this case in its Opposition.

also infra pp. 6-7 (analyzing *Harvard* under permissive intervention test). Here, there is no dispute that Proposed Intervenors have significant interests in the litigation, *see* MTI Opp. at 2, and Proposed Intervenors have identified specific examples of divergent objectives.

Finally, if the Court were to adopt Plaintiff's argument that the challenged policy should be subjected to strict scrutiny,[2] Defendants are unlikely to develop evidence and raise arguments about the discriminatory history of the Exam Schools admissions processes[3]—i.e., to argue that the challenged policy is narrowly tailored to a compelling government interest, such as remedying specific instances of past discrimination.[4] *See* MTI Mem. at 18. Proposed Intervenors on the other hand, have a direct interest in developing such evidence. In the very similar *Christa McAuliffe Intermediate School PTO, Inc. v. de Blasio* case—which Plaintiff failed to mention or distinguish in its Opposition—the court found that proposed intervenors overcame the presumption of adequate representation where they (unlike defendants) had incentives to develop evidence of prior racial discrimination by the defendant school system. No. 18-CV-11657, 2020 WL 1432213, at *7 (S.D.N.Y. Mar. 24, 2020); *see also Grutter v. Bollinger*, 188 F.3d 394, 401 (6th Cir. 1999) (granting intervention where the "University [wa]s unlikely to present evidence of past discrimination by the University itself or of the disparate impact of some current admissions criteria"); *Students for Fair Admissions v. Univ. of Tex. at Austin*, 338 F.R.D. 364, 371-72 (W.D. Tex. 2021) (similar). Here again, Plaintiff's reliance on *Maine*, MTI Opp. at 3-5, is misplaced;

[2] Of course, in accordance with binding precedent, the Tier Systems should be subject to rational basis review, *see generally* MTD Mem.

[3] For example, Defendants' trial brief in the earlier challenge to the Exam Schools admissions processes (ECF No. 76, *Boston Parent Coal. for Academic Excellence Corp. v. Sch. Comm. of the City of Boston*, No. 1:21-CV-10330 (D. Mass. Apr. 2, 2021)) did not concede that the Independent School Entrance Exam (ISEE) underpredicted the potential of Black and Latinx students to succeed in the Exam Schools. *See* MTI Mem. at 5-6.

[4] *Christa McAuliffe Intermediate Sch. PTO, Inc. v. de Blasio*, No. 18-CV-11657, 2020 WL 1432213, at *7 (S.D.N.Y. Mar. 24, 2020) (evidence of racial discrimination "would become relevant if the Court found that the [admissions process] should be reviewed under strict scrutiny, as remedying past discrimination can be a compelling government interest.").

unlike in *Maine*, the argument that Proposed Intervenors "wish to present" *does* "depend[] on introduction of evidence that [the defendant] would refuse to present." 262 F.3d at 20. Thus, Proposed Intervenors' interest in presenting such evidence and Defendants' disinclination to do so constitutes "adverse interest in [the] litigation[.]" *McAuliffe*, 2020 WL 1432213 at *7 (citing *Cotter v. Mass. Ass'n of Minority L. Enf't Officers*, 219 F.3d 31, 35-36 (1st Cir. 2000)), and intervention as of right should be granted.

II. Permissive Intervention Should Be Granted

As it did the first time Plaintiff challenged the Exam Schools admissions policies, the Court may decline to rule on whether Proposed Intervenors are entitled to intervene as of right and instead grant permissive intervention. Plaintiff points to *Harvard* in opposing permissive intervention, but this case is more akin to *Students for Fair Admissions Inc. v. Univ. of N.C.*, 319 F.R.D. 490 (M.D.N.C. 2017) ("*UNC*"), where the court granted permissive intervention.

In *Harvard*, the district court declined to grant intervention to proposed intervenors, because as potential applicants, they were unlike the "residents of a public school district [who] would be compelled to follow the district's []assignment policies" who were granted intervention in a similar case. 308 F.R.D. at 47. The *UNC* court—which declined to address intervention as of right because it granted permissive intervention—explicitly distinguished *Harvard*, noting that unlike Harvard College, UNC-Chapel Hill is the state's flagship public university, subject to state funding and regulation, and required to admit over 80% of its incoming freshman class from North Carolina. *UNC*, 319 F.R.D. at 496-97. The court concluded that amicus status would be inadequate for applicant-student intervenors, finding that as residents of North Carolina and in light of North Carolina's history of discrimination and segregation, "the result of the litigation will have a direct and significant impact on North Carolinians' access to UNC-Chapel Hill." *Id.* at 497. For similar

reasons, amicus status is inadequate for Proposed Intervenors here. The Boston Exam Schools are public schools, open only to Boston residents, and Proposed Intervenors represent members of the Black, Latinx, and low-income Asian communities who have historically been denied equal access to the Exam Schools. Given that the outcome of this litigation will undoubtedly have a "direct and significant" impact on Proposed Interevenors' access to their city's flagship public high schools, full party status is appropriate.

Plaintiff's suggestion that Proposed Intervenors' intervention would "unnecessarily complicate the litigation," without benefitting the decision-making process, is incorrect. *See* MTI Opp. at 8. Plaintiff makes these arguments cursorily, without providing any evidence that intervention at this early stage would unduly delay its adjudication or otherwise negatively impact the parties. *See, e.g.*, *Am. Humanist Ass'n v. Md. Nat'l Cap. Park & Plan. Comm'n*, 303 F.R.D. 266, 271 (D. Md. 2014) (granting permissive intervention where plaintiff "[did] not explain how the proceedings would be delayed" and "discovery [had] not yet commenced"). Further, "the intervention of adversarial public interest groups in a lawsuit of this ilk is a predictable and inevitable part of the process." *Animal Prot. Inst. v. Martin*, 241 F.R.D. 66, 70 (D. Me. 2007). And given that this case is still in its earliest stages, steps can be taken to avoid complications, and the participation of proposed intervenors will be subject to oversight by this Court.

Finally, intervention is necessary for the full development of the legal and factual issues, which will benefit the Court's decision-making process. *See supra* pp. 5-6; *see also* MTI Mem. at 18. Furthermore, Proposed Intervenors are represented by counsel who will bring the Court expertise on the very issues in this case. *See, e.g.*, *Boudreaux v. Sch. Bd. of St. Mary Par.*, No. 6:65-CV-11351, 2020 WL 5367088, at *9 (W.D. La. Sept. 8, 2020) (quoting *NAACP v. Button*, 371 U.S. 415, 422 (1963), for the proposition that "LDF has a 'corporate reputation for expertness in

presenting and arguing the difficult questions of law that frequently arise in civil rights litigation'"). Some of the organizations representing Proposed Intervenors here represent the intervenors in *McAuliffe* and interested parties in similar cases, *see, e.g.*, *Sargent v. Sch. Dist. of Phila.*, No. 24-3112 (3rd Cir. 2024); *Ass'n for Educ. Fairness v. Montgomery Cnty. Bd. of Educ.*, No. 23-1068 (4th Cir. 2023); *Coal. for Thomas Jefferson v. Fairfax Cnty. Sch. Bd.*, No. 22-1280 (4th Cir. 2023).

For these reasons, if the Court does not grant intervention as of right, it should grant permissive intervention. Proposed Intervenors maintain their request for a ruling on their Motion to Intervene separate from and regardless of the Court's decision on Defendants' pending Motion to Dismiss. *See* MTI Mem. at 7 (citing *Deveraux v. Geary*, 596 F. Supp. 1481, 1487 (D. Mass. 1984), *aff'd*, 765 F.2d 268 (1st Cir. 1985), in which the court granted motion to intervene despite also granting defendants' motion to dismiss, reasoning that intervenors "may wish to participate in any appellate review" of the dismissal order).

Respectfully Submitted,
/s/Francisca D. Fajana

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CERTIFICATE OF SERVICE

I hereby certify that this document will be sent electronically to the registered participants as identified on the Notice of Electronic Filing on December 15, 2025.

/s/ Francisca D. Fajana
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