

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

BOSTON PARENT COALITION FOR
ACADEMIC EXCELLENCE CORP.,

Plaintiff,

v.

THE SCHOOL COMMITTEE OF THE
CITY OF BOSTON, ALEXANDRA
OLIVER-DAVILA, MICHAEL O'NEIL,
HARDIN COLEMAN, LORNA RIVERA,
JERI ROBINSON, QUOC TRAN, ERNANI
DeARAUJO, AND BRENDA
CASSELLIUS,

Defendants,

and

THE BOSTON BRANCH OF THE NAACP,
GREATER BOSTON LATINO NETWORK,
ASIAN PACIFIC ISLANDER CIVIC
ACTION NETWORK, ASIAN AMERICAN
RESOURCE WORKSHOP, MAIRENY
PIMENTEL, and H.D.,

Intervenors.

C.A. No. 1:21-cv-10330-WGY

**LEAVE TO FILE AMICI CURIAE BRIEF
GRANTED ON MARCH 22, 2021 [Dkt. 56]**

**AMICI CURIAE BRIEF OF MASSACHUSETTS LAW REFORM INSTITUTE,
LATINOJUSTICE PRLDEF, CHILDREN'S LAW CENTER OF MASSACHUSETTS,
ET AL. IN SUPPORT OF DENIAL OF PRELIMINARY INJUNCTION AND
DISMISSAL OF PLAINTIFF'S COMPLAINT**

TABLE OF CONTENTS

Table of Authorities ii

IDENTITY AND INTEREST OF AMICI CURIAE.....1

INTRODUCTION1

ARGUMENT2

I. THE ADMISSIONS PLAN DOES NOT USE BOSTON ZIP CODES AS A PROXY FOR RACE.....2

 A. Plaintiff Paints a Narrow Picture of Boston Based on Twentieth Century Stereotypes.....3

 B. Boston is Racially and Socioeconomically Diverse.7

 C. The Admissions Plan’s Allocation of Seats Directly Correlates with School-Age Population Size.9

II. THE ADMISSIONS PLAN WILL IMPROVE STUDENT OUTCOMES, PROMOTE SOCIOECONOMIC DIVERSITY, ADDRESS THE SCHOOL COMMITTEE’S HISTORICAL DISCRIMINATION, AND SURVIVE ANY LEVEL OF CONSTITUTIONAL SCRUTINY.11

 A. Strict Scrutiny Does Not Apply.12

 B. The Boston School Committee Has Both Legitimate and Compelling Interests.13

 C. The Admissions Plan is Narrowly Tailored to Achieve the Boston School Committee’s Legitimate and Compelling Interests.19

CONCLUSION.....20

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Anderson ex rel. Dowd v. City of Boston</i> , 375 F.3d 71 (1st Cir. 2004).....	12
<i>Christa McAuliffe Intermediate Sch. PTO, Inc. v. de Blasio</i> , 364 F. Supp. 3d 253 (S.D.N.Y. 2019), <i>aff'd</i> , 788 F. Appx. 85 (2d Cir. 2019).....	12, 13
<i>Doe ex rel. Doe v. Lower Merion Sch. Dist.</i> , 665 F.3d 524 (3d Cir. 2011).....	13
<i>Fisher v. Univ. of Texas at Austin</i> , 631 F.3d 213 (5th Cir. 2011), <i>vacated and remanded</i> , 570 U.S. 297 (2013).....	14
<i>Fisher v. Univ. of Texas at Austin</i> , 136 S. Ct. 2198 (2016).....	19
<i>Morgan v. Hennigan</i> , 379 F. Supp. 410 (D. Mass. 1974).....	18
<i>N.A.A.C.P., Bos. Chapter v. Bos. Hous. Auth.</i> , 723 F. Supp. 1554 (D. Mass. 1989).....	6
<i>Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1</i> , 551 U.S. 701 (2007) (Kennedy, J., concurring in part)	1, 12, 13, 14
<i>Shelley v. Kraemer</i> , 334 U.S. 1 (1948).....	4
<i>Spurlock v. Fox</i> , 716 F.3d 383 (6th Cir. 2013)	17
<i>Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.</i> <i>(Harvard Corp.)</i> , 397 F. Supp. 3d 126 (D. Mass. 2019), <i>aff'd sub nom.</i> <i>Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.</i> , 980 F.3d 157 (1st Cir. 2020), <i>petition for cert. filed</i> , No. 20-1199 (U.S. Mar. 1, 2021).....	13, 19
 Other Authorities	
<i>2021 Most Diverse ZIP Codes in Massachusetts</i> , Niche, https://www.niche.com/places-to-live/search/most-diverse-zip-codes/s/massachusetts/ (last visited Mar. 29, 2021)	9

Anise Vance, *The Still Segregated City*, Boston Indicators (Oct. 20, 2015), <https://www.bostonindicators.org/article-pages/2015/october/the-still-segregated-city>5

Becky Little, *How a New Deal Housing Program Enforced Segregation*, History (Oct. 20, 2020), <https://www.history.com/news/housing-segregation-new-deal-program>5

Boston Public Schools 2019 Dropout Rate Report, Boston Public Schools Office of Data and Accountability, at 6, <https://www.bostonpublicschools.org/cms/lib/MA01906464/Centricity/Domain/238/2019%20BPS%20Annual%20Dropout%20Rate%20Report.pdf> (last visited Mar. 30, 2021)16

Boston Tutoring Services, *Boston Latin Exam Test Prep Packages*, Private Lessons, available at <https://bostonlatinexamprep.com/find-the-best-isee-tutors-in-boston/private-lessons/>20

Catherine Elton, *How Has Boston Gotten Away with Being Segregated for So Long?* Boston Magazine: City Life (Dec. 8, 2020), <https://www.bostonmagazine.com/news/2020/12/08/boston-segregation/>4

Charlotte B. Kahn et al., *Boston’s Education Pipeline: A Report Card*, Boston Indicators, at 28, https://www.tbf.org/~/_media/TBFOrg/Files/Reports/EdReportCard_Final5.pdf (last visited Mar. 29, 2021)20

Dennis Ford Eagan, *The Past, Present and Future of School Desegregation in Massachusetts*, 34 Suffolk L. Rev. 541, 554-55 (2001)18

Erin S. Ingram et al., *Hidden in Plain Sight: Homeless Students in America’s Public Schools* Civic Enterprises and Hart Research Associates https://www.americaspromise.org/sites/default/files/d8/2016-12/HiddeninPlainSightFullReportFINAL_0.pdf (last visited Mar. 30, 2021)17

Historical Shift from Explicit to Implicit Policies Affecting Housing Segregation in Eastern Massachusetts, 1920s-1948: Racially Restrictive Covenants, The Fair Housing Center of Greater Boston, <https://www.bostonfairhousing.org/timeline/1920s1948-Restrictive-Covenants.html> (last visited Mar. 30, 2021)3

Historical Shift from Explicit to Implicit Policies Affecting Housing Segregation in Eastern Massachusetts, 1988 Boston Housing Authority (BHA) Lawsuit, The Fair Housing Center of Greater Boston, <https://www.bostonfairhousing.org/timeline/1988-NAACP-v-BHA.html> (last visited Mar. 30, 2021)6

Kami Rieck, *Anti-Asian discrimination continues to surge amid pandemic*, Daily Hampshire Gazette (Mar. 17, 2021), <https://www.gazettenet.com/Anti-Asian-discrimination-surges-39469193>.....11

Lew Finfer, *How ‘redlining’ dashed dreams, hurt neighborhoods*, Dorchester Reporter (May 29, 2019), <https://www.dotnews.com/columns/2019/how-redlining-dashed-dreams-hurt-neighborhoods>.....4

Lorna Rivera, *Latinos in Greater Boston: Migration, New Communities and the Challenge of Displacement*, in *Changing Faces*, at 50 (May 2019), https://www.bostonindicators.org/-/media/indicators/boston-indicators-reports/report-files/changing-faces-2019/changingfaces_6latinos.pdf?la=en&hash=3D5F05E8E4FB5E53B5BCB0C66DCEA6FEAC9F759E7

Max Larkin, *As Trust Erodes, Boston Will Need a New Test for Exam-School Admissions*, WBUR News (Feb. 5, 2020), <https://www.wbur.org/edify/2020/02/05/boston-exam-school-admissions-test>.....19

Megan Johnson, *Clauses that discriminate against races still exist on some Massachusetts home deeds*, Real Estate by Boston.com (June 23, 2020), <http://realestate.boston.com/buying/2020/06/23/racist-clauses-still-exist-on-some-massachusetts-home-deeds/>3, 4

Neighborhood Profiles, Boston Admissions Planning & Development Agency Research Division (Aug. 2017), <http://www.bostonplans.org/getattachment/7987d9b4-193b-4749-8594-e41f1ae27719>7

Paul Watanabe & Shauna Lo, *Asian Americans in Greater Boston: Building Communities Old and New*, in *Changing Faces of Greater Boston: A Report from the Boston Indicators*, Boston Foundation, UMass Boston, and the UMass Donahue Institute, 22 (May 2019), https://www.bostonindicators.org/-/media/indicators/boston-indicators-reports/report-files/changing-faces-2019/changingfaces_4asian-americans.pdf?la=en&hash=C87B32F14828CFD383F61DC10C12329017A5380F&la=en&hash=C87B32F14828CFD383F61DC10C12329017A5380F.....6, 7

Peter Ciurczak, *The most diverse high school in Massachusetts is . . . , in Boston Research Snapshot* (Boston Indicators) (Feb. 2020) <https://www.bostonindicators.org/article-pages/2020/february/diversity-in-massachusetts-schools>.....11

Poverty in Boston, Boston Redevelopment Authority Research Division (March 2014), <http://www.bostonplans.org/getattachment/f1ecaf8a-d529-40b6-a9bc-8b4419587b86>.....16

Redefining Low-Income: A New Metric for K-12 Education, Massachusetts Department of Elementary and Secondary Education (last updated July 16, 2015), <https://www.doe.mass.edu/infoservices/data/ed.html>11

Richard D. Kahlenberg, *School Integration in Practice: Lessons from Nine Districts*, The Century Foundation (Oct. 14, 2016), <https://tcf.org/content/report/school-integration-practice-lessons-nine-districts/?agreed=1>15, 17

Roslyn Arlin Mickelson, *School Integration and K-12 Outcomes: An Updated Quick Synthesis of the Social Science Evidence (Research Brief)*, The National Coalition on School Diversity (Oct. 2016), <https://www.school-diversity.org/pdf/DiversityResearchBriefNo5.pdf>.....15

Simón Rios, *11 Things to Know About the ‘Changing Faces of Greater Boston,’* WBUR News (May 8, 2019) <https://www.wbur.org/news/2019/05/08/boston-area-demographics-report-takeaways> ’6, 8

Statement of Financial Activity, Boston Latin School Association, July 1, 2018 – June 30, 2019, Boston Latin School, [https://www.bls.org/apps/pages/index.jsp?uREC_ID=203829&type=d&pREC_ID=404402_\(last visited Mar. 30, 2021\)](https://www.bls.org/apps/pages/index.jsp?uREC_ID=203829&type=d&pREC_ID=404402_(last%20visited%20Mar.%2030,%202021)).....17

Stephanie Leydon, *How a Long-Ago Map Created Racial Boundaries that Still Define Boston*, GBH News, (Nov. 12, 2019), <https://www.wgbh.org/news/local-news/2019/11/12/how-a-long-ago-map-created-racial-boundaries-that-still-define-boston>4, 5

The Benefits of Socioeconomically and Racially Integrated Schools and Classrooms, The Century Foundation (Apr. 29, 2019), <https://tcf.org/content/facts/the-benefits-of-socioeconomically-and-racially-integrated-schools-and-classrooms/?agreed=1&session=1>14, 15, 16

The Untold Story of the Zip Code, US Postal Service, Office of Inspector General, (Apr. 1, 2013), <https://www.uspsoig.gov/document/untold-story-zip-code>2

U.S. Department of Health & Human Services, *High School Graduation*, Office of Disease Prevention and Health Promotion, <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/high-school-graduation> (last visited March 30, 2021)16

Unemployment rates and earnings by educational attainment, U.S. Department of Labor, U.S. Bureau of Labor Statistics (last modified Sept. 1, 2020) <https://www.bls.gov/emp/tables/unemployment-earnings-education.htm>.....16

Yawu Miller, *Boston blacks made exodus to Roxbury*, The Bay State Banner (Feb. 9, 2019), <https://www.baystatebanner.com/2018/02/09/boston-blacks-made-exodus-to-roxbury/>.....3

You Can't Live Here: The Enduring Impacts of Restrictive Covenants, National Association of Realtors (Feb. 2018), <https://www.nar.realtor/sites/default/files/documents/2018-February-Fair-Housing-Story.pdf>.....4

IDENTITY AND INTEREST OF AMICI CURIAE

Amici Curiae are community-based non-profit and legal organizations that advance economic, racial, and social justice for low-income persons and communities through advocacy and education. Amici have an interest in supporting the socioeconomic diversity of the Exam Schools. A list of Amici, with descriptions of their qualifications and interest, is in the Addendum.

INTRODUCTION

“Our nation has a moral and ethical obligation to fulfill its historic commitment to creating an integrated society that ensures equal opportunity for all of its children.” *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 797 (2007) (Kennedy, J., concurring in part) [hereinafter *Parents Involved*]. The Boston School Committee’s (“BSC”) admissions plan (the “Admissions Plan”) for the Boston Latin School, Boston Latin Academy, and John D. O’Bryant School of Mathematics and Science (the “Exam Schools”) seeks to do just that. In the process, it seeks to bolster socioeconomic, racial, and geographic diversity in these three elite high schools. As a result, Plaintiff contends that the Admissions Plan unconstitutionally discriminates on the basis of race. No part of the Admissions Plan, however, classifies students on the basis of race. Instead, in light of the COVID-19 pandemic, offers of admission are extended based on students’ GPA and home ZIP code, ranked by median income of households with school-age children, rather than an entrance exam. BSC’s interest in improving access to high-quality education for low-income students speaks to its commitment to transforming the lives of children and to eliminating access and achievement gaps—not to discriminatory animus.

Amici urge this Court to deny Plaintiff’s Motion for Preliminary Injunction and dismiss the Complaint for two reasons. First, the Admissions Plan does not classify students by race through the use of ZIP codes. Despite decades of segregation and discrimination, Boston is a diverse city with shifting residential patterns of racial groups that do not follow ZIP code

boundaries. Second, the Admissions Plan, which affords qualified low-income students from each Boston neighborhood an opportunity to be admitted to Boston's most prestigious high schools, passes constitutional muster. The Admissions Plan survives any level of scrutiny because BSC's interest in improving achievement outcomes; increasing socioeconomic, racial, and geographic diversity; and rectifying decades-long discrimination is not only legitimate, but also compelling.

ARGUMENT

I. THE ADMISSIONS PLAN DOES NOT USE BOSTON ZIP CODES¹ AS A PROXY FOR RACE.

The Admissions Plan does not use ZIP codes to classify students by race, as Plaintiff claims. Rather, the Admissions Plan uses ZIP codes to improve the possibility that the socioeconomic, racial, and geographic diversity of the Exam Schools would be more representative of Boston's student population as a whole. Under the Admissions Plan, BSC will distribute 80% of invitations to the Exam Schools using a combination of students' GPA and home ZIP code, ranked by median income of households with school-age children, without any reference to race.² BSC allocates to each ZIP code a number of seats proportionate to the percentage of school-age children in that ZIP code. Plaintiff argues that this approach equates to using ZIP codes as a proxy for race, Compl. ¶¶ 32, 33, while conveniently ignoring the growing diversity within Boston's ZIP codes and failing to recognize the socioeconomic, racial, and geographic landscape of Boston. As set forth in detail below, in more than half of Boston ZIP codes, the population has transformed from predominantly White to a combination of White, Black, Latino, and Asian. In

¹ The Post Office Department created Zone Improvement Admissions Plan (ZIP) codes in 1963 to improve mail sorting. *The Untold Story of the Zip Code*, US Postal Service, Office of Inspector General, (Apr. 1, 2013), <https://www.uspsoig.gov/document/untold-story-zip-code>.

² The Admissions Plan allots the first 20% of seats to students with the highest GPA citywide.

these ZIP codes, no single racial-ethnic group constitutes as much as 65% of all residents.³ Although BSC was mindful of race in approving the Admissions Plan, given the level of diversity now enjoyed in most neighborhoods, Plaintiff cannot establish that the Admissions Plan uses ZIP codes as a proxy for race.

A. Plaintiff Paints a Narrow Picture of Boston Based on Twentieth Century Stereotypes.

The history of racial segregation caused by discriminatory practices created the stereotypes that Plaintiff is attempting to perpetuate. Although past segregation has presented significant barriers to communities of color and some racially-concentrated communities persist, Boston ZIP codes do not correspond to or demarcate the location of these racially-concentrated communities, but rather encompass diverse racial groups.

Boston's Black population remained at less than 3% during the first half of the twentieth century until Black Americans began migrating from southern states.⁴ Racially discriminatory laws, policies, and practices—such as racially restrictive covenants—affected where the Black community could live upon arrival.⁵ These covenants ran with the land and prohibited buyers from selling to people of color.⁶ Before the Supreme Court struck down these covenants as

³ Amici acknowledge that Native Americans and other races reside within the City of Boston. Plaintiff has limited its arguments to Asians, Blacks, Latinos and Whites, and for the sake of brevity, Amici likewise narrow the scope of this brief to discussing those same racial groups.

⁴ Yawu Miller, *Boston blacks made exodus to Roxbury*, The Bay State Banner (Feb. 9, 2019), <https://www.baystatebanner.com/2018/02/09/boston-blacks-made-exodus-to-roxbury/>.

⁵ Megan Johnson, *Clauses that discriminate against races still exist on some Massachusetts home deeds*, Real Estate by Boston.com (June 23, 2020), <http://realestate.boston.com/buying/2020/06/23/racist-clauses-still-exist-on-some-massachusetts-home-deeds/>.

⁶ *Historical Shift from Explicit to Implicit Policies Affecting Housing Segregation in Eastern Massachusetts, 1920s-1948: Racially Restrictive Covenants*, The Fair Housing Center of Greater Boston, <https://www.bostonfairhousing.org/timeline/1920s1948-Restrictive-Covenants.html> (last visited Mar. 30, 2021).

unconstitutional,⁷ the Federal Housing Administration (“FHA”) encouraged their use.⁸ Such covenants were common in Massachusetts, limiting the movement of Black residents to towns and cities outside of Boston.⁹ The FHA also insured mortgages made by private lenders for new home construction and established new lending practices that made it easier for working and middle-class families to afford homes, resulting in a marked increase in new single-family homes and the rise of suburban America.¹⁰ However, the federal government deliberately withheld these new homeownership opportunities from Black residents. Between 1935 and 1962, FHA-insured loans, worth more than \$695 million in Massachusetts, went almost entirely to White homeowners.¹¹

Additionally, the FHA engaged in “redlining,” the practice of denying home loans and investments in areas deemed “high risk,” which were highlighted red on color-coded maps.¹² The FHA determined a neighborhood’s color-code and desirability mostly by its racial demographics,¹³

⁷ *Shelley v. Kraemer*, 334 U.S. 1, 23 (1948).

⁸ *You Can’t Live Here: The Enduring Impacts of Restrictive Covenants*, National Association of Realtors (Feb. 2018), <https://www.nar.realtor/sites/default/files/documents/2018-February-Fair-Housing-Story.pdf>. In fact, the FHA’s underwriting manual stated: “If a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes.” *Id.*

⁹ See Johnson, *supra* note 5.

¹⁰ See Catherine Elton, *How Has Boston Gotten Away with Being Segregated for So Long?* Boston Magazine: City Life (Dec. 8, 2020), <https://www.bostonmagazine.com/news/2020/12/08/boston-segregation/>

¹¹ *Id.*

¹² *Id.* As Elton explains, “[i]n 1933, the federal Home Owners’ Loan Corporation (HOLC) was established to refinance Depression-era homes in danger of foreclosure. In order to better gauge risk for these mortgages, the HOLC designed a uniform and highly detailed system of neighborhood appraisals in major cities across the nation, breaking them up into small segments, rating them, and color-coding them on a map based on whether appraisers believed they were likely to increase or decrease in value. Among the main criteria for sorting areas into these categories were the race and ethnicity of their inhabitants.” *Id.*

¹³ See *id.*; Stephanie Leydon, *How a Long-Ago Map Created Racial Boundaries that Still Define Boston*, GBH News, (Nov. 12, 2019), <https://www.wgbh.org/news/local-news/2019/11/12/how-a-long-ago-map-created-racial-boundaries-that-still-define-boston>; see also Lew Finfer, *How ‘redlining’ dashed dreams, hurt neighborhoods*, Dorchester Reporter (May 29, 2019), <https://www.dotnews.com/columns/2019/how-redlining-dashed-dreams-hurt-neighborhoods>.

resulting in Black neighborhoods being divested of capital, deemed undesirable, and marked unsafe.¹⁴ For example, all of Roxbury, which by then was predominantly Black, was marked red.¹⁵ The FHA refused to insure developments in these neighborhoods, which stymied Black homeownership, kept White people out of those neighborhoods, and led to significant racial segregation.¹⁶ The FHA's discriminatory practices contributed to the significant wealth gap between White and Black residents of Boston that persists today.

After the passage of the Civil Rights Act of 1968, the U.S. Department of Housing and Urban Development, the FHA's successor, eased its blatantly racist practices.¹⁷ Locally, however, racial discrimination and segregation persisted. A local program intended to address lending disparities by providing low-interest loans to homebuyers of color actually *increased* segregation.¹⁸ The Boston Banks Urban Renewal Group (BBURG), a consortium of banks that agreed to issue mortgages to prospective homebuyers of color, restricted these loans to Dorchester, Mattapan, and Roxbury.¹⁹ The Boston Housing Authority ("BHA") further contributed to segregation in Boston by assigning tenants to housing facilities based on race.²⁰ In the mid-1930s, the BHA was Boston's largest landlord for low-income tenants, controlling about 10% of rental

¹⁴ See Elton, *supra* note 10; Leydon, *supra* note 13.

¹⁵ Leydon, *supra* note 13.

¹⁶ See Elton, *supra* note 10.

¹⁷ Becky Little, *How a New Deal Housing Program Enforced Segregation*, History (Oct. 20, 2020), <https://www.history.com/news/housing-segregation-new-deal-program>.

¹⁸ See Anise Vance, *The Still Segregated City*, Boston Indicators (Oct. 20, 2015), <https://www.bostonindicators.org/article-pages/2015/october/the-still-segregated-city>.

¹⁹ Elton, *supra* note 10; Vance, *supra* note 18.

²⁰ Elton, *supra* note 10.

housing.²¹ In 1988, it only agreed to integrate its White housing developments in a consent decree resulting from a legal challenge to its discriminatory practices.²²

Immigrants of color almost entirely drove the population growth in Greater Boston between 1990-2017.²³ See Ex. A. The population of Chinese immigrants increased with the easing of discriminatory prohibitions, and later non-Chinese, Asian immigrants began migrating to Boston after race-based restrictions were lifted by the 1965 Immigration and Nationality Act.²⁴ Large numbers of immigrants, including refugees, from India, Vietnam, Cambodia, Korea, the Philippines, Japan, and Pakistan resettled in Greater Boston.²⁵ Today, Boston's Asian-American community is ethnically diverse, and educational attainment and socioeconomic status also vary widely. See Ex. B. For example, the median household income for Indian and Chinese Americans is \$120,000 and \$90,000, respectively; the median household income for Cambodian Americans is less than \$60,000.²⁶ Similarly, the Vietnamese-American population, which is 75% of the Asian-American population in Dorchester's 02122 ZIP code,²⁷ has a median household income of

²¹ *Id.*

²² *N.A.A.C.P., Bos. Chapter v. Bos. Hous. Auth.*, 723 F. Supp. 1554, 1556 (D. Mass. 1989); see *Historical Shift from Explicit to Implicit Policies Affecting Housing Segregation in Eastern Massachusetts, 1988 Boston Housing Authority (BHA) Lawsuit*, The Fair Housing Center of Greater Boston, <https://www.bostonfairhousing.org/timeline/1988-NAACP-v-BHA.html> (last visited Mar. 30, 2021).

²³ Simón Rios, *11 Things to Know About the 'Changing Faces of Greater Boston,'* WBUR News (May 8, 2019) <https://www.wbur.org/news/2019/05/08/boston-area-demographics-report-takeaways>.

²⁴ Paul Watanabe & Shauna Lo, *Asian Americans in Greater Boston: Building Communities Old and New*, in *Changing Faces of Greater Boston: A Report from the Boston Indicators*, Boston Foundation, UMass Boston, and the UMass Donahue Institute, 22 (May 2019) [hereinafter *Changing Faces*], https://www.bostonindicators.org/-/media/indicators/boston-indicators-reports/report-files/changing-faces-2019/changingfaces_4asian-americans.pdf?la=en&hash=C87B32F14828CFD383F61DC10C12329017A5380F&la=en&hash=C87B32F14828CFD383F61DC10C12329017A5380F.

²⁵ *Id.*

²⁶ *Id.* at 23.

²⁷ *Id.* at 26.

\$48,407.²⁸ Much of Boston's ethnically diverse Latino community also lives in racially concentrated neighborhoods across ZIP codes, such as neighborhoods of East Boston, Hyde Park, Jamaica Plain, Mission Hill, Roxbury, Dorchester, and Mattapan—substantially overlapping with the Black population in many of these neighborhoods.²⁹ Boston's Latino population is also diverse in terms of both socioeconomic status and educational attainment levels, although a large segment has depressed median household incomes.³⁰ *See Ex. C.* For example, in the 02128 ZIP code in East Boston, where the Latino population is 56.5%, the median household income is only \$40,313. Dkt. 63-1, p. 10; Dkt. 38-65, p. 23.

B. Boston is Racially and Socioeconomically Diverse.

Plaintiff's conjecture that ZIP codes must be a proxy for race fails to account for the dissimilar percentages of ethnic and racial groups within each ZIP code. By Plaintiff's definition, three of the twenty-nine Boston ZIP codes—two in Dorchester, (02125) and (02122), and one in Roxbury (02120)—cannot be used as a proxy for race because there are similar or equal percentages of all racial groups. Dkt. 63-1, p. 10. In another three—02136 (Hyde Park), 02111 (Chinatown), and 02131 (Roslindale)—no single racial group comprises more than 50% of the population. *Id.* In only four ZIP codes does one racial group represent 80-90% of the population—02108 (Beacon Hill), 02113 (North End), 02210 (Seaport), and 02110 (Downtown). *Id.* In each, that dominating racial group is White. *Id.* Boston is far more diverse, therefore, than Plaintiff

²⁸ *Id.* at 28.

²⁹ *Neighborhood Profiles*, Boston Admissions Planning & Development Agency Research Division (Aug. 2017), <http://www.bostonplans.org/getattachment/7987d9b4-193b-4749-8594-e41f1ae27719>.

³⁰ Lorna Rivera, *Latinos in Greater Boston: Migration, New Communities and the Challenge of Displacement*, in *Changing Faces*, at 50 (May 2019), https://www.bostonindicators.org/-/media/indicators/boston-indicators-reports/report-files/changing-faces-2019/changingfaces_6latinos.pdf?la=en&hash=3D5F05E8E4FB5E53B5BCB0C66DCEA6FEAC9F759E.

presents. Undoubtedly, race, poverty, and geography are inextricably linked; past and present racial and socioeconomic discrimination has confined communities of color to low-income sections of neighborhoods. Those sections, however, do not remain stagnant. More important, the racial boundaries that divide Boston's communities of color continue to take shape and change over time and are not confined to ZIP code boundaries.

ZIP codes do, however, correlate with socioeconomic status. In Boston's 02121 ZIP code, for example, the median household income for families with school-age children is only \$28,964, compared to \$138,800 in the 02132 ZIP code, where ten of the fourteen named members of Plaintiff's organization reside. Dkt. 38-65, p. 23. The 02121 ZIP code is 92% Black and Latino, whereas the 02132 ZIP code is 75.9% White. Dkt. 63-1, p. 10. Plaintiff's claim that Boston's ZIP codes are a proxy for race misses the obvious, inseparable link between low-income households and racially concentrated neighborhoods, the varied ethnic diversity within Boston's ZIP codes, and, crucially, the long history of exclusion, segregation, and discrimination that caused socioeconomically and racially intertwined neighborhoods in the first place.

As discussed above, the Black, Asian, and Latino communities have grown in Boston since the 1970s. These growing communities of color still live in racially concentrated neighborhoods within Boston even as some areas that were historically home to communities of color have become whiter in recent years due to gentrification. *See Ex. D.* For example, historically Black and Latino neighborhoods in the South End, Roxbury, Jamaica Plain, and Dorchester became demonstrably whiter between 1990 and 2017.³¹ **Those communities cannot be identified by ZIP code because they are *within and across* most ZIP codes.**

³¹ Rios, *supra* note 23.

Dorchester's 02125 ZIP code, one of the most diverse ZIP codes in the state,³² ranks eleventh of the twenty-nine Boston ZIP Codes in terms of median household income (ranked from lowest median income to highest). Dkt. 38-65, p. 23. The racial and ethnic breakdowns of this ZIP code are: Black (31.6%), White (29.0%) and Latino (23.5%). Dkt. 63-1, p. 10. This ZIP code is projected to gain nineteen additional admissions to the Exam Schools. Dkt. 38-71, p. 5. Given the racial diversity of the ZIP code, these additional seats could go to Black, White, or Latino students, but given its socioeconomic composition, it is highly likely that these students will be from lower-income homes. Similarly, seat gains are projected in East Boston's 02128 ZIP code and Hyde Park's 02136 ZIP code, Dkt. 38-71, p. 5, which are 33.9% and 23.5% White, respectively, Dkt. 63-1, p. 10. These ZIP codes rank sixth and twelfth, respectively, in terms of lowest median household income among the twenty-nine Boston ZIP codes. Dkt. 38-65, p. 23. The seats gained in these ZIP codes are likely to enhance the socioeconomic diversity of the Exam Schools regardless of the admitted students' race.

C. The Admissions Plan's Allocation of Seats Directly Correlates with School-Age Population Size.

Plaintiff claims the neighborhoods that it stereotypes as predominantly Asian and White will "lose" seats because of the Admissions Plan.³³ This assertion again ignores key facts. The number of seats allotted for each ZIP code depends solely on the number of school-aged children within that ZIP code, not race. Plaintiff ignores that the allocation of seats will vary among neighborhoods with similar demographic composition. For example, the populations in East Boston's 02128 and Roxbury's 02120 ZIP codes are each about 33.9% White, Dkt. 63-1, p. 10;

³² 2021 Most Diverse ZIP Codes in Massachusetts, Niche, <https://www.niche.com/places-to-live/search/most-diverse-zip-codes/s/massachusetts/> (last visited Mar. 29, 2021).

³³ Amici acknowledge that invitations are not the possession of any racial group or ZIP code for them to lose or gain.

however, 02128 will receive roughly twenty-four additional seats and 02120 will see a reduction of about two seats, Dkt. 38-71, p. 5. Two ZIP codes in Allston, with almost identical demographics, also have different outcomes. ZIP code 02134, with a population of 25.6% Asian, 4.9% Black, 12.7% Latino, and 52.5% White, Dkt. 63-1, p. 10, loses four seats while 02163, which is 25.3% Asian, 4.9% Black, 9.8% Latino, and 54.7% White, Dkt. 63-1, p. 10, remains stagnant. Dkt. 38-71, p. 5. Differences in seat allocations also occur for Latinos living in the city. Latinos represent 26% of the population in Hyde Park's 02136 ZIP code and 25.1% of the population in Roslindale's 02131 ZIP code. Dkt. 63-1, p. 10. 02136 gains twelve seats whereas 02131 loses twenty-four seats. Dkt. 38-71, p. 5. The same variance occurs when you combine racial groups, which Plaintiff does. Whites and Asians comprise 83% of the population in Beacon Hill/West End's 02114 ZIP code and 82% in South Boston's 02127 ZIP code, Dkt. 63-1, p. 10; however, 02114 will experience a decrease of six seats whereas 02127 will see an increase of seven seats, Dkt. 38-71, p. 5. Thus, any shift in seats is directly related to the population of school-aged children, not race.

Plaintiff engages in reckless stereotyping by deeming ZIP codes Black and Latino or White and Asian regardless of the actual composition of the neighborhood, thereby disregarding the effects of the Admissions Plan on other racial groups. To illustrate, Plaintiff's use of 02132 (West Roxbury) as an example only considers West Roxbury's White and Asian populations. In fact, West Roxbury has a larger Hispanic population (8.3%) than Asian population (7.6%) and a notable Black population (5.7%). Dkt. 63-1, p. 10. Plaintiff ignores the fact that every racial group in that ZIP code will experience the reduction of fifty-seven seats. Dkt. 38-71, p. 5. Additionally, Plaintiff's claim that the Admissions Plan disfavors Asian-American students narrowly focuses on Asian-Americans of Chinese descent. In doing so, Plaintiff ignores both intragroup diversity of Boston's Chinese community and the heterogeneity and socioeconomic diversity of Boston's

Asian American community at large.³⁴ As discussed above, low-income students of all races, including Asian Americans, stand to benefit tremendously from the Admissions Plan.

II. THE ADMISSIONS PLAN WILL IMPROVE STUDENT OUTCOMES, PROMOTE SOCIOECONOMIC DIVERSITY, ADDRESS THE SCHOOL COMMITTEE’S HISTORICAL DISCRIMINATION, AND SURVIVE ANY LEVEL OF CONSTITUTIONAL SCRUTINY.

Low-income students are woefully underrepresented in the Exam Schools. Across Boston Public Schools (“BPS”), 63% of students are considered economically disadvantaged.³⁵ By comparison, economically disadvantaged students make up only 19%, 36%, and 51% of students at Boston Latin School, Boston Latin Academy, and John D. O’Bryant School of Mathematics and Science, respectively.³⁶ As explained above, discriminatory practices have led to the segregation of low-income families, often families of color. Those ZIP codes that predominantly contain the lowest-income neighborhoods are underrepresented at the Exam Schools. To address this lack of socioeconomic diversity, the Admissions Plan invites students based on their GPA, ranked highest to lowest, and their home ZIP code, ranked from lowest to highest median household income for households with school-age children.

³⁴ Recent violent attacks targeting Asian Americans are reminders that they are perceived as insular minorities. See e.g., Kami Rieck, *Anti-Asian discrimination continues to surge amid pandemic*, Daily Hampshire Gazette (Mar. 17, 2021), <https://www.gazettenet.com/Anti-Asian-discrimination-surges-39469193>.

³⁵ *Redefining Low-Income: A New Metric for K-12 Education*, Massachusetts Department of Elementary and Secondary Education (last updated July 16, 2015), <https://www.doe.mass.edu/infoservices/data/ed.html>. DESE defines “economically disadvantaged” students as students who participate “in one or more of the following state-administered programs: the Supplemental Nutrition Assistance Program (SNAP); the Transitional Assistance for Families with Dependent Children (TAFDC); the Department of Children and Families’ (DCF) foster care program; and MassHealth (Medicaid).” *Id.*

³⁶ Peter Ciurczak, *The most diverse high school in Massachusetts is . . .*, in *Boston Research Snapshot* (Boston Indicators), Feb. 2020, <https://www.bostonindicators.org/article-pages/2020/february/diversity-in-massachusetts-schools>.

A. Strict Scrutiny Does Not Apply.

Strict scrutiny is inapplicable here. While race-conscious, the Admissions Plan is not based on discriminatory intent or racial animus but on an intent to create more inclusive schools and address the broader effects of past and present racial and socioeconomic discrimination that have created patterns of racially concentrated communities in Boston. *See Anderson ex rel. Dowd v. City of Boston*, 375 F.3d 71, 87 (1st Cir. 2004) (“The Supreme Court has explained that the motive of increasing minority participation and access is not suspect.”) (citing *City of Richmond v. JA Croson Co.*, 488 U.S. 469, 507 (1989)); *Christa McAuliffe Intermediate Sch. PTO, Inc. v. de Blasio*, 364 F. Supp. 3d 253, 278–79 (S.D.N.Y. 2019), *aff’d*, 788 F. Appx. 85 (2d Cir. 2019) (stating that “the proposition that a facially neutral policy seeking to improve racial diversity necessarily carries with it a discriminatory intent . . . is not the law” and “to equate a ‘desire to eliminate the discriminatory impact’ on some disadvantaged groups with ‘an intent to discriminate against’ other groups ‘could seriously stifle attempts to remedy discrimination.’” (internal quotations and citations omitted)).

Justice Kennedy, in his concurring opinion in *Parents Involved*, contemplated a scenario where, as here, a school board “devise[s] race-conscious measures” to address a lack of diversity “without treating each student in different fashion solely on the basis of a systematic, individual typing by race.” 551 U.S. at 788–89 (2007) (Kennedy, J., concurring in part). He stated:

School boards may pursue the goal of bringing together students of diverse backgrounds and races through other means, including strategic site selection of new schools; ***drawing attendance zones with general recognition of the demographics of neighborhoods***; allocating resources for special programs; recruiting students and faculty in a targeted fashion; and tracking enrollments, performance, and other statistics by race. These mechanisms are race conscious but do not lead to different treatment based on a classification that tells each student he or she is to be defined by race, so ***it is unlikely any of them would demand strict scrutiny to be found permissible***.

Id. at 789 (Kennedy, J., concurring in part) (emphasis added). Amici do not contend that every facially neutral law or policy should be subject to rational basis review simply because it lacks discriminatory intent. In this case, however, the history and context supporting the Admissions Plan justify the application of rational basis review. Indeed, the Admissions Plan closely aligns with the measures that Justice Kennedy found would likely not require strict scrutiny. In any event, regardless of the standard applied, the Admissions Plan passes constitutional muster.³⁷

B. The Boston School Committee Has Both Legitimate and Compelling Interests.

Plaintiff concedes that “students can benefit educationally when the student body of their school is diverse in terms of race, socioeconomic status, national origin, views and other factors.” Dkt. 38, ¶ 69. As this Court recently acknowledged, “[i]t is somewhat axiomatic at this point that diversity of all sorts . . . is an important aspect of education.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll. (Harvard Corp.)*, 397 F. Supp. 3d 126, 133 (D. Mass. 2019), *aff’d sub nom. Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 980 F.3d 157 (1st Cir. 2020), *petition for cert. filed*, No. 20-1199 (U.S. Mar. 1, 2021).

States have a legitimate interest in policies that provide low-income students and students of color, among other things, a “high-quality education” and “better educational outcomes.” *See Christa McAuliffe Intermediate Sch. PTO*, 364 F. Supp. 3d at 280 (holding that admissions program served “a legitimate government interest in helping more economically disadvantaged students receive a high-quality education”); *Doe ex rel. Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 557 (3d Cir. 2011) (holding that admissions plan was “rationally related to legitimate government interests” in part because “with equalized high school populations, students would

³⁷ Amici expect the parties in this case to brief the standard of review issue extensively. Amici will not belabor the point because the Admissions Plan independently satisfies both strict scrutiny and rational basis review.

benefit from a stronger sense of community, better interactions with faculty, and better educational outcomes”). Additionally, as summarized by the Fifth Circuit, the Supreme Court has identified three principal benefits to having diverse student bodies that amount to compelling state interests: (1) increased perspectives; (2) professionalism; and (3) civic engagement. *Fisher v. Univ. of Texas at Austin*, 631 F.3d 213, 219–20 (5th Cir. 2011) (summarizing *Grutter v. Bollinger*, 539 U.S. 306 (2003)), *vacated and remanded*, 570 U.S. 297 (2013). Justice Kennedy, in his concurring opinion in *Parents Involved*, also found that “remedying past intentional discrimination” and promoting diversity in education are compelling government interests, stating:

[W]e recognized the compelling nature of the interest in remedying past intentional discrimination in Freeman v. Pitts, 503 U.S. 467, 494, 112 S.Ct. 1430, 118 L.Ed.2d 108 (1992), and of the *interest in diversity in higher education in Grutter*. At the same time, these compelling interests, in my view, do help inform the present inquiry. And to the extent the plurality opinion can be interpreted to foreclose consideration of these interests, I disagree with that reasoning.

Parents Involved, 551 U.S. at 791 (2007) (Kennedy, J., concurring in part) (emphasis added).

By potentially increasing enrollment of students from low-income families at the Exam Schools through the use of ZIP codes, the Admissions Plan serves each of these legitimate and compelling interests. As more schools implement measures to promote socioeconomic, racial, and geographic diversity, studies have shown that these schools achieve better results overall as compared to districts that maintain socioeconomically isolated schools. These benefits include academic and cognitive benefits, civic and social-emotional benefits, and economic benefits.³⁸

“[O]n average, students in socioeconomically and racially diverse schools—regardless of a student’s own economic status—have stronger academic outcomes than students in schools with

³⁸ *The Benefits of Socioeconomically and Racially Integrated Schools and Classrooms*, The Century Foundation (Apr. 29, 2019) [hereinafter *Benefits of Socioeconomically and Racially Integrated Schools*], <https://tcf.org/content/facts/the-benefits-of-socioeconomically-and-racially-integrated-schools-and-classrooms/?agreed=1&session=1>.

concentrated poverty.”³⁹ Students in mixed-income schools have shown 30% more growth on test scores than their peers with similar socioeconomic backgrounds in schools with concentrated poverty.⁴⁰ Students at diversified schools are also much more likely to attend college. When comparing students with similar socioeconomic backgrounds, students who attend more affluent schools are 68% more likely to enroll at a four-year college than their peers at high-poverty schools.⁴¹ The heightened academic success of all students attending integrated schools can be seen in nearby Cambridge. Cambridge has had a socioeconomic integration plan since 2001, and its students outperform those in demographically similar Massachusetts districts on state exams.⁴²

Students also obtain demonstrable social-emotional benefits from exposure to peers from different socioeconomic, racial, and geographic backgrounds. Diverse classrooms prepare students for life, work, and leadership in an increasingly global economy by “fostering leaders who are creative, collaborative, and able to navigate deftly in dynamic, multicultural environments.”⁴³ This early exposure makes it more likely that students choose to live in integrated neighborhoods later in life, further combating historical housing segregation.⁴⁴ These social-emotional benefits “foster[] greater adherence to democratic values and enhance[] a person’s propensity for civic engagement.”⁴⁵ Substantial economic benefits also inure to socioeconomically, racially, and geographically integrated schools. According to a recent estimate, reducing socioeconomic

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Richard D. Kahlenberg, *School Integration in Practice: Lessons from Nine Districts*, The Century Foundation (Oct. 14, 2016), <https://tcf.org/content/report/school-integration-practice-lessons-nine-districts/?agreed=1>.

⁴³ *Benefits of Socioeconomically and Racially Integrated Schools*, *supra* note 38.

⁴⁴ *Benefits of Socioeconomically and Racially Integrated Schools*, *supra* note 38.

⁴⁵ Roslyn Arlin Mickelson, *School Integration and K-12 Outcomes: An Updated Quick Synthesis of the Social Science Evidence (Research Brief)*, The National Coalition on School Diversity (Oct. 2016), <https://www.school-diversity.org/pdf/DiversityResearchBriefNo5.pdf>.

segregation in schools by half would produce a return on investment of three to five times the cost of implementing the integration programs.⁴⁶

All students benefit from socioeconomically, racially, and geographically diverse schools, but students from low-income families benefit most. Quality education is a pathway out of poverty. Labor statistics show the strong correlation between education attainment and earning potential.⁴⁷ According to a 2014 study by the Boston Redevelopment Authority, “poverty rates decrease as educational attainment increases. It is highest for those who did not graduate from high school and lowest for those with a Bachelor’s degree or above.”⁴⁸ Given that the three Exam Schools have graduation rates between 94% and 98%, the possibility of upward mobility for these students is undeniable.⁴⁹ Graduation from high school alone improves not only one’s economic prospects, but also long-term health. The U.S. Department of Health and Human Services considers graduation from high school to be a leading health indicator.⁵⁰ The Exam Schools also have incredible resources such as well-maintained facilities, highly qualified teachers, challenging courses, and private funding.⁵¹ For example, Boston Latin School has an endowment of over \$5

⁴⁶ *Benefits of Socioeconomically and Racially Integrated Schools*, *supra* note 38.

⁴⁷ See *Unemployment rates and earnings by educational attainment*, U.S. Department of Labor, U.S. Bureau of Labor Statistics (last modified Sept. 1, 2020) <https://www.bls.gov/emp/tables/unemployment-earnings-education.htm>.

⁴⁸ *Poverty in Boston*, Boston Redevelopment Authority Research Division (March 2014), <http://www.bostonplans.org/getattachment/fl/ecaf8a-d529-40b6-a9bc-8b4419587b86>.

⁴⁹ *Boston Public Schools 2019 Dropout Rate Report*, Boston Public Schools Office of Data and Accountability, at 6, <https://www.bostonpublicschools.org/cms/lib/MA01906464/Centricity/Domain/238/2019%20BPS%20Annual%20Dropout%20Rate%20Report.pdf> (last visited Mar. 30, 2021).

⁵⁰ U.S. Department of Health & Human Services, *High School Graduation*, Office of Disease Prevention and Health Promotion, <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/high-school-graduation> (last visited Mar. 30, 2021).

⁵¹ See *Benefits of Socioeconomically and Racially Integrated Schools*, *supra* note 38.

million that allows it to offer competitive programming and activities.⁵² Access to strong, stable, and supportive networks, as well as quality educational materials and activities, is critical for low-income and homeless children given the precarious and challenging nature of living in poverty and with housing instability.⁵³ Therefore, by expanding access to quality education for low-income students, the Admissions Plan increases the likelihood that these students will graduate from high school, attend college, live healthier lives, and rise out of poverty.

Additionally, courts have recognized the governmental interest in providing low-income students with greater access to schools with better resources. *See, e.g., Spurlock v. Fox*, 716 F.3d 383, 403 (6th Cir. 2013) (“[T]he notion that children from underprivileged neighborhoods are somehow better off staying in their woefully deprived neighborhood schools . . . instead of attending manifestly superior outside schools, is counterintuitive.”). Low-income students who attend schools with representation from higher socioeconomic levels achieve more long-term success than low-income students attending low-income schools. In fact, “low-income students in mixed-income schools are as much as two years ahead of low-income students in high-poverty schools.”⁵⁴ In Cambridge, for example, 89.5% of low-income students graduated from high school in the 2014-15 school year, compared to a graduation rate of 82% overall nationally.⁵⁵

⁵² *Statement of Financial Activity, Boston Latin School Association, July 1, 2018 – June 30, 2019*, Boston Latin School, https://www.bls.org/apps/pages/index.jsp?uREC_ID=203829&type=d&pREC_ID=404402 (last visited Mar. 30, 2021).

⁵³ *See* Erin S. Ingram et al., *Hidden in Plain Sight: Homeless Students in America’s Public Schools* Civic Enterprises and Hart Research Associates https://www.americaspromise.org/sites/default/files/d8/2016-12/HiddeninPlainSightFullReportFINAL_0.pdf (last visited Mar. 30, 2021).

⁵⁴ Kahlenberg, *supra* note 42.

⁵⁵ Kahlenberg, *supra* note 42.

Finally, the Admissions Plan serves the further compelling interest of rectifying past and present discrimination and making progress toward the long overdue fulfillment of equal educational opportunities for all students. Racially discriminatory policies and practices sanctioned by the federal government, carried out by lending institutions, and enforced by the BHA cohered lower socioeconomic status households and racially segregated neighborhoods. Furthermore, BSC's discriminatory policies also intensified segregated housing patterns that persist today. In *Morgan v. Hennigan*, this Court determined that "[r]acial segregation permeates schools in all areas of the city, all grade levels and all types of schools[,] including the Exam Schools which, at the time, were nearly 90% White. 379 F. Supp. 410, 424 (D. Mass. 1974). Rejecting BSC's contention that segregated schools were the inevitable consequence of segregated housing patterns, the Court noted their "reciprocal effect upon one another." *Id.* at 470. BSC, fully aware of "the racial segregation of Boston's neighborhoods, deliberately incorporated that segregation into the school system." *Id.* For nearly twenty years, BSC worsened "the correlation between residential segregation and school segregation." *Id.* at 472. Indeed, the Court found that BSC's school assignment policies, manipulation of district lines, establishment of grade structure, and feeder school patterns intentionally discriminated against Black students. *Id.* at 425. As a result, the Court declared BSC's actions unconstitutional. *Id.* at 479–80.⁵⁶

Now, forty-seven years after *Morgan* was decided, BSC does not feign ignorance of the close relationship between segregated housing patterns and the lower socioeconomic neighborhoods from which most of its low-income students of color hail; nor should BSC's awareness of that relationship render the Admissions Plan constitutionally infirm.

⁵⁶ Much has been written about Boston's busing crisis, which resulted, in part, from the remedial order imposed in *Morgan*. See, e.g., Dennis Ford Eagan, *The Past, Present and Future of School Desegregation in Massachusetts*, 34 Suffolk L. Rev. 541, 554-55 (2001).

C. The Admissions Plan is Narrowly Tailored to Achieve the Boston School Committee’s Legitimate and Compelling Interests.

The Admissions Plan is narrowly tailored to accomplish BSC’s compelling interests in improving student outcomes; promoting socioeconomic, racial, and geographic diversity; and rectifying past discrimination. To be narrowly tailored, “the means chosen to accomplish the asserted purpose must be specifically and narrowly framed to accomplish that purpose.” *Students for Fair Admissions*, 980 F.3d at 187 (internal quotations and citations omitted). The Admissions Plan must not create quotas and cannot be used if there are other workable race-neutral alternatives. *Id.* It is undisputed that the Admission Plan does not use racial quotas. That the Admissions Plan was prepared after BSC members participated in a racial equity training, Dkt. 38-64, does not “transform[] a flexible admission [Plan]” into a so-called racial balancing plan. *Students for Fair Admissions*, 980 F.3d at 188 (internal citations omitted). Further, the Working Group that recommended the Plan considered the least disruptive options for low-income families and families of color in light of COVID-19. Dkt. 38-65. Narrow tailoring does not require exhaustion of every conceivable alternative. *Fisher v. Univ. of Texas at Austin*, 136 S. Ct. 2198, 2214 (2016).

Moreover, the Admissions Plan will achieve its intended purpose of promoting socioeconomic diversity in the Exam Schools. Plaintiff does not dispute that implementation of the Admissions Plan will result in the admission of additional students from low-income families. The Admissions Plan will temporarily curb the unfair advantages usually inherent in the process for students from higher-income families. The admissions exam has long been criticized for featuring material not covered by the BPS curriculum, favoring high-income families who can afford to provide their children with additional resources.⁵⁷ Private admissions exam preparation

⁵⁷ See Max Larkin, *As Trust Erodes, Boston Will Need a New Test for Exam-School Admissions*, WBUR News (Feb. 5, 2020), <https://www.wbur.org/edify/2020/02/05/boston-exam-school-admissions-test>.

services, which fill the gaps left by the BPS curriculum, cost upwards of \$1,000.⁵⁸ Many high income families also send their students to private or parochial elementary and middle schools until they are eligible for admission to the Exam Schools.⁵⁹ These schools have more resources and more rigorous curricula that better prepare students for the admissions exam. As a result, the admissions exam has presented a significant barrier for students from low-income families.

The Admissions Plan is also narrowly tailored to address the past and present discriminatory practices that have consigned students from low-income families to low-income schools. By using ZIP codes ranked by median household income as a criterion for admission to the Exam Schools, the Admissions Plan will give students from low-income neighborhoods a better opportunity to access the high-quality education offered at the Exam Schools. Additionally, increasing socioeconomic diversity in schools makes it more likely that one day, students will live in diverse or mixed-income neighborhoods, helping to mitigate the detrimental impact of Boston's historical discriminatory housing practices.

The Admissions Plan, therefore, is narrowly tailored to address BSC's compelling interests, and survives a constitutional challenge even if subjected to the heightened strict scrutiny standard.

CONCLUSION

For the foregoing reasons, Amici Curiae respectfully urge this Court to dismiss Plaintiff's Complaint and deny Plaintiff's Motion for a Preliminary Injunction.

⁵⁸ See Boston Tutoring Services, *Boston Latin Exam Test Prep Packages*, Private Lessons, available at <https://bostonlatinexamprep.com/find-the-best-isee-tutors-in-boston/private-lessons/> (last visited Apr. 2, 2021).

⁵⁹ Charlotte B. Kahn et al., *Boston's Education Pipeline: A Report Card*, Boston Indicators, at 28, https://www.tbf.org/~media/TBFOrg/Files/Reports/EdReportCard_Final5.pdf (last visited Mar. 29, 2021).

Dated: April 2, 2021

Respectfully submitted,

/s/ Melanie Dahl Burke

BROWN RUDNICK LLP

Amanda Buck Varella (BBO #641736)

Melanie Dahl Burke (BBO #688157)

Brian M. Alosco (BBO #693899)

One Financial Center

Boston, MA 02111

Tel: 617-856-8200

Fax: 617-856-8201

avarella@brownrudnick.com

mburke@brownrudnick.com

balosco@brownrudnick.com

Counsel for Amici Curiae

**MASSACHUSETTS LAW REFORM
INSTITUTE**

Virginia Benzan (BBO #659065)

40 Court Street, Suite 800

Boston, MA 02108

Tel: 617-357-0700

Fax: 617-357-0777

vbenzan@mlri.org

*Counsel for Amicus Curiae Massachusetts
Law Reform Institute*

LATINOJUSTICE PRLDEF

Francisca D. Fajana (BBO #564301)

475 Riverside Drive, Suite 1901

New York, NY 10115

Tel: 212.219.3360

FFajana@latinojustice.org

*Counsel for Amicus Curiae LatinoJustice
PRLDEF*

**CHILDREN'S LAW CENTER OF
MASSACHUSETTS**

Lucy Ellis (BBO #707146) (*admission
forthcoming*)

Lauren Koster (BBO #705542) (*admission
forthcoming*)

Stephanie Rodriguez-Ruiz (BBO #705823)
(admission forthcoming)
298 Union Street #2
Lynn, MA 01901
Tel: 781-581-1977
Fax: 781-598-9364
L.Ellis@clcm.org
L.Koster@clcm.org
S.Rodriguez-Ruiz@clcm.org

*Counsel for Amicus Curiae Children's Law
Center of Massachusetts*

ADDENDUM

Massachusetts Law Reform Institute

LatinoJustice PLRDEF

Children's Law Center of Massachusetts

American Civil Liberties Union of Massachusetts

Autism Sprinter

Center for Law and Education

Charles Hamilton Houston Institute for Race & Justice at Harvard Law School

Citizens for Public Schools

EdVestors

GLBTQ Legal Advocates & Defenders

Greater Boston Association of Black Social Workers

Harvard Legal Aid Bureau

Hispanic Association of Colleges and Universities (HACU)

Hispanic Federation

Jamaica Plain Progressives

Mass Insight Education & Research

Massachusetts Advocates for Children

Massachusetts Appleseed Center for Law and Justice

Northeastern University School of Law, Center for Health Policy and Law

Progressive West Roxbury/Roslindale

Quality Education for Every Student (QUEST)

Roslindale is for Everyone (RISE)

VISIONS, Inc.

CERTIFICATE OF SERVICE

I hereby certify that this document was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and served by mail on anyone unable to accept electronic filing.

Dated: April 2, 2021

/s/ Melanie Dahl Burke

Melanie Dahl Burke