United States Court of Appeals
for the First Circuit

No. 21-1303

BOSTON PARENT COALITION FOR ACADEMIC EXCELLENCE CORP.,
Plaintiff - Appellant,

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;
BRENDA CASSELLIUS,
Defendants - Appellees,

THE BOSTON BRANCH OF THE NAACP; THE GREATER BOSTON LATINO NETWORK; ASIAN PACIFIC ISLANDER CIVIC ACTION NETWORK; ASIAN AMERICAN RESOURCE WORKSHOP; MAIRENY PIMENTEL; H.D.,
Defendants - Intervenors - Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS, NO. 21-CV-10330-WGY

AMICI CURIAE BRIEF OF LATINOJUSTICE PRLDEF, ASIAN AMERICANS ADVANCING JUSTICE-AAJC, AND FOURTEEN OTHER AMICI IN SUPPORT OF DEFENDANTS-INTERVENORS-APPELLEES AND AFFIRMANCE OF THE JUDGMENT AGAINST APPELLANT

— Additional information listed on the inside cover —

No. 22-1144

BOSTON PARENT COALITION FOR ACADEMIC EXCELLENCE CORP.,
Plaintiff - Appellant,

v.

THE SCHOOL COMMITTEE OF THE CITY OF BOSTON;
ALEXANDRA OLIVER-DAVILA; MICHAEL D. O'NEILL; HARDIN COLEMAN;
LORNA RIVERA; JERI ROBINSON; QUOC TRAN; ERNANI DEARAUJO;
BRENDA CASSELLIUS, Superintendent of the Boston Public Schools,
Defendants - Appellees,

THE BOSTON BRANCH OF THE NAACP; THE GREATER BOSTON LATINO NETWORK; ASIAN PACIFIC ISLANDER CIVIC ACTION NETWORK; ASIAN AMERICAN RESOURCE WORKSHOP; MAIRENY PIMENTEL; H.D.,
Defendants - Intervenors - Appellees.

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Dated: September 9, 2022

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), A*mici Curiae* state that each is a not-for-profit organization, none has a corporate parent, none issues stock, and no publicly held corporation owns 10% or more of any of them, individually or collectively.

RULE 29(a)(4)(E) STATEMENT

No part of this brief was authored, in whole or in part, by counsel for any party. No person, including but not limited to any party or party's counsel, other than *amici* or *amici*'s counsel, contributed any money intended to fund the preparation or submission of this brief.

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IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici Curiae are community-based non-profit and legal organizations that advance economic, racial, and social justice through advocacy and education. *Amici* have an interest in supporting the socioeconomic, racial, and geographic diversity of the Boston Latin School, the Boston Latin Academy, and the John D. O'Bryant School of Mathematics and Science ("Exam Schools"). A list of *Amici*, with additional information about their qualifications and interests, is in the Addendum.

All parties have consented to the filing of *Amici*'s brief in accordance with Federal Rule of Appellate Procedure 29(a)(2).

SUMMARY OF ARGUMENT

The district court correctly ruled that the admissions plan the Boston School Committee ("BSC") adopted in the exigencies of the COVID-19 pandemic—which relied on ZIP codes rank-ordered by family income, grade point average, and school preference ("Admissions Plan")—is race neutral and, thus, does not trigger strict scrutiny under the Equal Protection Clause. Applying rational basis review, the district court found that the Admissions Plan passes constitutional muster because it furthers the BSC's legitimate interests in promoting socioeconomic, racial, and geographic diversity.

Amici urge affirmance of the district court's judgment. First, Appellant mischaracterizes Boston's history and legacy of segregation, disregards its modern

and increasingly multi-ethnically diverse neighborhoods, and diminishes the heterogeneity and socioeconomic diversity of its Asian American communities to support its racial proxy claim. Low-income communities across Boston's ethnically diverse neighborhoods stand to benefit under the Admissions Plan. The Equal Protection Clause does not bar such a socioeconomic and geography-based admissions policy. Second, since *Brown v. Board of Education*, courts have used equity as a practical tool to remove barriers to equal educational opportunity. Appellant's contempt for the BSC's "pivot to equity" is misplaced. Third, Appellant misconstrues the *Arlington Heights* framework and its disparate impact teaching. Unlike Appellant's status-quo-entrenching year-over-year comparator, comparing the applicant pool to the admitted students helps courts detect stark patterns of discriminatory effect.

ARGUMENT

I. BOSTON'S LEGACY OF SEGREGATION, ITS MODERN AND MULTI-ETHNIC NEIGHBORHOODS, AND THE HETEROGENEITY WITHIN ITS ASIAN AMERICAN COMMUNITIES UNDERCUT APPELLANT'S RACIAL PROXY CONTENTION.

As the district court astutely observed, "putting the poorest neighborhoods first [in the Admissions Plan] is a bold attempt to address America's caste system." *Bos. Parent Coal. for Acad. Excellence Corp. v. City of Boston*, 2021 WL 1422827, at *13 (D. Mass. Apr. 15, 2021) ("*Boston Parent I*"). Appellant puts forth a sanitized,

revisionist history of segregation in Boston, relying on stereotypes, cherry-picked facts, and legal decisions that ignore the full historical context and result in a distorted understanding of the BSC's actions. *See* Appellant's Opening Br., at 46-48. Appellant's misleading retelling of history cannot stand.

A. Boston's Legacy of Segregation Stems from Discriminatory Laws, Practices, and Policies by Government Actors.

During the first half of the twentieth century, Boston's Black population was less than 3% but steadily grew with migration from southern states.[1] Racially discriminatory laws, policies, and practices—such as racially restrictive covenants—affected where members of the Black community could live upon arrival in Boston.[2] These covenants, which ran with the land, prohibited sales of homes to Black Americans and other people of color.[3] Before the Supreme Court struck down these covenants as unconstitutional,[4] the Federal Housing

[1] Yawu Miller, *Boston Blacks Made Exodus to Roxbury,* Bay State Banner (Feb. 9, 2018), https://www.baystatebanner.com/2018/02/09/boston-blacks-made-exodus-to-roxbury/.

[2] 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] *Historical Shift from Explicit to Implicit Policies Affecting Housing Segregation in Eastern Massachusetts, 1920s-1948: Racially Restrictive Covenants*, Fair Hous. Ctr., https://www.bostonfairhousing.org/timeline/ (last visited Aug. 21, 2022).

[4] *See Shelley v. Kraemer*, 334 U.S. 1, 23 (1948).

Administration ("FHA") encouraged their use.[5] Such covenants were common in Massachusetts, limiting the movement of Black residents to towns and cities outside of Boston.[6] 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.[7] 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 exclusively to White homeowners.[8]

FHA also engaged in "redlining"—the practice of denying home loans and investments in areas deemed "high risk," which were highlighted red on color-coded maps.[9] FHA determined a neighborhood's color-code and desirability mostly by its racial demographics,[10] resulting in Black neighborhoods being divested of capital,

[5] *You Can't Live Here: The Enduring Impacts of Restrictive Covenants*, Nat'l Ass'n Realtors (Feb. 2018), https://www.nar.realtor/sites /default/files/documents/2018-February-Fair-Housing-Story.pdf.
[6] *See* Johnson, *supra* note 2.
[7] *See* Catherine Elton, *How Has Boston Gotten Away with Being Segregated for So Long?*, Bos. Mag. (Dec. 8, 2020, 11:26 AM), https://www.bostonmagazine.com/news/2020/12/08/boston-segregation/.
[8] *Id.*
[9] *Id.*
[10] *See id.*; *see also* Stephanie Leydon, *How a Long-Ago Map Created Racial Boundaries that Still Define Boston*, GBH News (Nov. 12, 2019),

deemed undesirable, and marked unsafe.[11] For example, all of Roxbury, which by then was predominantly Black, was marked red.[12] FHA refused to insure developments in these neighborhoods, which stymied Black homeownership, kept White residents out of those neighborhoods, and led to significant racial segregation.[13] FHA's discriminatory practices contributed not only to the significant wealth gap between White and Black residents of Boston that persists today, but also to the segregation of large swaths of low-income residents in some neighborhoods.

After passage of the Civil Rights Act of 1968, the U.S. Department of Housing and Urban Development, FHA's successor, eased its blatantly racist practices.[14] Locally, however, racial discrimination and segregation persisted. For example, a Boston program intended to address lending disparities by providing low-interest loans to homebuyers of color actually *increased* segregation.[15] The Boston Banks Urban Renewal Group ("BBURG"), a consortium of banks that agreed to issue

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https://www.wgbh.org/news/local-news/2019/11/12/how-a-long-ago-map-created-racial-boundaries-that-still-define-boston.

[11] *See* Elton, *supra* note 7; Leydon, *supra* note 10.

[12] *See* Leydon, *supra* note 10.

[13] *See* Elton, *supra* note 7.

[14] *See* Becky Little, *How a New Deal Housing Program Enforced Segregation,* History (Oct. 20, 2020; updated June 1, 2021), https://www.history.com/news/housing-segregation-new-deal-program.

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

mortgages to prospective homebuyers of color, restricted these loans to Dorchester, Mattapan, and Roxbury.[16] The Boston Housing Authority further contributed to segregation in Boston by assigning tenants to housing facilities based on race.[17]

The BSC's own discriminatory policies also intensified segregated housing patterns that persist today. This Court is all too familiar with Boston's history of segregated schooling. *See Anderson ex rel. Dowd v. City of Bos.*, 375 F.3d 71, 74-76, 84 (1st Cir. 2004) (recounting Boston's history of racially segregated dual public school system as well as "reverse discrimination" litigations). However, some of that history bears revisiting to correct Appellant's circumscribed view of history.

In *Morgan v. Hennigan*, the United States District Court for the District of Massachusetts 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 were nearly 90% White at the time. 379 F. Supp. 410, 424, 466-67 (D. Mass. 1974), and *supplemented sub. nom. Morgan v. Kerrigan*, 388 F. Supp. 581 (D. Mass 1975), *aff'd*, 530 F.2d 431 (1st Cir. 1976).[18] The court rejected BSC's contention that segregated schools were the inevitable consequence of segregated housing

[16] Elton, *supra* note 7; Vance, *supra* note 15.
[17] Elton, *supra* note 7.
[18] For the 1971-1972 school year, Boston Latin School was 93% White, Girls' Latin School (now Boston Latin Academy) was 89% White, and Boston Technical High School (now John D. O'Bryant School of Mathematics & Science) was 84% White. *Morgan*, 379 F. Supp. at 424-25.

patterns, noting that it is "generally agreed that schools and neighborhoods have a reciprocal effect upon one another." *Id.* at 470. The court found that the BSC, fully aware of "the racial segregation of Boston's neighborhoods, deliberately incorporated that segregation into the school system," and failed to implement policies reasonably available to eliminate racial segregation. *Id.* at 425. As a result, the court declared BSC's actions unconstitutional. *Id.* at 479–80. The court enjoined the defendants from "discriminating upon the basis of race in the operation of the public schools of the City of Boston and from creating, promoting or maintaining racial segregation in any school…in the Boston school system…." *Id.* at 484. Further, the court ordered the defendants to immediately begin the "formulation and implementation of plans which shall eliminate every form of racial segregation in the public schools of Boston…" *Id.*

With respect to the Exam Schools, the First Circuit in *Morgan* found that "[a] high degree of racial segregation also existed in the city's specialized high schools." *Id.* at 466. This Court rejected the proposition that the Exam Schools should not be included in a desegregation remedial plan, holding that "[t]he examination schools in Boston…are an integral part of a school system which has been found to be administered in an unconstitutional manner. They are presumed to be unlawfully segregated. As such, the examination schools must be part of the remedial plan." *Morgan*, 530 F.2d at 423-24.

By 1987, "systemic progress" allowed this Court to conclude that the BSC had achieved unitary status[19] and the district court relinquished control over student assignments. *Wessmann v. Gittens*, 160 F.3d 790, 792 (1st Cir. 1998). Following *Wessmann*, the BSC removed any consideration of race in the Exam Schools' admissions and the number of Black and Latino students dropped dramatically. In 1994, Black and Latino students made up 22.8% and 10.4% of the student population, respectively, at Boston Latin School.[20] By 2005, those percentages dropped to 9.4% and 6.7%, respectively.[21]

Given this history, there is a clear nexus between segregated housing patterns and the lower socioeconomic neighborhoods from which most of BSC's low-income students of color hail. The BSC's awareness of that correlation does not render the Admissions Plan suspect. "The fact that public school officials are well aware that race neutral selection criterion—such as zip code and family income—are correlated with race and that their application would likely promote diversity does not automatically [require application of strict scrutiny under the Equal Protection Clause]." *Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. of the City of*

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[19] A school system achieves unitary status when it is "a fully integrated, non-segregated system." *Morgan v. Nucci*, 831 F.2d 313, 316 (1st Cir. 1987).
[20] Carrie Jung, *Not Always An Exam School: The History of Admissions At Boston's Elite High Schools* (Mar. 5, 2020), https://www.wbur.org/news/2020/03/05/boston-exam-school-admissions-history.
[21] *Id.*

Bos., 996 F.3d 37, 48 (1st Cir. 2021) (*Boston Parent II*); *see also Raso v. Lago*, 135 F.3d 11, 16 (1st Cir. 1998) ("plaintiffs are mistaken in treating 'racial motive' as a synonym for a constitutional violation. Every antidiscrimination statute aimed at racial discrimination, and every enforcement measure taken under such a statute, reflect a concern with race. That does not make such enactments or actions unlawful or automatically 'suspect' under the Equal Protection Clause"). The BSC is not forbidden from being race-aware any more than it is required to ignore Boston's history of intentional racial segregation. *See Doe ex. rel. Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 548 (3rd Cir. 2011) ("[A] school plan in which race is not a factor [does not automatically violate the Equal Protection Clause] merely because the decisionmakers were aware of or considered race when adopting the policy.").

Despite the enduring vestiges of *de jure* segregation and ongoing discriminatory housing practices,[22] Black Bostonians reside in nearly all Boston neighborhoods. Because the Admissions Plan was designed to promote socioeconomic and geographic diversity, Black families who reside in low-income neighborhoods with a high proportion of Boston school-age children will benefit from the Admissions Plan. Moreover, as set forth in detail below, Boston's neighborhoods have not remained static. They increasingly reflect multi-ethnic diversity.

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[22] *See* note 29 *infra.*

B. Latino Communities Span Virtually All Boston Neighborhoods.

For nearly three decades, between 1990 and 2017, the population growth in Greater Boston was fueled almost entirely by immigrants of color.[23] From 1980 to 2017, Boston's Latino population increased by 475%,[24] accounting for 92% of Boston's total growth.[25] Without that growth, Boston's child population would have declined dramatically. Latinos are underrepresented in high-wage occupations and one-third are in low-wage jobs where the median income is $27,000. Only 19% of working-age Latinos have a college degree or higher.[26]

Boston has the largest Latino population in Massachusetts (nearly half of whom are foreign-born).[27] The Latino population is comprised of diverse ethnic groups with Puerto Ricans being the most populous, followed closely by

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[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] Lorna Rivera, *Latinos in Greater Boston: Migration, New Communities and the Challenge of Displacement*, Boston Indicators, 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.

[25] Alvaro Lima, et al., *Powering Greater Boston's Economy: Why the Latino Community is Critical to our Shared Future*, Boston Indicators (2019), https://www.bostonindicators.org/reports/report-website-pages/latinos-in-greater-boston#:~:text=Latinos%20are%20also%20key%20to,institutions%20over%20the%20long%20term.

[26] *Id.*

[27] *Id.*

Dominicans, then Salvadorians, Colombians, and Mexicans.[28] Despite persistent discrimination in housing, these ethnicities are spread throughout Boston's neighborhoods.[29] Although many Puerto Ricans and Dominicans live in Hyde Park and Roxbury, they also live in the South End, Roslindale, Dorchester, and virtually every Boston neighborhood.[30] Indeed, although many Colombians live in East Boston, many also live in West Roxbury.[31] As argued in § I(D), *infra*, Latino families who live in low-income neighborhoods with a high percentage of Boston school-age children will benefit from the Admissions Plan. The same is true for Boston's ethnically and socioeconomically diverse Asian American population, as set forth below.

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[28] *Id*.

[29] *See id*.; Zeninjor Enwemeka, et al., *Black and Hispanic people are more likely to be denied mortgage loans in Boston*, wbur.org (March 30, 2022) (finding that Latinos were twice, and Black Bostonians were three times, as likely as white applicants to be denied home mortgages), https://www.wbur.org/news/2022/03/30/home-loans-mortgages-boston-denials.

[30] Boston Planning & Development Agency Research Division, June 2017, *Profiles of Boston's Latinos*, at p. 12, 22, available at https://www.bostonplans.org/getattachment/e0019487-138b-4c73-8fe5-fbbd849a7fba

[31] *Id.* at p. 42.

C. The Diversity Within Asian American Communities Belie Appellant's Monolithic Stereotype.

Appellant also perpetuates the harmful "model minority" myth by treating Boston's diverse Asian American communities as a monolithic group.[32] The model minority myth flattens identities of Asian American students and obscures the rich diversity of their lived experiences. Moreover, it fails to recognize the needs of many Asian American communities, including low-income, Limited English Proficient ("LEP"), and immigrant and refugee families of diverse ethnicities and backgrounds.

Asian immigrants began migrating to Boston in greater numbers after implicit race-based restrictions were lifted by the 1965 Immigration and Nationality Act.[33] Today, more than 19 Asian ethnicities from diverse immigration and refugee backgrounds are represented in Boston, including Chinese Americans (48.6%), Vietnamese Americans (17.2%), Indian Americans (15.5%), Korean Americans

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[32] *See* Kat Chow, *'Model Minority' Myth Again Used as a Racial Wedge Between Asians and Blacks*, NPR (Apr. 19, 2017) https://www.npr.org/sections/codeswitch/2017/04/19/524571669/model-minority-myth-again-used-as-a-racial-wedge-between-asians-and-blacks;

[33] 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.

(5.2%), Filipino Americans (3.3%), Japanese Americans (2.2%), Taiwanese Americans (1.0%), and Thai Americans (1.0%).[34] Of those who speak an Asian or Pacific Island language at home, 53.7% of Chinese American households and 52.6% of Vietnamese American households in Boston are LEP, whereas 33.7% of Korean American households are LEP.[35] Household income varies widely across these groups: the median household income for Indian Americans and Chinese Americans in Greater Boston is $120,000 and $90,000 respectively, while the median household income for Cambodian Americans is less than $60,000.[36] Similarly, the Vietnamese American population in Boston's 02125 ZIP code (one of the ZIP codes in which the Admissions Plan seeks to change the under-identification of qualified students) has a median household income of $48,407.[37]

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[34] U.S. Census Bureau, Table B02015, Asian Alone by Selected Groups (Boston), 2020 ACS 5-Year Estimates https://data.census.gov/cedsci/table?q=Table%20B02015&g=0600000US2502507000&tid=ACSDT5Y2020.B02015.

[35] U.S. Census Bureau, ACS 2015 5-Year Estimates, Table B16002, Household Language by Household Limited English Speaking Status, Boston, Massachusetts,https://data.census.gov/cedsci/table?t=-04%20-%20All%20available%20detailed%20Asian%20races%3A012%20-%20Asian%20alone%3A031%20-%20Asian%20alone%20or%20in%20combination%20with%20one%20or%20more%20other%20races%3ALanguage%20Spoken%20at%20Home&g=1600000US2507000&tid=ACSDT5YSPT2015.B16002.

[36] *Changing Faces*, *supra* note 33, at 22-3.

[37] *Id*. at 27-28.

Appellant's claim that the Admissions Plan disfavors Asian American students narrowly focuses on a subgroup of Asian Americans who are of higher income. For example, Appellant notes Exam Schools seat "losses" in at least five ZIP codes with median household incomes (for families with children under 18) of over $100,000. Record Appendix ("App.") at 02222 (ZIP codes 02113, 02114, 02129, 02130, 02132); Opening Br. at 34. By contrast, none of the ZIP codes that Appellant alleges will "gain" seats have median household incomes above $60,000. *Id.* In two of the latter ZIP codes (Dorchester ZIP codes 02124 and 02125), Asian Americans make up 6.6% and 10.7% of the total population, representative of the overall Asian American population in Boston of 9.6%. App. at 02076; *Boston Parent I*, 2021 WL 1422827, at *6. Appellant ignores the Asian American school-age children in these ZIP codes[38] (and all ZIP codes that have "gained" seats) who will benefit from the Admissions Plan. In limiting its focus to specific Asian American subgroups, Appellant ignores both the heterogeneity and socioeconomic diversity of Boston's Asian American communities at large.

Importantly, all students, including low-income Asian Americans, benefit from race-neutral policies that remove existing barriers and expand educational

[38] 12.4% of school-age children in Boston reside in ZIP code 02124 and 6.3% of school-age children in Boston reside in ZIP code 02125). App. at 02198.

opportunities. Expanding access to educational opportunities benefits all students by exposing them to greater diversity of thought and lived experiences.

The BSC's Admissions Plan likely benefits Asian American students who live in poor and underrepresented neighborhoods. *Amici* categorically reject the dangerous notion that policies like the Admissions Plan are "anti-Asian" and purportedly take away "seats" from Asian American students. *Amici*, representing a multiracial group of local and national organizations, stand together in support of policies that address inequities and expand educational access for all students. This Court should not countenance Appellant's false "zero-sum" premise that obscures the diversity of lived experiences of Asian American students and seeks to pit communities against each other.[39]

D. Multi-Ethnically Diverse Low-Income Neighborhoods Across Boston Benefit from the Admissions Plan, Undercutting Appellant's Racial Proxy Allegation.

Far from Appellant's contention, ZIP codes, as deployed in the Admissions Plan, are not a proxy for race. *See Christa McAuliffe Intermediate Sch. PTO, Inc. v. De Blasio*, No. 18 CIV. 11657 (ER), 2022 WL 4095906, at *8 (S.D.N.Y. Sept. 7,

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[39] *See Coal. for TJ v. Fairfax Cty. Sch. Bd.*, No. 22-1280, 2022 WL 986994, *3 (4th Cir. Mar. 31, 2022) (Heytens, J., concurring) (rejecting "the district court's analysis . . . that 'the Board's policy was designed to increase Black and Hispanic enrollment, which would, *by necessity*, decrease the representation of Asian-Americans at TJ'" because it is "flatly inconsistent with the Supreme Court's decision in *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256, 279 (1979).").

2022) (finding that measures of economic disadvantage were not a proxy for race). Asian American, Latino, Black, and White families coexist in many Boston neighborhoods. For example, no single racial group comprises more than 50% of the population in seven of Boston's twenty-nine ZIP codes—02136 (Hyde Park), 02111 (Chinatown), 02131 (Roslindale), 02125 (Dorchester), 02122 (Dorchester), 02120 (Roxbury), 02118 (South End).[40] Indeed, in nearly two-thirds of all Boston ZIP codes, Asian Americans, Black Americans and Latinos together make up less than 50% of the population—in other words, many low-income students of any race from these neighborhoods will benefit from the Admissions Plan.[41]

In Appellant's bid to pit certain Asian American students against other students of color, it postulates so-called White/Asian American ZIP codes, discounting that Latinos, in fact, outnumber Asian Americans in many of those ZIP codes and, thus, are likely to be more adversely impacted. For example, there are far more Latinos (21%) than Asian Americans (6%) in 02130 (Jamaica Plain), which Appellant claims is 63% White/Asian.[42] There are also more Latinos (18%) than Asian Americans (14%) in 02118 (South End), which Appellant says is 61% White/Asian American.[43] Further, Latinos (11%) outnumber Asian Americans (6%)

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[40] App. at 02076.
[41] *Id.*
[42] *Id.*
[43] *Id.*

in 02127 (South Boston), which Appellant claims is 82% White/Asian American.[44] Plainly, Latino students in these ZIP codes are more likely than Asian American students to "lose" seats under Appellant's mischaracterization of the Admissions Plan. Tellingly, Appellant's own data reveal that in the 02128 ZIP code (East Boston), where Latinos comprise 56.5% of the population,[45] students "lost" 12 seats, thereby refuting its contention that the so-called ZIP code plan was intended to disadvantage Asian American students. Opening Br. at 34.

ZIP codes do, however, correlate with socioeconomic status. In Boston's 02121 ZIP code (Roxbury), 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 (West Roxbury), where ten of the fourteen members of Appellant's organization reside.[46] Given the low median income in the 02121 ZIP code, low-income students from that ZIP code will benefit under the Admissions Plan. Appellant's contention that the 02132 ZIP code "loses" seats, again, disregards the reality that Latinos outnumber Asian Americans in that ZIP code, and are, therefore, just as likely not to have gained admission because they live in a high-income ZIP code. And in Dorchester's 02125 ZIP code—one of the most diverse ZIP codes in

[44] *Id.*; Opening Br. at 34.
[45] App. at 02076.
[46] App. at 00160.

the state,[47] which ranks eleventh of the twenty-nine Boston ZIP codes in terms of median income for families, children of any race living in that ZIP code were also likely to benefit from the Admissions Plan.[48]

In the end, Boston is far more diverse than Appellant presents. Despite a legacy of intentional racial segregation, the boundaries that define Boston's communities of color have not remained stagnant. Over time, neighborhoods have shifted. Communities of color reside in virtually all of Boston's neighborhoods. And historically Black and Latino neighborhoods in the South End, Roxbury, Jamaica Plain, and Dorchester have become demonstrably whiter.[49] These shifting neighborhoods are not confined by ZIP codes (which were originally created in the 1960s to facilitate mail delivery not as a proxy for race).[50]

Appellant's claim that Boston's ZIP codes are a proxy for race obscures critical historical context, ignores the growing multi-ethnic diversity within Boston's neighborhoods, diminishes the benefits of equalizing educational opportunities for

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[47] *2021 Most Diverse ZIP Codes in Massachusetts*, Niche, https://www.niche.com/places-to-live/search/most-diverse-zip-codes/s/massachusetts/ (last visited Aug. 21, 2022). The racial and ethnic breakdown of Boston's 02125 ZIP code are: Black (31.6%), White (29.0%), Latino (23.5%), and Asian American (10.7%). App. at 02076.

[48] App. at 00160; Opening Br. at 34.

[49] Rios, *supra* note 23.

[50] Office of the Inspector General, United States Postal Service, *The Untold Story of the ZIP code* (April 1, 2013), https://www.uspsoig.gov/sites/default/files/document-library-files/2015/rarc-wp-13-006_0.pdf.

low-income students of all races and ethnicities, regardless of which neighborhood they may live, and most importantly, compels the BSC to ignore the low-income status and the racial demographics of the neighborhoods in which its student populations reside. The Equal Protection Clause does not require that. "School boards may pursue the goal of bringing together students of diverse backgrounds and races through … means [such as] drawing attendance zones with general recognition of the demographics of neighborhoods…." *Parents Involved in Community Schools v. Seattle School District No. 1*,551 U.S. 701, 789 (2007) (Kennedy J., concurring).

II. EQUITY IS USED AS A TOOL TO REMOVE BARRIERS TO EQUAL EDUCATIONAL OPPORTUNITY AND IS DEEPLY ROOTED IN EQUAL PROTECTION JURISPRUDENCE.

The BSC's commitment to equity—like its awareness of neighborhood demographics—does not offend the Equal Protection Clause. This is so because this Court made clear that "equity was one of the principal goals of [a] plan [it upheld under] rational basis in [*Anderson*, 375 F.3d at 91]." *Boston Parent II,* 996 F.3d at 47. Evidently, Appellant disregards this precedent. Instead, it maintains that the BSC's "pivot to equity" somehow smacks of illegality. Opening Br. at 17, 55.[51] Appellant misunderstands equity's deeply rooted role in Equal Protection law.

[51] *See also* Defendants-Intervenors-Appellees Br. at 26, n.10.

To begin, the Constitution extends "judicial power . . . to all cases, in law and *equity*." U.S. CONST. art. III, § 2, cl. 1. American equity jurisprudence essentially replicates England's centuries-old model and promotes "[f]lexibility rather than rigidity." *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944). Equity is an instrument to balance the public interest with private needs. *Id.*; *see also Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 12 (1971) ("Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs.").[52]

Beyond the equity powers enshrined in the Constitution, equity serves as a useful tool that supplements—not supplants—current anti-discrimination analysis in the constitutional quest for equal protection of the laws under the Equal Protection Clause.[53] To be clear, "[e]quality suggests providing every student with the same experience. Equity means working to overcome the historical legacy of discrimination, marginalization, and underinvestment that disadvantages specific

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[52] To the extent a statement in the district court's opinion may be construed to imply that a pivot "towards equity…has no support in the Equal Protection jurisprudence of the Supreme Court," *Boston Parent I*, 2021 WL 1422827, at *12, the Supreme Court's precedents contradict that assertion. *See, e.g.*, *Swann*, 402 U.S. at 12.

[53] Wilfred U. Codrington, III, *The Benefits of Equity in the Constitutional Quest for Equality*, 43 HARBINGER 105, 110 (2019).

groups of people, especially defined by race."[54] Further, equity requires providing support tailored to the specific needs of students. Equality is often described as "giving everyone a shoe," while equity "is giving everyone a shoe *that fits*."[55] Put simply, equity considers each person's differences. Thus, equity's objective is to allocate opportunities and resources to people, as needed, to reach fair and just outcomes.[56]

Courts have long deployed equity to correct unconstitutional deeds and ensure that "equal" is also equitable. For example, in *Brown v. Bd. of Ed. of Topeka, Shawnee Cnty., Kan.*, 347 U.S. 483, 492 (1954) ("*Brown I*"), supplemented sub nom. *Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294 (1955) ("*Brown II*"), the Supreme Court assumed that segregated schools were "equal" in terms of "tangible factors"—buildings, curricula, and qualifications—but looked to the "effect of segregation" on Black children and their educational opportunities in striking down "separate but equal" schooling.[57] The Court found that "to separate [Black children]

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[54] *Equity in Education*, ACHIEVEMENT NETWORK, (June 13, 2018), https://www.achievementnetwork.org/anetblog/eduspeak/equity-in-education.

[55] @SociologyTheory, TWITTER (Nov. 23, 2014, 2:01 AM), https://twitter.com/sociologytheory/status/536414127200419840 (emphasis added).

[56] Dowd, 41 CARDOZO L. REV. at 1400; *see also* Codrington, 43 HARBINGER 105, 109 n.1.

[57] Susan Poser, *Termination of Desegregation Decrees and the Elusive Meaning of Unitary Status*, 81 NEB. L. REV. 283, 339 (2002).

from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." *Brown I*, 347 U.S. at 494.

Faced with the implementation of its anti-segregation decision, in *Brown II,* the Court "looked squarely and expressly to the judiciary's power of equity."[58] The Court determined that lower courts should use "equitable principles" as a practical way of removing obstacles in the way of plaintiffs' access to fair educational experiences.[59] *Brown I* and *Brown II* formulated the "concept of modern equity as a tool to ensure equal protection" and provide adequate relief.[60] Following these seminal cases, the Supreme Court continued to require consideration of equity in the bid to desegregate schools. *See, e.g., Green v. County Sch. Bd. of New Kent Cnty., Va.*, 391 U.S. 430, 439 (1968); *Swann*, 402 U.S. at 1; *Milliken v. Bradley (Milliken II)*, 433 U.S. 267 (1977).[61]

Boston Public Schools are experiencing re-segregation. In 2019, about 66% of students of color attended an intensely segregated school (i.e., where more than

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[58] Michael Anthony Lawrence, *Justice as Fairness—As Judicial Guiding Principle: Remembering John Rawls & the Warren Court*, 81 BROOK L. REV. 673, 699 (2016).
[59] *Brown II*, 349 U.S. at 300.
[60] Derel Ludwin, *Can Courts Confer Citizenship? Plenary Power & Equal Protection*, 74 N.Y.U. L. REV. 1376, 1401 (1999).
[61] *See also Morgan*, 530 F.2d 401, 413; *Hart v. Cty. Sch. Bd. of Brooklyn, New York Sch. Dist. No. 21*, 383 F. Supp. 699, 731-33 (E.D.N.Y. 1974), *aff'd sub num. Hart v. Cmty. Sch. Bd. of Ed., N.Y. Sch. Dist. No. 21*, 512 F.2d 37 (2d Cir. 1975);

90% of students are of color), compared to 2% in 1980.[62] About 77% of Black students, 64% of Latino students, 32% of Asian American students, and 18% of White students attend intensely segregated Boston schools.[63] Moreover, 80% of Boston Public School students are low-income.[64] The BSC need not accept this untenable status quo. It should be empowered—not thwarted—in its efforts to effectuate "[t]his Nation['s] [] 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,* 551 U.S. at 797 (2007) (Kennedy J., concurring).

Appellant's cynical ploy to delegitimize the BSC's "pivot to equity" misses the mark. It surely misses equity's mooring in Equal Protection jurisprudence. As this Court did in *Anderson*, here as well, it should uphold the BSC's Admissions Plan. *See* 375 F.3d at 91.

III. APPELLANT'S DISPARATE IMPACT CLAIM IS LEGALLY FLAWED.

In addition to its justifiable advancement of equity, the Plan should also be sustained because its race-neutral policy does not violate the Equal Protection Clause. For the reasons set forth in Intervenor's brief, *Amici* agree that Appellant

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[62] Peter Ciurczak, et al., *Kids Today: Declining Child Population and its Effect on School Enrollment*, Boston Indicators, at 29 (Jan. 22, 2020), https://www.bostonindicators.org/reports/report-website-pages/kids-today.
[63] *Id*. at 27, 29, 30.
[64] *Id*. at 30.

fails to meet its burden to show both disparate impact and discriminatory purpose. Defendants-Intervenors-Appellees Br. at 30-31; 33-39. Having failed to satisfy its burden to trigger strict scrutiny, Appellant's Equal Protection claim crumbles. Nevertheless, here, *Amici* amplify two critical flaws in Appellant's disparate impact analysis. First, it persists in a simplistic year-over-year comparison of admissions data; and second, it incorrectly argues that relying on a comparator of applicant pool versus admitted student pool would create a substantial exception to *Arlington Heights'*s rule.

A. Year-over-Year Comparison of Admissions Data is Legally Deficient.

Appellant concedes, as it must, that the Admissions Plan is facially race neutral. To prevail on its Equal Protection claim, it must therefore show "disproportionate racial effect" or disparate impact and other indicia of discriminatory purpose. *Boston Parent II*, 996 F.3d at 45 (quoting *Village of Arlington Heights v. Metro Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977)).

This Court has already cast considerable doubt on Appellant's disproportionate racial effect assertion. In denying Appellant's request for an injunction following entry of judgment against it in the lower court, this Court found Appellant's methodology for generating disparate impact wanting. Specifically, regarding Appellant's comparison of year-over-year admissions data, this Court was unpersuaded that "a supposed adverse impact [could be generated] by comparing

projected admissions under the Plan to prior admissions under the predecessor plan." *Boston Parent II*, 996 F.3d at 46. Further, this Court noted Appellant offered "no analysis and argument" for why that comparator, "rather than a plan based on random selection," was correct. *Id*. Not only did Appellant use the wrong comparator, but crucially, it adduced "no evidence establishing that the numerical decrease in the overrepresentation of Whites and Asians under the Plan is statistically significant." *Id.; see also Anderson*, 375 F.3d at 89 (rejecting disproportionate racial effect claim where there was "no clear pattern of disparate racial impact, much less the 'stark' pattern").

The lower court's rulings are entirely consistent: "It goes without saying that White and Asian students are not 'losing' seats simply because last year different White and Asian students were exceedingly privileged to win a high number of seats without any evidence that this years' students would have fared the same. No such evidence was presented, and this Court rejects the use of stereotypes to that effect." *Boston Parents I,* 2021 WL 1422827, at *15 n.20.

Appellant offers no new argument for continuing to press a year-over-year comparator. It simply cites two out-of-circuit district court cases, one of which has been significantly questioned by a recent Fourth Circuit decision. In granting a stay of the lower court judgment Appellant cites, Judge Heytens's concurrence in *Coalition for TJ*, 2022 WL 986994, at *1, observed that "the district court's disparate

impact analysis is likely flawed because it relies on the wrong comparator." *Id.* at *3.[65] Judge Heytens rejected the "simple before-and-after comparator," which Appellant continues to advance, as the proper baseline for assessing disparate impact. *Id.* Judge Heytens reasoned that using a current government policy to "create[] a floor against which all future policies will be judged [risks making it] exceedingly difficult for government actors to change existing policies that have a real (albeit unintentional) disparate impact." *Id.* Appellant makes no attempt to engage this decision that rejects its position.

The second district court case Appellant rests on is equally unavailing. On July 29, 2022, after Appellant filed its opening brief, the District of Maryland issued a decision in *Association for Education Fairness v. Montgomery County Board of Education*, in which it agreed with "the soundness of Judge Heytens's analysis." 2022 WL 3019762, at *7 (D. of Md. 2022). In dismissing the plaintiff's amended complaint, the court reconsidered its reliance, in the decision Appellant cites (*see* Opening Br. at 28), on the simple before-and-after (year-over-year) comparison. *Id.* Applying the proper comparator, as explained in section III(B), *infra*, the court could not "see how the [challenged] Plan visited a disproportionate *burden* on Asian American students when [their] percentage of admitted … students so substantially

[65] The United States Supreme Court denied an application to vacate the stay. *See Coal. for TJ v. Fairfax Cty. Sch. Bd.*, No. 21A590, 2022 WL 1209926, at *1 (U.S. Apr. 25, 2022).

outpaces the percentage of representation among all applicants." *Id*. (emphasis in original). Because neither case advances Appellant's cause, its disparate impact analysis remains constitutionally deficient.

B. Comparing Applicant Pool to Admitted Students is the Correct Barometer for Disparate Impact Analysis.

Appellant's insistence on using the wrong comparator to show disparate impact distorts *Arlington Heights*'s teachings. Elucidating its holding in *Washington v. Davis*, 426 U.S. 229, 242 (1976), that "disproportionate impact . . . is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution," the Supreme Court instructed that disproportionate impact is determined, in part, by whether the challenged official action "bears more *heavily* on one race than another," or whether "a clear pattern, unexplainable on grounds other than race emerges from the effect of the [official] action..." *Arlington Heights*, 429 U.S. at 266 (internal citation and quotation marks omitted) (emphasis added). Applying these precepts, although the challenged official action "arguably bear[s] more heavily on racial minorities," the Court in *Arlington Heights* deemed the impact insufficient to sustain an Equal Protection claim. *Id.* at 269. Nothing in the opinion established the

comparator for adjudging disparate impact where applicants compete for spots in a school or a job. But guideposts abound.[66]

The district court here aptly ruled that the racial demographics of the Exam Schools were variable from year-to-year given that there was no guarantee that any group of applicants would be admitted. *Boston Parent I*, 2021 WL 1422827, at *15. Judge Heytens's concurrence in the Fourth Circuit decision discussed in section III(A), *supra,* could not be clearer:

> The more obviously relevant comparator for determining whether [a] race neutral admissions policy has an outsized impact on a particular racial group is the percentage of applicants versus the percentage of offers… Such a nexus targets more directly the core question for assessing disparate impact: whether members of one group have, proportionally, more difficulty securing admissions than others.

Coal. for T.J., 2022 WL 986994, at *3; *see also Debra P. v. Turlington*, 644 F.2d 397, 401 (5th Cir. 1981) (comparing percentage of test-takers to percentage of students who failed to earn high school diploma to determine constitutional violation).

Rather than offer a controlling precedent for its preferred comparator, Appellant complains that using the applicant pool compared to admitted students

[66] In the employment context, for example, courts routinely compare applicant pool to the pool of successful hires to assess disparate impact. *See, e.g., Watson v. Fort Worth Bank and Trust*, 487 U.S. 977, 995 (1988) ("plaintiffs are required to show that the test[] in question select applicants for hire … in a racial pattern significantly different from that of the pool of applicants").

would "create a substantial exception to the *Arlington Heights* framework." Opening Br. at 36. But it is Appellant's disinclination to demonstrate that White and Asian American students "have, proportionally, more difficulty securing admissions," *Coal. for T.J.*, 2022 WL 986994, at *3, to the Exam Schools than Black and Latino students that threatens to eviscerate *Arlington Heights*' teachings. Stated differently, Appellant's disparate impact analysis fails to show stark patterns of disproportionate racial exclusion. *See Anderson*, 375 F.3d at 89; *Hayden v. Cty. of Nassau*, 180 F.3d 42, 52 (2d Cir. 1999) (finding that appellant's Equal Protection claim fails where their disfavored criterion did not adversely disproportionately impact them); *Assoc. for Educ. Fairness,* 2022 WL 3019762, at *7 (ruling that Asian American students alleging disparate impact "consistently have occupied a proportionally greater share of students admitted … as compared to their representation in the applicant pool," and therefore their equal protection claim "fails on [that] basis alone").[67]

Accepting Appellant's misguided interpretation of *Arlington Heights* would turn the Equal Protection Clause on its head and restrict a school district's ability to make race-neutral changes to address existing inequities by turning the prior year's admissions results, which can vary year-to-year, into a "baseline against which all

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[67] *See also, Christa McAuliffe Intermediate Sch. PTO, Inc.*, 2022 WL 4095906, at *10 (collecting cases and noting that courts have routinely analyzed disparate impact by comparing "the percentage of the plaintiff group in the applicant pool to the percentage of offers received by that group.").

future [outcomes] must comport." *Bos. Parent Coal. For Acad. Excellence Corp. v. Sch. Comm. of City of Bos.*, No. 21-cv-10330, 2021 WL 4489840, at *15 n.20 (D. Mass. Oct. 1, 2021). This cannot be so. As the district court observed, the "Equal Protection Clause is not a bulwark for the status quo." *Boston Parent I*, 2021 WL 1422827, at *14 n.18.

CONCLUSION

For the foregoing reasons, *Amici Curiae* respectfully urge this Court to affirm the district court's judgment.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Melanie Dahl Burke, hereby state that, pursuant to FRAP 29(a)(4) and 32(a)(7)(B)(i), the Brief of *Amici* Curiae contains 6,426 words, excluding the portions exempted by Rule 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface in 14 point, Times New Roman font.

/s/ Melanie Dahl Burke
Melanie Dahl Burke

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: September 9, 2022

/s/ *Melanie Dahl Burke*
Melanie Dahl Burke

ADDENDUM

ASIAN AMERICANS ADVANCING JUSTICE-AAJC ("Advancing Justice-AAJC") is an advocacy group that seeks to advance civil and human rights for Asian Americans. Founded in 1991, Advancing Justice-AAJC has a strong history of promoting equal protection on the social, legal, and political stages. Advancing Justice-AAJC has filed numerous amicus briefs in support of educational equity, including in *Fisher v. University of Texas at Austin*, 579 U.S. 365 (2016). Furthermore, it represents a group of Asian American and other students of color in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 980 F.3d 157 (1st Cir. 2020), who testified and presented evidence as student-*amici* plus in support of race-conscious admissions, sharing how consideration of race safeguards against discrimination and ensures candidates' full life experience can be shared and recognized.

AUTISM SPRINTER is committed to collaborating with education advocacy organizations. Many of the families we serve encounter financial barriers as it pertains to providing access to a quality education for their loved ones. Often our Boston families face the dilemma of having to prioritize between paying for additional services unique to students on the spectrum, or paying for additional academic tutoring that would increase their loved one's opportunity to gain admittance at one of the Boston Exam Schools. Therefore, we did not hesitate to

support the temporary admissions plan and enthusiastically signed on to an Amicus Brief supporting the plan. We find that this advocacy is extremely important for the families we serve and will continue to do so.

The **BOSTON UNIVERSITY CENTER FOR ANTIRACIST RESEARCH** (the "Center") is a nonpartisan, nonprofit, university-based research center that convenes researchers, scholars, advocates, and policy experts across disciplines to address seemingly intractable problems of racial injustice and inequity. The Center's interest in this case arises from its mission to examine racist policies, practices, and actions, and advance antiracist solutions. The law is clear that a governmental body may consider the racial impact of its policies without triggering strict scrutiny under the Equal Protection Clause. Plaintiff-Appellant's argument to the contrary is grounded in the false premise that the Fourteenth Amendment prohibits race consciousness, when in fact it prohibits racial discrimination. The Center joins this amicus brief to emphasize that entities seeking to make admissions policies more equitable are well within the bounds of equal protection jurisprudence.

CITIZENS FOR PUBLIC SCHOOLS is a public education advocacy organization. We believe public education is the foundation of our democracy. Our mission says that all children regardless of race, color, creed, nationality, gender, disability, class or economic status should have equal educational opportunity so they can participate successfully in the civic and economic life of the

Commonwealth. Thus, consistent with our mission, we support the Boston Public Schools' ability to make race-neutral changes to the admissions policy and to address inequities in educational opportunities and oppose any efforts to challenge this ability.

EDVESTORS is a school improvement organization with the mission to advance equitable, meaningful education for all Boston students. Given the issues of equity at stake in the Exam School case, EdVestors' interest is in the most equitable assignment system feasible.

GLBTQ LEGAL ADVOCATES & DEFENDERS ("GLAD") is a Boston-based legal organization dedicated to creating a just society free of discrimination based on gender identity and expression, HIV status, and sexual orientation. Since 1978, GLAD has worked in New England and nationally through strategic litigation, public policy advocacy, and education. GLAD has a particular interest in, and record of advocacy to empower, lesbian, gay, bisexual, transgender and queer youth in all systems, including the education, child welfare and juvenile justice systems. For LGBTQ youth, who are more likely to experience homelessness than their non-LGBTQ peers, access to safe, excellent, and equitable education is central to their ability to thrive in society.

HAMKAE CENTER is a community group that organizes and advocates with Asian Americans in Virginia and we support the ability of school districts to

make race-neutral policy changes to address existing barriers to educational opportunities and expand access for all students. Similar efforts in Northern Virginia have resulted in a more diverse and inclusive student body, including more lower-income Asian American students, that continues to reflect the rigor that Governor Schools are known for as well as the actual demographics of Northern Virginia. We know that these reforms work without compromising standards of excellence.

HISPANIC FEDERATION, INC. ("HF") is the nation's premier Latino nonprofit membership organization. Founded in 1990, HF seeks to empower and advance the Hispanic community, support Hispanic families, and strengthen Latino institutions through work in the areas of education, health, immigration, civic engagement, economic empowerment, and the environment. For two decades, HF has worked to advance educational equity, promote racial diversity and diminish racial isolation for students of color, particularly Latinx students. HF promotes its education objectives through several initiatives, including Pathways to Academic Excellence with its Pathways to College Prep and Pathways for Early Childhood Literacy components. HF supports increased racial, ethnic, and socioeconomic diversity in publicly funded selective high schools in Boston, New York and across the country, as they are pathways to opportunity for Latinx students.

JAMAICA PLAIN PROGRESSIVES is an organization committed to equity for all people regardless of race, sex, sexual orientation, gender identity,

socioeconomic class, religion, nationality, or physical ability. We also believe that there are some things everyone is entitled to, including a good public education. We have been committed to and advocated for these ideals since our formation in 2009. Our public schools are a manifestation of our public values. A society that values equity and diversity must have equitable and diverse public schools where our youth can learn how to be citizens who value and honor the perspectives of their entire community. Our Exam Schools admissions policies have failed to create a student body that reflects our city, specifically failing to provide fair access to our Black and Latinx students. We know that we can only thrive when we ALL thrive, and a more equitable admission process is a vital step toward that goal. We recognize that Jamaica Plain is a neighborhood that will, under the admissions policy, likely "lose" exam school seats, but we reject the notion that this is a loss—rather, more equitable admissions policies are a win for our neighborhood and our city as we work to make sure all voices and experiences are heard, valued, and affirmed.

LATINOJUSTICE PRLDEF is a civil rights organization that works to create a more racially just society by using and challenging the rule of law to secure transformative, equitable and accessible justice, by empowering Latinx communities, and by fostering leadership through advocacy and education. Since its founding in 1972 as the Puerto Rican Legal Defense & Education Fund, LatinoJustice has taken a leadership role in causes devoted to immigrant rights,

education, voting rights, and criminal justice reform. LatinoJustice brought litigation establishing the right of non-English-speaking Puerto Rican and Latinx students to receive bilingual education in New York City, and has served as counsel for amici in many cases advancing educational equity, including *Fisher v. University of Texas at Austin*, 570 U.S. 297 (2013), and *A.C. by Waithe v. McKee*, 23 F.4th 37 (1st Cir. 2022).

MASSACHUSETTS ADVOCATES FOR CHILDREN (“MAC”) is a non-profit organization founded in 1969 whose mission is to remove barriers to educational and life opportunities for children and youth. MAC provides legal representation to students and families in special education and school discipline matters; transforms school cultures to be inclusive, safe and supportive; and creates policy change so all children and youth can learn in school, reach their potential, and thrive. MAC focuses its educational advocacy on behalf of children and youth who face significant barriers, inequities, or discrimination because of their race, ethnicity, disability, economic status, immigration status, English Learner status, and/or traumatic life experiences. MAC supports the Boston School Committee’s admissions policy removing barriers to equal educational opportunity.

MASSACHUSETTS APPLESEED CENTER FOR LAW AND JUSTICE (“Massachusetts Appleseed”), for over ten years, has engaged in research and advocacy in an effort to dismantle the school-to-prison pipeline, which

disproportionately impacts Black and Latinx students from low-income backgrounds. Our organization has released reports detailing the harmful impact of zero-tolerance policies, and advocated for essential disciplinary reforms through the Chapter 222 of the Acts of 2012, and the Criminal Justice Reform Act of 2018. All of Massachusetts Appleseed's research and advocacy around the school-to-prison pipeline lies at the intersection of race and socioeconomic status, with the goal of eliminating existing disparities within the Commonwealth's education system. Furthermore, Massachusetts Appleseed has in the past joined with Lawyers for Civil Rights and other groups in hosting community conversations about exam school admissions, and we have signed on to letters requesting that BPS change their practices and eliminate the entrance exams in an effort to increase diversity. The changes proposed within the School Committee of the City of Boston's Exam School admissions plan align directly with those same aims, and would represent a significant step in breaking down the barriers to opportunity that low-income students of color continually face in our state.

The **MASSACHUSETTS LAW REFORM INSTITUTE** ("MLRI") is a statewide non-profit law and poverty center, and a principal support center for Massachusetts civil legal aid agencies. Its mission is to advance economic, social, and racial justice for low-income persons and communities. For over fifty years, MLRI has engaged in legislative, administrative, and judicial advocacy on behalf of

its clients. Addressing public and institutional policies and procedures that either contribute to, or perpetuate, the cycle of poverty, and advancing racial equity, are two of the three fundamental frameworks guiding MLRI's mission. As part of its advocacy, MLRI has participated as amicus curiae in numerous cases concerning the rights of people with low incomes. *See, e.g., Davila-Bardales v INS*, 27 F.3d 1 (1st Cir. 1994); *Jobe v INS*, 238 F.3d 96 (1st Cir. 2001); *Haoud v Ashcroft*, 350 F.3d 201 (1st Cir. 2003); *El Moraghy v Ashcroft*, 331 F.2d 195 (1st Cir. 2003); *Aguilar v. USICE*, 510 F.3d 1 (1st Cir. 2007). MLRI supports the Boston School Committee's admissions policy removing barriers to equal educational opportunity for low-income students.

MASS INSIGHT EDUCATION AND RESEARCH INSTITUTE ("MI") is a strong advocate for equity in education. In our programs, services, and advocacy work we partner with states, districts, schools, and communities to build capacity to advance equity and opportunity in K-12 education so that all students, particularly those who have been systemically marginalized, are prepared to achieve their academic and personal potential.

MONTGOMERY COUNTY PROGRESSIVE ASIAN AMERICAN NETWORK's ("MoCoPAAN") mission is to raise the visibility of Asian Americans, to collectivize and lift up progressive voices, and to offer allyship through strategic communications. We speak up on issues that affect people of

diverse backgrounds: representation, equity and inclusion; immigrant rights; and, racial discrimination and profiling. We are strong supporters of racial equity and access to education for all students.

PROGRESSIVE WEST ROXBURY/ROSLINDALE ("PWRR") is a chapter of Progressive Massachusetts. Its statewide and local organizations are committed to equity, that residents of our communities and the city as a whole will all be better off only when every individual and neighborhood can flourish. The recent access path to the exam schools failed to provide fair access to lower socio-economic families and Black and Latinx students, which harmed all of us and Boston as a whole. Significantly, numerous members have independently contacted us supporting our signing onto the amicus brief collectively for them.

Progressive West Roxbury/Roslindale is committed to effective policy, leadership, and public participation in democracy. Exam school graduates will be more effective participants and leaders in our democracy if they have formative experiences in schools that explicitly hold diversity as a value. Conversely, if they have formative experiences that demonstrate valuing exclusion and lack of diversity, cycles of exclusion and harm are likely to be perpetuated. Our communities are changing demographically and ideologically as evidenced by census data, voting patterns, and numerous community activities over several years involving hundreds,

sometimes thousands, of people. We support this amicus brief to speak for ourselves and our changing communities; the plaintiffs do not speak for us.

We are aware of the widespread practice in our more affluent neighborhoods of paying for expensive tutoring for the recently used admissions exam. We are also aware that grading practices across BPS, parochial, charter, and independent schools are inconsistent, and that some schools, particularly in West Roxbury, have engaged in grade inflation to give their students an advantage in accessing the exam schools. The plan to spread access across zip codes mitigates the impact of both practices. Some of the seats projected to be "lost" from our neighborhoods were unethically gained for decades.

This one-year pandemic-adjusted access plan avoided spreading COVID-19, and, for this year, identifies highly qualified students in a fairer way than the district has used previously. We strongly support this plan.