

## For Immediate Release

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### **The Korematsu Center joins 19 organizations and 32 law school professors in filing *amicus* brief with the New York Court of Appeals addressing color discrimination in jury selection**

NEW YORK – On October 20, 2016, the [Fred T. Korematsu Center for Law and Equality](#) (Korematsu Center) joined 19 other bar associations and non-profit organizations, and 32 law school professors in filing an *amicus* brief with the New York Court of Appeals, urging the Court to recognize that excluding an individual from jury service based on the color of her skin violates the Equal Protection Clause of the United States and New York Constitutions.

The United States Supreme Court held in the seminal case *Batson v. Kentucky* that a prosecutor who exercises a peremptory strike raising an inference of racial discrimination must provide a neutral explanation for the strike. 476 U.S. 79, 97 (1986). In the case before the New York Court of Appeals, *People v. Bridgeforth*, the Appellant asserted that the prosecutor improperly used his peremptory strikes to exclude all dark-skinned women from the jury. Despite the prosecutor's failure to offer an explanation for striking one of the jurors, a dark-skinned Indian-American woman, both the trial court and the intermediate appeals court upheld the strike. The intermediate appeals court, in particular, held that the Appellant failed to establish that the prosecutor struck this prospective juror because she was a member of a "constitutionally cognizable class" protected by *Batson*.

The State of New York has argued that skin color cannot form the basis of a protected class under *Batson*, questioning both whether color discrimination occurs and whether courts have the ability to administer claims of color discrimination. In response, the *amicus* brief presents ample empirical research and real-world examples documenting the pernicious impact of color discrimination in criminal sentencing, employment, education, politics, and popular culture, both within and across different races. The brief further sets forth numerous other legal frameworks under which claims of color discrimination are already recognized, from Section 1981 of the 1866 Civil Rights Act to Title VII of the 1964 Civil Rights Act to the Fair Housing Act.

Professor Robert S. Chang, executive director of the Korematsu Center, commented, "The broad coalition joining the brief reflects the importance of this issue to these organizations that are committed to ensuring fair treatment in all walks of life."

Sherrilyn Ifill, President and Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc. (LDF) observed, "Permitting discrimination based on color in any part of our justice system further undermines trust in our public institutions. The notion that discrimination based on color is too difficult for our courts to analyze sells our courts and judges short. LDF has long been dedicated to the fight against discrimination in jury selection, including as amici in *Batson*, and continues to seek an end to all forms of discrimination in the criminal justice system."

Attorneys from Akin Gump Strauss Hauer & Feld LLP served as pro bono counsel on the brief. "Akin Gump is committed to pro bono and access to justice and is pleased to bring its appellate advocacy

expertise to represent this broad coalition to ensure that New York courts eradicate color discrimination from the jury selection process,” said Alice Hsu, a partner in Akin Gump’s New York office representing the *amici*.

Professor Vinay Harpalani from Savannah Law School, who served as of counsel for *amici*, further noted that Indian-Americans, like the stricken juror in this case, “have faced a long history of discrimination in the United States, based not only on race and national origin, but also skin color. Even today, we still see cases of dark-skinned Indian-Americans, like Black Americans, being profiled by police.”

In total, 32 law professors and 20 organizations have joined the amicus brief, including: the Fred T. Korematsu Center for Law and Equality, the Anti-Defamation League (ADL), Asian Americans Advancing Justice | AAJC, Asian Americans Advancing Justice | Asian Law Caucus, Asian Americans Advancing Justice | Atlanta, Asian Americans Advancing Justice | Chicago, Asian Americans Advancing Justice | Los Angeles, the Asian American Bar Association of New York, the Asian American Legal Defense and Education Fund (AALDEF), the Hispanic National Bar Association (HNBA), LatinoJustice PRLDEF, Inc., the Metropolitan Black Bar Association (MBBA), the National Asian Pacific Bar Association (NAPABA), the National Asian Pacific American Women’s Forum (NAPAWF), the NAACP Legal Defense & Educational Fund, Inc. (LDF), the National Bar Association, the National Native American Bar Association (NNABA), the Society of American Law Teachers, Inc. (SALT), the South Asian Bar Association of New York (SABANY), and the South Asian Bar Association of North America (SABA North America).

“Color discrimination inflicts lasting harms both on individuals and on society as a whole, across racial and ethnic groups,” says Jennifer Weddle, President of the National Native American Bar Association. “We urge the New York Court of Appeals to preserve the principles of equal protection, which are of fundamental importance to the integrity of the judicial system.”

Oral argument in *People v. Bridgeforth* will be heard by the New York Court of Appeals on November 17, 2016. Webcasts of arguments are available at <https://www.nycourts.gov/ctapps/live.html>.

The amicus brief is available [here](#).