

No. 11-345

In The
Supreme Court of the United States

—◆—
ABIGAIL NOEL FISHER,

Petitioner,

v.

UNIVERSITY OF TEXAS AT AUSTIN, ET AL.,

Respondents.

—◆—
**On Writ Of Certiorari To The
United States Court Of Appeals
For The Fifth Circuit**

—◆—
**BRIEF OF AMERICAN SOCIAL SCIENCE
RESEARCHERS AS *AMICI CURIAE*
IN SUPPORT OF RESPONDENTS**

—◆—
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INTEREST OF *AMICI CURIAE*

Pursuant to Supreme Court Rule 37, the undersigned social scientists submit this brief as *amici curiae* in support of Respondents.¹

Amici curiae are social scientists and scholars who have extensively studied issues related to diversity, affirmative action, desegregation, and race relations in higher education institutions and in society. Collectively, *amici curiae* include 444 researchers from 42 states and from 172 educational institutions and research centers throughout the United States. Their work extends across numerous disciplines, including education, psychology, sociology, demography, economics, political science, and history.²

Amici curiae have an interest in presenting to the Court research findings relevant to the educational judgments of The University of Texas at Austin (“the University”), and to the possible implications of the Court’s decision for other institutions and programs. The brief draws from the *amici*’s original

¹ All parties have filed with the Court their blanket consent for the filing of *amicus curiae* briefs in these cases. Pursuant to Supreme Court Rule 37.6, counsel for *amici curiae* certifies that this brief was not written in whole or in part by counsel for any party, and that no person or entity other than *amici curiae* or their counsel has made a monetary contribution to the preparation or submission of this brief.

² A list of *amici* is included in the Appendix. *See infra* App. 6-23. Institutional affiliation is provided for identification purposes only and does not reflect the views of the institutions.

research and their review of the literature, including the most extensive and up-to-date body of knowledge about the Texas Top Ten Percent Law (“the percent plan”).

We believe it is vital that the Court have the newest and most rigorous peer-reviewed research and statistical analyses when considering an issue that is so critical for all of the nation’s selective colleges and universities. The evidence in this brief bears directly on whether the University’s admissions policy withstands strict scrutiny.

This brief focuses primarily on the means the University uses to leverage the educational benefits of diversity and to serve its institutional mission. A substantial body of research and the extensive experience of educational experts at other postsecondary institutions support the conclusion that the University’s holistic admissions policy is narrowly tailored to further a compelling interest in the educational benefits of diversity – benefits that extend to all students at the University.



SUMMARY OF ARGUMENT

To create the level of diversity that fosters educational excellence and adequately prepares students for engaged citizenship and successful careers in a multiracial society, the University needs a meaningful level of inclusion of students from different racial groups, both in its classrooms and across campus.

The consideration of race as one among many factors in admissions is a supplement to the percent plan that has led to an important increase in the enrollment of African American and Latino students, which has enabled the University to create a more stimulating and productive educational environment for all of its students. Although the percent plan is a useful tool, it limits the University's ability to consider the unique experiences and qualities of individual students who are not among the top 10% but who could nevertheless contribute to a truly diverse learning environment for all students.

The long-term experience of other selective colleges and universities with race-neutral policies underscores the need for the University's holistic policy. Despite myriad race-neutral efforts to increase racial diversity at public institutions in states with laws or regulations that have banned the consideration of race as a factor in admissions, a number of important education programs have experienced a substantial decline in racial diversity. These declines have occurred in graduate studies and professional programs related to science, business, medicine, and law, and at selective undergraduate colleges, which limits the preparation and prospects of a multiracial group of potential future leaders and damages the quality of education and educational opportunities for all students. These institutional experiences highlight the harm the University is seeking to avoid.

Without the complement of a *Grutter*-like policy the percent plan has not achieved the desired results

at the University, and the plan has worked far less well at the other flagship campus in Texas. Thus, it is apparent that percent plans alone will not yield the level of diversity needed to leverage the educational benefits of diversity at public education institutions in other states, or at the nation's great private universities.



ARGUMENT

I. The University's Holistic Admissions Policy Achieves a Compelling Educational Objective That the Court Has Endorsed in *Grutter v. Bollinger*.

By supplementing the percent plan with the consideration of race as a factor in admissions, the University seeks to address the severe isolation or absence of African American and Latino students in many undergraduate classrooms, majors, and graduate programs. Pet. App. at 21a-24a. The large body of diversity research conducted before and since the Court's ruling in *Grutter v. Bollinger*, 539 U.S. 306 (2003), demonstrates that the University needs to continue to consider race in admissions in order to leverage diversity to provide educational excellence, and to prepare all students to meet the challenges of citizenship and to fill leadership roles in an increasingly diverse society. The University's *amici*, including the Brief of the American Educational Research Association et al., summarize the extensive research supporting this conclusion. In this brief, we focus on

research supporting the University's asserted need for diversity within its classrooms.

Classroom diversity is essential to providing the educational and citizenship benefits of diversity endorsed in *Grutter*. As the Court recognized in *Grutter*, a diverse student body promotes learning outcomes, and “[t]hese benefits are ‘important and laudable,’ because ‘classroom discussion is livelier, more spirited, and simply more enlightening and interesting’ when the students have ‘the greatest possible variety of backgrounds.’” 539 U.S. at 330 (emphasis added). Furthermore, research published since *Grutter* supports the Court's conclusion. The presence and participation in the classroom of racially diverse students enhances the content of the curriculum, class discussions, and students' motivation to work with peers from other racial groups.³ Racial

³ See Mitchell J. Chang et al., *The Educational Benefits of Sustaining Cross-Racial Interaction Among Undergraduates*, 77 J. Higher Educ. 430, 432 (2006) (finding that interactions with diverse peers in classrooms is an important aspect of cross-racial interaction on campus). See also Meera E. Deo, *The Promise of Grutter: Diverse Interactions at the University of Michigan Law School*, 17 Mich. J. Race & L. 63, 97-103 (2011) (studying the benefits of diversity in the University of Michigan's law school classrooms); Patricia Gurin et al., *Engaging Race and Gender: Intergroup Dialogues in Higher Education* (forthcoming 2013) (finding improved inter-ethnic relationships and reduction of stereotypes in diverse undergraduate classes); Jeffrey F. Milem et al., *The Important Role that Diverse Students Play in Shaping the Medical School Curriculum*, Ariz. Med. Educ. Res. Inst. (AMERI), 2-4 (2012), available at <http://www.coe.arizona.edu/ameri/publications> (explaining that medical students guide

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diversity not only increases the breadth and scope of ideas produced in a collaborative learning environment like the classroom, it also significantly improves the quality of solutions envisioned collectively for solving real-life problems.⁴

Petitioner and her *amici* criticize the University's asserted need to attain a "critical mass" of students in the classroom to leverage the educational benefits of diversity. As the Court noted in *Grutter*, critical mass must be "defined by reference to the educational benefits that diversity is designed to produce." 539 U.S. at 330. This determination must consider the context in which learning takes place and does not correspond to a fixed number or percentage, which is neither practical nor desirable in a greatly varied and changing nation. The dynamics of diversity are contextual, interdependent, participatory, and cross-racial. Therefore, an institution can know when there is interactive diversity – i.e., opportunities for both

diversity education in the medical school curriculum); Victor B. Sáenz et al., *Factors Influencing Positive Interactions Across Race for African American, Asian American, Latino, and White College Students*, 48 Res. Higher Educ. 1, 35 (2007) (stating that the college classroom is a critical context for increasing positive cross-racial interactions); Ximena Zúñiga et al., *Action-Oriented Democratic Outcomes: The Impact of Student Involvement with Campus Diversity*, 46 J. C. Student Dev. 660, 673 (2005) (explaining that engagement with diverse peers informally and in college classrooms is vital to reducing racial bias).

⁴ See, e.g., Scott E. Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies* 327-28 (2007).

students of color and white students to reap the educational benefits of diversity – only by assessing students’ experiences of classroom participation or of racial isolation in the classroom and other learning environments on campus. These judgments should be left to the University, as it has the best understanding of the context in which it seeks to fulfill its educational mission.

Including a meaningful number of students from different racial and ethnic groups is especially important in the classroom, where the “interplay of ideas and exchange of views” occurs. *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 314 (1978) (citing *Sweatt v. Painter*, 339 U.S. 629, 634 (1950)). As the Court recognized in *Grutter*, “diminishing the force of racial stereotypes is both a crucial part of [an institution’s] mission, and one that it cannot accomplish with only token numbers of minority students.” 539 U.S. at 333. Moreover, having more than a token presence of students from racial minority groups in the classroom reduces racial isolation and increases student integration, which creates a more beneficial classroom environment and more successful campus experience.⁵ Students who report having had negative

⁵ See, e.g., Janice McCabe, *Racial and Gender Microaggressions on a Predominantly-White Campus: Experiences of Black, Latina/o and White Undergraduates*, 16 *Race, Gender & Class* 133, 141-43 (2009) (stating that the classroom is particularly a site for microaggressions and feelings of isolation); Samuel D. Museus et al., *Modeling Racial Differences in the Effects of Racial Representation on 2-year College Student*
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racial experiences in the college classroom or elsewhere on campus are more likely to express overall dissatisfaction with their college experience.⁶ In fact, having a meaningful level of diversity on campus helps institutions retain minority students and improves graduation rates.⁷

Racially integrated classrooms also help to reduce stereotype threat, which is a physiological response that limits the performance of racial minorities and

Success, 13 J. C. Student Retention 549, 551 (2012) (explaining that greater inclusion of one's own racial group on campus improves classroom environments for students and increases the likelihood of success); Richard N. Pitt & Josh Packard, *Activating Diversity: The Impact of Student Race on Contributions to Course Discussions*, 53 Soc. Q. 295, 312-13 (2012) (concluding that the presence of African American students with diverse perspectives in a classroom improves class content discussion and helps avoid over-generalization across groups).

⁶ See, e.g., Shaun R. Harper & Sylvia Hurtado, *Nine Themes in Campus Racial Climates and Implications for Institutional Transformation*, New Directions for Student Services, Winter 2007, at 7, 18; Sylvia Hurtado et al., *Predicting Transition and Adjustment to College: Biomedical and Behavioral Science Aspirants and Minority Students' First Year of College*, 48 Res. Higher Educ. 841, 881 (2007); Berkeley Miller & Sutee Sujitparapitaya, *Campus Climate in the Twenty-First Century: Estimating Perceptions of Discrimination at a Racially Mixed Institution, 1994-2006*, New Directions for Institutional Res., Spring 2010, at 29, 29-30.

⁷ See, e.g., Sylvia Hurtado et al., *A Model for Diverse Learning Environments: The Scholarship on Creating and Assessing Conditions for Student Success*, in 27 *Higher Education: Handbook of Theory and Research* 41, 57, 102 (John C. Smart & Michael B. Paulsen eds., 2012) (synthesizing research linking campus climate and retention).

non-minorities alike in situations where they are at risk of confirming a negative stereotype about their racial group's capacity.⁸ In other words, students' performance in an academic context is adversely affected by the awareness that their behavior "might be viewed through the lens of racial [or gender] stereotypes."⁹ An African American or Latino student who is the only member of his race in a classroom can face a situation of intense discomfort that undermines his performance. However, when the same student is made to feel that he belongs from situational cues such as the presence of other African American or Latino students in the classroom, his academic performance improves.¹⁰

Experiencing diverse classrooms and a healthy racial climate is as important for white students as for minority students. If there are no Latino or African American students in their classrooms or fields of study, white students have little opportunity for

⁸ See, e.g., Claude M. Steele, *Whistling Vivaldi: And Other Clues to How Stereotypes Affect Us* 134-90 (2010); Mitchell J. Chang et al., *Considering the Impact of Racial Stigmas and Science Identity: Persistence Among Biomedical and Behavioral Science Aspirants*, 82 J. Higher Educ. 564, 569 (2011).

⁹ *What Is Stereotype Threat?*, ReducingStereotypeThreat.org, <http://reducingstereotypethreat.org/definition.html> (last visited July 22, 2012).

¹⁰ *Id.* This is also true, for example, when women are tested on math skills in a setting where negative stereotypes about women's math ability are activated. *Id.* See also Steele, *supra* note 8, at 134-51.

cross-racial interactions. Therefore, a healthy racial climate is critical to creating a learning environment that improves white students' ability to gain the educational benefits of diversity.¹¹

II. The University's Holistic View of Applicants Is Narrowly Tailored to Further a Compelling Interest in the Educational Benefits of Diversity.

A. The University's Policy Has Increased the Enrollment of Well-Qualified African American and Latino Students Who Help the University Leverage the Benefits of Diversity in Its Classrooms and on Campus.

The University's admissions policy has led to important increases in the enrollment of African American and Latino students. As the Fifth Circuit opinion noted, after the University's *Grutter*-like plan began, "in an entering class that was roughly the same size in 1998 as in 2008, the enrollment of African American students doubled from 165 students to 335 students. Hispanic enrollment increased approximately 1.5 times." Pet. App. at 24a.

¹¹ Uma M. Jayakumar, *Can Higher Education Meet the Needs of an Increasingly Diverse and Global Society? Campus Diversity and Cross-Cultural Workforce Competencies*, 78 Harv. Educ. Rev. 615, 634 (2008).

Data from the state's higher education coordinating board show similar increases.¹² Comparing the six years (1998 to 2004) when the University was prohibited from considering race as a factor in admissions and was using all race-neutral means at its disposal with the three years (2005 to 2008) challenged by Petitioner when the University supplemented these efforts with its *Grutter*-like policy, the average percentage of African American students enrolled at the University increased by 46%¹³ and the average percentage of Latino students enrolled increased by 35%.¹⁴

These increases under the University's holistic admissions policy are significant, as they allowed the University to leverage the benefits of diversity on its campus and in its classrooms, and thus to contribute to the education of a multiracial cadre of leaders who will understand more fully how to serve a changing nation and state. These increases are also important, as African American and Latino students who attend selective public flagship universities like

¹² See Tex. Higher Educ. Coordinating Bd. (THECB), *First-Time Undergraduate Applicant, Acceptance, and Enrollment Information*, Tex. Higher Educ. Data (1998-2010), <http://www.txhighereddata.org/Interactive/AppAccEnr.cfm>.

¹³ *Id.* This gain reflects an increase from 3.7% (or 267 African American freshmen from a total of 7,146 freshmen) to 5.4% (385 African American freshmen from a total of 7,094 freshmen). *Id.*

¹⁴ *Id.* This gain represents an increase from 14.6% (1,042 Latino students from a total of 7,146 freshmen) to 19.7% (1,396 Latino freshmen from a total of 7,094 freshmen). *Id.*

the University are more likely to graduate than comparable students who attend less selective institutions.¹⁵ Moreover, flagship universities are the fast track to professional schools: in the past five years, the University's graduates included 5,000 applicants to U.S. law schools (the third highest number in the nation), which exceeded the combined total for five other Texas public universities, including the state's other flagship institution.¹⁶

In graduate and professional degree programs, the holistic consideration of race in admissions has led to important increases in the enrollment of African American and Latino students. The results of a study that isolated the impact of *Grutter* in Texas showed that by 2006, the percentage of African American, Latino, and Native American students who enrolled in public graduate and professional schools in the state increased by 3.4%.¹⁷

¹⁵ William G. Bowen et al., *Crossing the Finish Line: Completing College at America's Public Universities* 209-15 (2009) (including the University in the set of flagship universities). See also William G. Bowen & Derek Bok, *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions* 257, 376-77 (1998).

¹⁶ *Top 240 ABA Applicant Feeder Schools*, Law Sch. Admission Council (LSAC) (2006-2007 to 2010-2011), <http://www.lsac.org/LSACresources/default.asp> (follow "Data" hyperlink; then follow "Top 240 Feeder Schools" hyperlink).

¹⁷ This reflects an increase from 29% to 30%. Liliana M. Garces, *Necessary But Not Sufficient: The Impact of Grutter v. Bollinger on Student of Color Enrollment in Graduate and Professional Schools in Texas*, 83 J. Higher Educ. 497, 499

(Continued on following page)

B. The Top Ten Percent Plan, Even with Extensive Outreach and Recruitment Programs, Has Not Produced Sufficiently Diverse Learning Environments.

Petitioner's claim that the percent plan has produced "substantial" diversity at the University (21.4%) is based on lumping together Latino and African American student enrollment numbers. Pet'r's Br. at 5. The effectiveness of the percent plan, however, needs to be assessed in terms of the impact it has had on various racial groups. *See Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 723 (2007) (noting the importance of not aggregating racial groups with distinctive histories and experiences).

1. The Percent Plan Restricts the University's Freedom to Shape Its Entering Class and Consider the Individual Experiences of Students Who Would Contribute to a Diverse Learning Environment.

The Court recognized in *Grutter* that percent plans are not workable substitutes for the flexible

(2012) (noting the importance of these increases in the context of graduate schools). *See also* Harry J. Holzer & David Neumark, *Affirmative Action: What Do We Know?*, 25 J. of Pol'y Analysis & Mgmt. 463, 483 (2006) (noting the important, even if modest, increases in Latino and African American graduate student enrollment when race is considered as a factor in admissions).

consideration of race, noting in particular the obstacles they create in “conducting the individualized assessments necessary to assemble a student body that is . . . diverse along all the qualities valued by the University.” 539 U.S. at 340. America’s great universities invest heavily in the individual consideration of student applications because they believe that the construction of the most diverse and interesting class possible is a vital component of both fairness to all individuals and educational excellence. They do not admit students based on a single dimension, and they are concerned with creating the most educationally powerful class possible.¹⁸

Without the supplement of a holistic admissions policy that can consider race, the percent plan prevents the University from considering certain individuals with special talents and qualities who may be essential to improving the educational experiences of all students. For instance, African American and Latino applicants from educationally demanding integrated or largely white schools may not be in the top 10% of their class, due to factors beyond their control, such as tracking.¹⁹ And yet, these students’

¹⁸ Neil L. Rudenstine, *Student Diversity and Higher Learning*, in *Diversity Challenged: Evidence on the Impact of Affirmative Action* 31, 43 (Gary Orfield ed., with Michal Kurlaender, 2001).

¹⁹ See, e.g., Andrea Venezia & Michael W. Kirst, *Inequitable Opportunities: How Current Education Systems and Policies Undermine the Chances for Student Persistence and Success in College*, 19 *Educ. Pol’y* 283, 287, 289 (2005) (finding inequitable
(Continued on following page)

previous experience in integrated schools gives them skills and understanding that could greatly help the University to leverage the benefits of diversity. For example, these students' presence could help to dismantle stereotypes and to bridge the gaps between white and non-white students that exist in racially isolated schools. Their experiences crossing racial lines could help students of all races feel comfortable with, and to benefit from, campus diversity.

Thus, as a complement to the percent plan, the consideration of race during the holistic review process, which relies on the skills of its faculty and admissions experts, allows the University to consider each applicant's personal, family, community, and academic histories and thus to build a truly diverse learning environment that contributes to its mission.

tracking in Texas along racial and class lines); *see also* David Card & Jesse Rothstein, *Racial Segregation and the Black-White Test Score Gap*, 91 J. of Pub. Econ. 2158, 2160 (2007) (explaining that data on enrollment in honors courses suggest that within-school segregation increases when schools are more highly integrated); William H. Schmidt, *At the Precipice: The Story of Mathematics Education in the United States*, 87 Peabody J. Educ. 133, 140-41 (2012) (finding that in 13 states, including Texas, a student's opportunity to learn mathematics is greatly influenced by race and family income); Jeannie Oakes, *Keeping Track: Structuring Equality and Inequality in an Era of Accountability*, 110 Teachers C. Rec. 700, 705-07 (2008) (providing a national overview of tracking based on race and class).

2. The Racial Isolation School Attendance Patterns upon Which the Percent Plan Is Premised Have Not Yielded Broad-Ranging Racial Diversity at the University.

The percent plan is premised on the assumption that the large number of racially isolated schools in Texas will increase racial diversity at flagship campuses by guaranteeing admission to the top-performing students at those schools. Despite these assumptions, the plan has not yielded sufficient beneficial results for African American and Latino students. The level of racial isolation differs for each group, and the mechanistic admissions process excludes equally talented students at less racially isolated schools.

There are very few education regions in Texas where African American students are so isolated that a percent plan would mean they are automatically admitted to college. None of the education regions in Texas has a majority of African American students, and only one of the state's 73 school districts with more than 15,000 students (Beaumont) has a majority of African American students.²⁰ On average,

²⁰ Spring W. Lee et al., Tex. Educ. Agency, *Enrollment in Texas Public Schools 2010-2011*, 37-40 (2011); Nat'l Ctr. for Educ. Stats. (NCES), U.S. Dep't of Educ., *Selected Statistics on Enrollment, Teachers, Dropouts, and Graduates in Public School Districts Enrolling More Than 15,000 Students: 1994, 2000, 2006-07, & 2008*, Dig. of Educ. Stat. (Oct. 2010), http://nces.ed.gov/programs/digest/d10/tables/dt10_094.asp.

African American students in Texas attend schools with half as many members of their own race as Latino students. *See infra* Appendix Table 1. Thus, it is not surprising that African American students constituted only an average of 3.7% of the University's entering class during the period the percent plan was in place without an accompanying holistic policy that allowed the consideration of race.²¹

The majority of all public school students in Texas are Latino (50.3% in 2010-2011); Latino students are also the majority in 8 of the 20 education regions in Texas, with four regions enrolling over 70% Latinos.²² Yet, the Latino student presence at the University under the percent plan, an average of 15% from 1998 to 2004, did not reflect the significant population of Latino high school graduates, 31% in 1997-1998.²³ Moreover, much of the growth in Latino

²¹ *See* THECB, *supra* note 12.

²² *See* Lee et al., *supra* note 20, at 7, 36-40.

²³ Nat'l Ctr. for Educ. Stats. (NCES), U.S. Dep't of Educ., *High School Graduates and Dropouts in Public Elementary and Secondary Schools, by Race/Ethnicity and State: 1997-98*, Dig. of Educ. Stat. (Sept. 2000), <http://nces.ed.gov/programs/digest/d00/dt103.asp>. *See also* Mark C. Long & Marta Tienda, *Winners and Losers: Changes in Texas University Admissions Post-Hopwood*, 30 *Educ. Eval. & Pol'y Analysis* 255, 266-67, 278 n.46 (2008) (noting that under the percent plan the University was "unable to maintain the share of Black and Hispanic students that would have been admitted under a regime that allowed . . . consideration of race").

enrollment at the University reflects demographic changes, not the policy changes of the percent plan.²⁴

3. Outreach and Recruitment Efforts Alone Have Not Been Sufficient Complements to the Percent Plan.

The percent plan's potential to yield racial diversity is dependent on extensive outreach and recruitment efforts, which the University has implemented.²⁵ Despite these efforts, from 1998 to 2004, fewer than 50% of the Latino students eligible for admission under the percent plan and approximately 30% of eligible African American students enrolled each year at the state's elite institutions.²⁶ These are substantially lower percentages than that for the white students eligible for the percent plan, 60% of

²⁴ Angel L. Harris & Marta Tienda, *Hispanics in Higher Education and the Texas Top 10% Law*, 4 *Race & Soc. Probs.* 57, 59 (2012).

²⁵ Catherine L. Horn & Stella M. Flores, The Civ. Rts. Project, *Percent Plans in College Admissions: A Comparative Analysis of Three States' Experiences* 52-53 (2003), available at <http://civilrightsproject.ucla.edu/research/college-access/admissions/percent-plans-in-college-admissions-a-comparative-analysis-of-three-states2019-experiences>.

²⁶ *Id.* at 42-50. See also Catherine L. Horn & Stella M. Flores, *When Policy Opportunity Is Not Enough: The Complexity of College Access and Enrollment*, 3 *J. Applied Res. on Child.* (forthcoming 2012) (on file with authors).

whom enrolled at either the University or at Texas A&M each year during that period.²⁷

The University's efforts to boost these numbers through outreach and recruitment programs have not relieved the concerns that prevent students from applying to or enrolling at the University, such as the perception that students of color are not valued or welcome at the institution. Studies have shown that policies banning the consideration of race in admissions can have a "discouragement effect" on minority students.²⁸ By contrast, policies that permit the consideration of race in admissions can serve as a "symbolic beacon of a welcoming environment" that helps students to overcome their reluctance to apply or enroll at a selective institution.²⁹ Thus, the

²⁷ See THECB, *supra* note 12. The differences in enrollment patterns are not explained by students' decision to attend college out of state. From 1998 to 2008 not more than 3% of white students, 4% of African American students, and 1% of Latino students who were eligible for admissions under the percent plan chose to attend college out of state. *Id.*

²⁸ See Susan K. Brown & Charles Hirschman, *The End of Affirmative Action in Washington State and Its Impact on the Transition from High School to College*, 79 Soc. of Educ. 106, 108, 119 (2006). See also Kimberly A. Griffin et al., *The Influence of Campus Racial Climate on Diversity in Graduate Education*, 35 Rev. Higher Educ. 535, 561 (2012) (finding that "[b]road efforts to increase the presence of people of color across campus appear to influence favorably prospective students' perceptions of the institution's commitment to diversity and signal an appreciation of the voices, needs, and experiences of individuals from a variety of backgrounds.")

²⁹ Brown & Hirschman, *supra* note 28, at 108.

University's holistic policy can serve as a signal to African American and Latino students that the University is a welcoming institution that values diversity. This message is critically important, given the University's long struggle to overcome its ignoble history of *de jure* segregation, discrimination, and a brazenly hostile campus climate for African American and Latino students.³⁰

C. The University's *Grutter*-Like Policy Benefits All Students and Does Not Operate as a Quota.

Petitioner's claim that the University's holistic policy unduly harms white students is factually wrong. The holistic consideration of race in admissions helps the University increase racial diversity, which benefits all students. *See infra* Point III.C. Furthermore, given the wide variety of factors that can be considered in a selective admissions process, no individual can be assured of admission, regardless of whether a policy is race-conscious or race-neutral. The *amicus curiae* briefs filed by Asian American and Pacific Islander organizations in support of the University compellingly demonstrate why the Court

³⁰ *See* Resp. Br. at 3-4 & n.1 (summarizing the long history of *de jure* and *de facto* discrimination against African Americans and Latinos at Texas' public schools and at the University). *See also* Brief of The Advancement Project et al. as *Amici Curiae* in Support of Respondents (discussing the University's chilly racial climate in recent years).

should also reject the claim by Petitioner and her *amici* that the University's *Grutter*-like policy harms Asian American students.

Year after year, fluctuations exist in the racial and ethnic distribution of students enrolled through holistic review separate from the percent plan. Data from the state's higher education coordinating board demonstrate that, since the University's *Grutter*-like policy was reinstated, the percentage of Latino students enrolled at the University who were not part of the percent plan ranged from 12% to 15% between 2005 and 2008, and the percentage of African American students ranged from 4% to 6%.³¹ These figures demonstrate that the University's *Grutter*-like policy does not operate as a quota. *See also* JA 131a.

III. Despite Race-Neutral Efforts to Maintain Diversity, Racial Diversity Has Declined at Institutions That Can No Longer Consider Race in Admissions, Which Is Harming the Nation's Future and the Quality of Education for All Students.

When not allowed to consider race as a factor in admissions, selective U.S. universities have dedicated substantial financial resources and tried myriad alternative strategies to achieve the racially and ethnically diverse student bodies needed to prepare all students for success in an increasingly diverse and

³¹ *See* THECB, *supra* note 12.

global marketplace. On their own, however, these efforts have failed to produce sufficiently diverse campuses. These institutions have instead experienced substantial declines in racial diversity, making it especially difficult for them to live up to the declaration in *Grutter* that, “[i]n order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity.” 539 U.S. at 332. The nation’s future and the quality of education for all students also have been compromised, as the skills acquired through interaction with racially diverse peers have a lasting effect on individuals’ preparation for employment in an increasingly diverse and global workforce.

A. Race-Neutral Strategies Such as the Consideration of Socioeconomic Status and Outreach and Recruitment Programs Have Not Been Effective Substitutes for the Holistic Consideration of Race.

The University’s comprehensive admissions review process considers race and low-income status, both of which can and should be considered. However, attending to family income without also considering race does not produce the wide-ranging diversity needed to further the University’s mission. This experience is supported by numerous studies, which find that considering parental income or social background without also considering race would lead to

the enrollment of substantially fewer students of color in selective schools than the holistic approach the University takes.³²

Lessons learned at the University of California further underscore the limited effect of other race-neutral efforts, such as additional outreach and recruitment. Immediately after the University of California was prohibited from considering race in admissions, the university instituted a major expansion of outreach, doubling its expenditures from \$60 million to \$120 million annually, the objective being to work directly with high schools that served a high percentage of minority students.³³ However, this outreach effort had a more limited impact on diversifying the student body than the prior admissions policy, which did consider race, among other factors.

³² See, e.g., Holzer & Neumark, *supra* note 17, at 476 (“[T]he presence of minorities among all low-income students in the United States, and especially among those graduating from high school with sufficient grades and test scores to be admitted to college, would be too small to generate a level of minority representation anywhere close to its current level.”); Alan Krueger et al., *Race, Income and College in 25 Years: Evaluating Justice O’Connor’s Conjecture*, 8 Am. Law & Econ. Rev. 282, 309 (2006) (“The correlation between race and family income, while strong, is not strong enough to permit the latter to function as a useful proxy for race in the pursuit of diversity.”).

³³ Jerome Karabel, *No Alternative: The Effects of Color-Blind Admissions in California*, in *Chilling Admissions: The Affirmative Action Crisis and the Search for Alternatives* 33, 39 (Gary Orfield & Edward Miller eds., 1998).

The results of California's experience are supported by statistical analyses that simulate the impact of replacing holistic admissions policies that consider race with race-neutral efforts, such as increased minority student recruitment and support programs geared toward minority students (e.g., college preparatory programs and campus organizations).³⁴ The findings show that these policies fail to restore the number of students of color at the most selective four-year institutions to the level that would be achieved with the holistic consideration of race in admissions.

Forgoing the consideration of race in admissions would further exacerbate the racial and socioeconomic gaps among those attending college. A 2012 report by Stanford University researchers shows that gaps in enrollment in terms of both race and income have become substantially larger since the 1980s, despite a narrowing academic achievement gap.³⁵ The report also states that the growing racial disparities in U.S. college enrollment cannot be explained by differences in income according to race and ethnicity. At any income level, white students are twice as likely as

³⁴ Jessica S. Howell, *Assessing the Impact of Eliminating Affirmative Action in Higher Education*, 28 *J. of Lab. Econ.* 113, 152-54 (2010).

³⁵ Sean F. Reardon et al., *Ctr. for Educ. Policy Analysis, Race, Income, and Enrollment Patterns in Highly Selective Colleges, 1982-2004*, 14 (2012), available at <http://cepa.stanford.edu/content/race-income-and-enrollment-patterns-highly-selective-colleges-1982-2004>.

African American students to attend a highly selective college.³⁶ In the upper half of the income distribution, white students are twice as likely as Latinos to attend a highly selective college.³⁷

B. Despite Race-Neutral Efforts to Maintain Diversity, Public Institutions That Cannot Implement a *Grutter*-Like Policy Have Experienced Substantial Declines in Racial Diversity.

1. Racial Diversity Has Dropped Significantly in Science Fields Critical to Industry and Defense, and in the Areas of Business, Law, and Medicine That Train Future Leaders and Serve the Health Needs of the Nation.

The drop in racial diversity in graduate programs has been greatest in the science fields that are critical for continued scientific and technological advancement and to national security. This drop causes a lack of the diverse perspectives needed in these fields to foster the innovation necessary to tackle complex research problems and advance scientific inquiry.³⁸ The nation also has an urgent need to produce one million more students with science, technology,

³⁶ *Id.* at 8.

³⁷ *Id.* at 14.

³⁸ *See, e.g.,* Page, *supra* note 4, at 327.

engineering, and mathematics degrees to meet workforce projections and keep America internationally competitive.³⁹ In fact, California's world leadership in high-tech industries has depended on hundreds of thousands of special visas being issued to foreign workers because the state has been unable to educate its overwhelming number of non-white students to the level needed.

Bans on *Grutter*-like policies in admissions at public institutions across four states have led to a 26% drop⁴⁰ in the percentage of engineering graduate students who are Latino, African American, or Native American, and a 19% decline⁴¹ in the natural sciences.⁴² These declines show that postsecondary

³⁹ President's Council of Advisors on Sci. & Tech., Exec. Office of the President, *Engage to Excel: Producing One Million More College Graduates with Degrees in Science, Technology, Engineering, and Mathematics*, 1 (2012), available at [http://www.nap.edu/openbook.php?record_id=12984&page=1](http://www.whitehouse.gov/administration/eop/ostp/peast/docsreports; Comm. on Sci., Eng'g, & Pub. Policy, <i>Expanding Underrepresented Minority Participation: America's Science and Technology Talent at the Crossroads</i>, 34 (2011), available at <a href=).

⁴⁰ A decline from 6.2% to 4.6%. Liliana M. Garces, The Civ. Rts. Project, *The Impact of Affirmative Action Bans in Graduate Education*, 4 (2012), available at <http://civilrightsproject.ucla.edu/research/college-access/affirmative-action/the-impact-of-affirmative-action-bans-in-graduate-education>.

⁴¹ A drop from 7.8% to 6.3%. *Id.*

⁴² *Id.* See also Liliana M. Garces, *Racial Diversity, Legitimacy, and the Citizenry: The Impact of Affirmative Action Bans on Graduate School Enrollment*, 36 *Rev. of Higher Educ.* 93, 122

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institutions need to be able to consider race in their admissions policies if the U.S., with a 46% non-white student population, is to remain a world leader in industry, defense, and basic science.

Racial diversity also has dropped significantly at schools of business, law, and medicine. Comparing two years (1995-1996) when the six public business schools in the University of California system could consider race in admissions to the post-Proposition 209 years (2000-2011) when they have been prohibited from considering race, the average percentage of entering African American students dropped by 58%.⁴³ Moreover, between 2000 and 2011, many of the University of California business schools had not one single African American or American Indian student in their entering classes.

In the period during which it has been without a *Grutter*-like policy in admissions (1997-2011), the UC Berkeley Law School enrolled an average of 12.5 African American students annually, only half of what the annual enrollment had been (25.7) when the law school was able to consider race in its holistic

(2012) (finding a 12.2% decline in student of color enrollment across all graduate programs).

⁴³ This drop represents a decline from 3.6% to 1.5%. William C. Kidder, *Misshaping the River: Proposition 209 and Lessons for the Fisher Case* (Aug. 2012), available at <http://ssrn.com/abstract=2123653>.

admissions plan (1970-1996).⁴⁴ A similar drop occurred at UCLA Law School, despite a remarkable increase in the numbers and strength of the applicant pool over the decades and intense recruitment efforts.

At California's medical schools, the percentage of entering underrepresented minorities also dropped, from 23.1% in 1993 to 14.3% in 1997 – the figures before and after the consideration of race as a factor in medical school admissions was challenged.⁴⁵ The average in the decade since (16.4%) is still considerably below pre-Proposition 209 levels, even as the state's non-white population soars. Myriad race-neutral efforts in California have not reversed these trends.⁴⁶ Similar declines were seen in Texas after *Hopwood v. Texas* prohibited institutions from considering race as a factor in admissions. 78 F.3d 932 (5th Cir. 1996), *abrogated by Grutter v. Bollinger*, 539 U.S. 306 (2003). In 1995, underrepresented minorities were 21.4% of first-year medical school enrollees in

⁴⁴ *Id.*

⁴⁵ Ann Steinecke & Charles Terrell, Ass'n of Am. Med. Colleges, *After Affirmative Action: Diversity at California Medical Schools*, 8 Analysis in Brief, Sept. 2008, at 1, available at <https://www.aamc.org/download/102358/data/aibvol8no6.pdf>; see also Jordan J. Cohen, *The Consequences of Premature Abandonment of Affirmative Action in Medical School Admissions*, 289 J. Am. Med. Ass'n 1143, 1146-47 (2003).

⁴⁶ Steinecke & Terrell, *supra* note 45, at 2 (explaining that efforts included “automatic admissions for top high school students, outreach, academic enrichment, and financial aid . . .”).

Texas, but this percentage dropped by one-fifth from 1997 to 2002, to an average of 17.2%.⁴⁷

2. Racial Diversity Has Dropped Significantly at Selective Undergraduate Institutions That Can No Longer Consider Race as a Factor in Admissions.

Racial diversity also has dropped at selective colleges that can no longer consider race as a factor in admissions, undermining these institutions' ability to fulfill their educational missions.⁴⁸ After Michigan's Proposal 2 prohibited the consideration of race as a factor in admissions, the University of Michigan experienced a substantial drop in racial diversity. From 2006 (the year before Proposal 2 could have affected enrollment) to 2010, the percentage of African American students enrolled decreased by over

⁴⁷ MALDEF et al., *Blend It, Don't End It: Affirmative Action and the Texas Ten Percent Plan After Grutter and Gratz*, 8 Harv. Latino L. Rev. 33, 36 (2005).

⁴⁸ See, e.g., Peter Hinrichs, *The Effects of Affirmative Action Bans on College Enrollment, Educational Attainment, and the Demographic Composition of Universities*, Rev. of Econ. & Stat. (forthcoming 2012) (manuscript at 13) (finding that bans on race-conscious admissions policies in multiple states have led to a 1.74 percentage-point decline in African American enrollment and a 2.03 percentage-point decline in Latino enrollment at the most selective institutions); Ben Backes, *Do Affirmative Action Bans Lower Minority College Enrollment and Attainment? Evidence from Statewide Bans*, 47 J. Hum. Resources 435, 440-47 (2012) (finding similar declines in multiple states).

25%, while that for Latino students fell by nearly 20%.⁴⁹

Similarly striking declines in racial diversity have been documented at the University of California flagship campuses of Los Angeles and Berkeley since Proposition 209 was passed. Between 1997 and 1998, enrollments of African American freshman at UC Berkeley declined by 53%, while Latino enrollees fell by 45%.⁵⁰ In the same period, African American enrollments at UCLA dropped by 38%, while Latino enrollments declined by 30%.⁵¹ Although there has been a modest recovery in absolute numbers since

⁴⁹ African American enrollment dropped from 6% to just over 4% and Latino student enrollment declined from over 5% to just over 4%. John T. Yun et al., Presentation at the University of Michigan National Center for Educational Diversity Symposium: Impact of Anti-Affirmative Action Policies in Higher Education (Mar. 28, 2012) (authors' tabulation based on IPEDS data). See also Michele S. Moses et al., *Affirmative Action's Fate: Are 20 More Years Enough?*, 17 Educ. Pol'y Analysis Archives, Sept. 10, 2009, at 1, 21-22, available at <http://epaa.asu.edu/epaa/v17n17/>.

⁵⁰ African American enrollment dropped from 7% (or 252 in a class of 3,215 students) to 3.7% (122 African American students in a class of 3,333 students). Latino and Chicano student enrollment dropped from 14.6% (or 469 in a class of 3,215 students) to 7.9% (266 in a student body of 3,333 students). Univ. of Cal. Office of the President, *University of California Application, Admissions and Enrollment of California Resident Freshman For Fall 1989 Through 2010*, 1, 2, 5 (2011), available at http://www.ucop.edu/news/factsheets/flowfrc_10.pdf.

⁵¹ A decline of enrolled African American students from 5.6% to 3.5% and of enrolled Latino and Chicano students from 15.8% to 11%. *Id.*

that time, neither campus has regained the diversity it had in 1995, and admissions and enrollments for African American and Latino students continue to decline at both campuses, relative to their changing percentages in the high school graduate population. Prohibitions on the holistic consideration of race in admissions have also shifted Latino and African American students from more selective to less selective colleges, which, as we note below, limits these students' educational opportunities.⁵²

C. Declines in Racial Diversity Undermine the Quality of Education and Opportunities for All Students.

Declines in racial diversity reduce the quality of education for all students. Leveraging diversity is not a process through which one group loses and another gains, but one through which all groups learn more and prepare more fully for the future. For instance, many white students in selective universities and graduate programs have grown up having little contact with people of other races, although non-whites will constitute the large majority of the population in many parts of the U.S. as these students'

⁵² Eric Grodsky & Michal Kurlaender, *The Demography of Higher Education in the Wake of Affirmative Action, in Equal Opportunity in Higher Education: The Past and Future of California's Proposition 209*, 33, 33 (Eric Grodsky & Michal Kurlaender eds., 2010).

careers unfold. By cooperating with, understanding better, and networking with people whose backgrounds and experiences are similar to their future coworkers, clients, neighbors, and fellow citizens, white students gain something of tangible value. The gains they enjoy from having a diverse student body is one of the reasons why white students on selective campuses strongly support the consideration of race as a factor in admissions decisions.⁵³

Given that selective universities are the training ground for the nation's most influential jobs and leadership positions, it is critical that students attending these institutions have the opportunity to engage with diverse peers in meaningful ways. Racially diverse learning environments prepare all students more fully to become leaders and workers in a diverse society, nationally and globally. They also help break patterns of racial segregation, which in the long term benefits the entire nation. People who grow up in segregated environments tend to choose segregated environments as adults;⁵⁴ however, white

⁵³ See, e.g., Deo, *supra* note 3, at 95-97 (finding white students support diversity efforts at the University of Michigan Law School); Gary Orfield & Dean Whitley, *Diversity and Legal Education: Student Experiences in Leading Law Schools, in Diversity Challenged: Evidence on the Impact of Affirmative Action* 143, 151, 154-69 (Gary Orfield ed., with Michal Kurlaender, 2001) (finding white student support at several elite law schools).

⁵⁴ See, e.g., Jomills Henry Braddock & James M. McPartland, *Social-Psychological Processes that Perpetuate*
(Continued on following page)

students who experience diversity at college are more likely to choose an integrated post-college work environment and live in more integrated neighborhoods.⁵⁵

The shifting of minority students from more selective to less selective institutions, as occurred in California after Proposition 209, also harms students' educational opportunities. Contrary to claims by some of Petitioner's *amici*, it matters greatly where students enroll in college. Attending a more selective institution is associated – for all students but for African American and Latino students in particular – with a host of benefits, including higher rates of degree completion,⁵⁶ increased attendance at graduate or professional schools,⁵⁷ higher earnings,⁵⁸ and more

Racial Segregation: The Relationship Between School and Employment Desegregation, 19 *J. Black Stud.* 267, 269 (1989).

⁵⁵ Jayakumar, *supra* note 11, at 615; *see also* Nida Denson & Mitchell J. Chang, *Racial Diversity Matters: The Impact of Diversity-Related Student Engagement and Institutional Context*, 46 *Am. Educ. Res. J.* 322, 324 (2009).

⁵⁶ *See, e.g.*, Sigal Alon & Marta Tienda, *Assessing the "Mismatch" Hypothesis: Differences in College Graduation Rates by Institutional Selectivity*, 78 *Soc. of Educ.* 294, 296 (2005) (demonstrating persistence to degree and graduation rates); Mark C. Long, *College Quality and Early Adult Outcomes*, 27 *Econ. of Educ. Rev.* 588, 597-98 (2008) (reporting increases in bachelor's degree attainment).

⁵⁷ Ann L. Mullen et al., *Who Goes to Graduate School? Social and Academic Correlates of Educational Continuation After College*, 76 *Soc. of Educ.* 143, 158 (2003).

⁵⁸ Stacy Dale & Alan B. Krueger, *Estimating the Return to College Selectivity over the Career Using Administrative*
(Continued on following page)

leadership positions.⁵⁹ Given that leadership positions go disproportionately to those who attend selective institutions, it is critical to foster racial diversity at these schools. Addressing the value of attending the state's leading law school in *Sweatt v. Painter*, the Court unanimously stated that the impact on applicants was unquestionable:

[T]he University of Texas Law School possesses to a far greater degree those qualities which are incapable of objective measurement but which make for greatness in a law school. Such qualities, to name but a few, include reputation of the faculty, experience of the administration, position and influence of the alumni, standing in the community, traditions and prestige.

339 U.S. 629, 634 (1950).

An extensive body of social science research repudiates the so-called “mismatch hypothesis” (i.e., that minority students attending selective colleges who had test scores below those of their mainstream peers have lower rates of persistence to graduation).⁶⁰

Earnings Data, 26, (Nat'l Bureau of Econ. Research, Working Paper No. 17159, 2011), available at <http://www.nber.org/papers/w17159>; Mark Hoekstra, *The Effect of Attending the Flagship State University on Earnings: A Discontinuity-Based Approach*, 91 *Rev. of Econ. & Stat.* 717, 718 (2009).

⁵⁹ Bowen & Bok, *supra* note 15, at 160-75.

⁶⁰ See, e.g., Kalena E. Cortes, *Do Bans on Affirmative Action Hurt Minority Students? Evidence from the Texas 10 Percent Plan*, 29 *Econ. of Educ. Rev.* 1110, 1119-20 (2010)

(Continued on following page)

For example, former Princeton University president William Bowen and his colleagues show that Latino students with the same high school grade point averages who attend more selective colleges graduate at significantly higher rates than those who attend less selective colleges.⁶¹ In fact, Latinos tend to “under-match” and enroll in less selective schools than they are eligible to attend.⁶² This contributes to their exceptionally low rates of college completion, which directly threatens the educational and economic future of the states in which they live.⁶³

D. The Inability to Consider Race in Admissions Leads to Low Levels of Racial Diversity and Harms the Racial Climate.

A campus’s racial climate is part of the institutional context, which includes community members’ perceptions of “issues of race, ethnicity, and

(finding *lower* rather than *higher* graduation rates for students in Texas who, according to the mismatch hypothesis, would be “better matched” and thereby experience higher graduation rates instead).

⁶¹ Bowen et al., *supra* note 15, at 106-08, 210, 215.

⁶² *Id.* at 106-08, 208-16.

⁶³ Richard Fry, Pew Hispanic Ctr., *The Role of Selective Pathways: Latino Youth Finishing College*, 3-4 (2004), available at <http://www.pewhispanic.org/2004/06/23/latino-youth-finishing-college/>.

diversity.”⁶⁴ Contrary to claims by Petitioner’s *amici* that the consideration of race as a factor in admissions stigmatizes students or harms the racial climate, it is the prohibition of the practice that leads to lower levels of racial diversity and a poor racial climate, which prevents institutions from leveraging the benefits of diversity for all students.

Survey data from 31 institutions across the country, including campuses in California and Texas, show that having lower levels of diversity at colleges reinforces stereotypes and discrimination.⁶⁵ Minority students are more likely to feel excluded from campus events and activities at institutions with low levels of racial diversity than at those with higher levels. *See infra* Appendix Figure A. Although African American students are not the predominant minority on any of these campuses, the data indicate that they feel more included where there is a diverse campus environment. Higher levels of diversity on campus are also

⁶⁴ Sylvia Hurtado et al., *Assessing the Value of Climate Assessments: Progress and Future Directions*, 1 J. Diversity in Higher Educ. 204, 205 (2008).

⁶⁵ *See* Sylvia Hurtado & Adriana Ruiz, UCLA Higher Educ. Research Inst., *The Climate for Underrepresented Groups and Diversity on Campus* (2012), available at <http://heri.ucla.edu/briefs/urmbriefreport.pdf> (studying climate data on 490 African American students and 3,488 Latino students).

significant in reducing Latino students' feelings of isolation.⁶⁶

Institutions that are not able to consider race in their admissions policies also experience a more difficult racial climate. National survey data show that the racial climate for underrepresented minority students at the University of California – which has not been able to consider race as a factor in admissions for 16 years – is worse than at the University. Only 62.2% of African American students on eight of the University of California campuses reported feeling that students of their race are respected on campus, compared to 72.3% of African American students at the University. *See infra* Appendix Figure B. The comparison for Latino students also reveals a more difficult racial climate when institutions are prohibited from considering race as a factor in admissions (77.2% for Latinos at the University of California, compared to 89.9% at the University).

These data underscore the need for the University to supplement the percent plan with the flexible consideration of race if it is to create the conditions necessary on campus to leverage the educational benefits of diversity for all students.

⁶⁶ *Id.* Intergroup relations at highly diverse institutions, such as those where underrepresented minority students are 36% or more, also require attention, as increasing numbers of Latino students transform campuses with previously predominantly white environments. *Id.*

IV. A Percent Plan Is Not a Workable Alternative to the Holistic Admissions Practices Endorsed in *Grutter*.

The Court recognized in *Grutter* that percent plans are unsuitable for graduate and professional school admissions, which cannot rely on high school rankings. *See Grutter*, 539 U.S. at 340. Studies conducted since *Grutter* confirm that – in undergraduate admissions – percent plans alone are not effective substitutes for a holistic policy that may consider race. These studies show that replacing a holistic admissions policy with a top ten percent plan nationwide would not successfully restore the number of students of color that would be achieved under a holistic policy that considers race at the most selective four-year campuses.⁶⁷ These findings hold true for a number of situations, including those in which high schools are assumed to be completely racially isolated,⁶⁸ where admission under the percent plan is extended to students from out of state and

⁶⁷ *See, e.g.*, Howell, *supra* note 34, at 116 (finding that a percent plan rule alone would lead to a 10% decrease in the proportion of African American and Latino students enrolled in highly selective colleges and universities); Thomas J. Espenshade & Alexandria Walton Radford, *No Longer Separate, Not Yet Equal: Race and Class in Elite College Admission and Campus Life* 361-64 (2009); Mark C. Long, *Race and College Admissions: An Alternative to Affirmative Action?*, 86 *Rev. of Econ. & Stat.* 1020, 1031-32 (2004); Reardon et al., *supra* note 35, at 12-15.

⁶⁸ Long, *supra* note 67, at 1032.

guaranteed at any institution of choice,⁶⁹ and where percent plan admissions are in place at private colleges and universities.⁷⁰

In the real world, a percent plan alone would be even less effective than the research simulations in achieving the level of diversity that can be attained with a holistic admissions policy that considers race. This is because patterns of racial isolation in high school differ greatly across states, students face multiple practical barriers to college access, and the guarantees of automatic admissions policies are more restricted than those used in the simulations. The most recent federal data from the National Center for Education Statistics show that the demography of states and their levels of residential and educational segregation differ on many dimensions, making it impossible to create one mechanistic admissions policy for achieving racial diversity that would work across all states. *See infra* Appendix Table 1.

Thus, the consideration of race as one of many factors in college admissions is necessary to maintain the current level of racial diversity at many selective undergraduate institutions and programs in a society where almost half of students are non-white. Graduate and professional institutions also need a workable tool for achieving the compelling benefits of diversity,

⁶⁹ Espenshade, *supra* note 67, at 362-64.

⁷⁰ Long, *supra* note 67, at 1031.

and for training future leaders to deal with the challenges of an increasingly multiracial society.



CONCLUSION

For the foregoing reasons, this Court should affirm the Court of Appeals judgment upholding the constitutionality of The University of Texas at Austin's holistic admissions policy.

Respectfully submitted,

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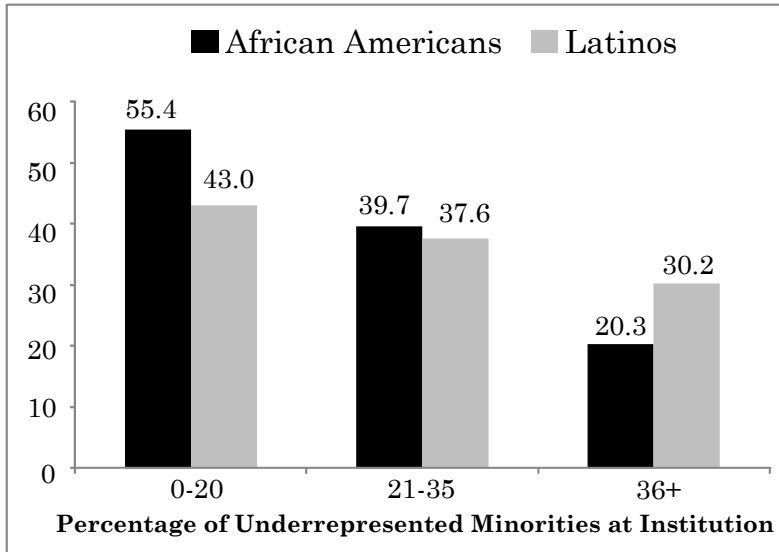
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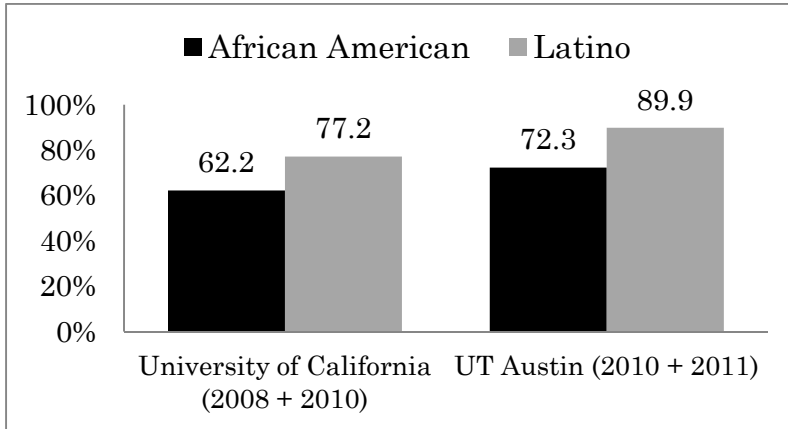
APPENDIX

Figure A. Percentage of Latino and African American Students Responding “Yes” to “Exclusion” as the Type of Discrimination Experienced.



Data source: Diverse Learning Environment Survey, 2010 and 2011, HERI, UCLA. Based on 31 institutions across the country, including campuses in Texas and California.

Figure B. Percentage of African American and Latino Students Who Responded “Strongly Agree, Agree, or Somewhat Agree” to Survey Question: “Students of My Race/Ethnicity Are Respected on This Campus.”¹



¹ Responses at eight University of California campuses that administered the survey in 2008 and 2010, and at the University in 2010 and 2011. Within the University of California, the survey is called UC Undergraduate Experience Survey (UCUES), and at the University it is called Student Experience in the Research University (SERU). Analyses show statistically significant differences for each group. The survey responses in this chart are derived from a grand total of 1,151 African American students (1,010 at the University of California and 141 at the University) and 6,419 Latino students (5,788 at the University of California and 631 at the University). For additional details, see Kidder, *supra* note 43.

Table 1. Average Percentage of Schoolmates from the Same Racial Group for African American and Latino Students in Public K-12 Schools in 2009-2010 for States.

State	Average Percentage of African American Schoolmates for African American Students	Average Percentage of Latino Schoolmates for Latino Students
Alabama	65.7	*
Alaska	*	10.5
Arizona	10.6	61.4
Arkansas	57.8	27.5
California	19.4	67.1
Colorado	18.9	48.5
Connecticut	35.7	38.4
Delaware	43.6	24.2
Florida	46.5	49.3
Georgia	61.0	29.4
Hawaii	*	6.9*
Idaho	*	27.4
Illinois	64.7	57.2
Indiana	50.1	22.6
Iowa	18.6	22.7
Kansas	26.5	37.8
Kentucky	32.0	*
Louisiana	66.3	*

App. 4

Maine	*	*
Maryland	63.5	28.6
Massachusetts	29.5	41.9
Michigan	67.1	23.8*
Minnesota	31.0	19.4
Mississippi	71.7	*
Missouri	58.9	*
Montana	*	*
Nebraska	33.4	38.8
Nevada	19.5	50.8
New Hampshire	*	*
New Jersey	47.2	47.9
New Mexico	*	70.9
New York	50.4	48.1
North Carolina	47.3	20.6
North Dakota	*	*
Ohio	62.4	*
Oklahoma	33.4	30.4
Oregon	*	34.9
Pennsylvania	56.0	37.3
Rhode Island	19.9	48.9
South Carolina	54.6	13.6
South Dakota	*	*
Tennessee	62.6	16.1
Texas	33.8	67.8
Utah	*	30.1

App. 5

Vermont	*	*
Virginia	48.8	24.3
Washington	16.5	40.0
West Virginia	18.5	*
Wisconsin	51.3	29.4
Wyoming	*	19.4

Note: * African American or Latino students constitute less than 4.45% of total secondary school enrollment.

Source: National Center for Education Statistics, 2009-2010.

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