

IN THE
Supreme Court of the United States

STUDENTS FOR FAIR ADMISSIONS, INC.,
Petitioner,

v.

PRESIDENT AND FELLOWS
OF HARVARD COLLEGE,
Respondent.

STUDENTS FOR FAIR ADMISSIONS, INC.,
Petitioner,

v.

UNIVERSITY OF NORTH CAROLINA, *et al.*,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS
OF APPEALS FOR THE FIRST AND FOURTH CIRCUITS

**BRIEF OF *AMICI CURIAE* NATIONAL WOMEN'S LAW
CENTER AND 37 ADDITIONAL ORGANIZATIONS
COMMITTED TO RACE AND GENDER EQUALITY
IN SUPPORT OF RESPONDENTS**

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TABLE OF CONTENTS

	<i>Page</i>
TABLE OF AUTHORITIES	iii
INTEREST OF AMICI CURIAE.....	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	4
I. The inclusion of women of color is central to achieving the benefits of a diverse student body that this Court has long recognized, including countering harmful stereotypes, fostering the exchange of ideas, and preparing students for a diverse society	4
A. Racial diversity in higher education is necessary to counter harmful stereotypes regarding women of color, and to benefit from the indispensable contributions that women of color bring to the educational environment.....	5
B. Racial diversity in higher education prepares students for a diverse society.....	15
II. Considering race as one factor in higher education admissions policies is necessary to ensure the inclusion of women of color and to achieve the well-recognized benefits of diverse student bodies	22

Table of Contents

	<i>Page</i>
CONCLUSION	31
APPENDIX.....	1a

TABLE OF AUTHORITIES

	<i>Page</i>
CASES	
<i>Associated Gen. Contractors of Cal., Inc. v. City & Cnty. of S.F., 813 F.2d 922 (9th Cir. 1987)</i>	6
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Authorities

	<i>Page</i>
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INTEREST OF AMICI CURIAE¹

The National Women’s Law Center (“NWLC”) and the 37 additional *amici*, listed in the Appendix below, are organizations that share a commitment to our diverse society. *Amici* submit this brief to highlight the important contributions and experiences of women of color as a crucial part of considering the many benefits of diversity in higher education. NWLC is a non-profit legal advocacy organization that fights for gender justice—in the courts, in public policy, and in our society—working across the issues that are central to the lives of women and girls—especially women of color, LGBTQ people, and low-income women and families. Since its founding in 1972, NWLC has worked to advance workplace justice, income security, educational opportunities, and health and reproductive rights. NWLC has participated in numerous cases, including before this Court, to advocate for equal opportunities and greater inclusion in our society including for women, people of color, immigrants, disabled individuals, and LGBTQ individuals.

NWLC and the additional *amici* submit this brief to emphasize the ways that women of color experience the overlapping effects of race- and sex-based stereotypes and the need for race-conscious admissions to break down these stereotypes and reap the many well-recognized benefits of diverse student bodies. Social science research and

1. Pursuant to Rule 37 of the Rules of the Supreme Court of the United States, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici* or their counsel made a monetary contribution to its preparation or submission. The parties have provided blanket consent to the filing of amicus briefs.

amici's own experience confirm that harmful stereotypes can be effectively challenged when students are exposed to a range of perspectives and ideas. Universities must have the freedom to implement race-conscious admissions policies in order to promote educational environments where students of all backgrounds are able to learn how to thrive in our diverse nation.

Accordingly, *amici* submit this brief in support of the Respondents and their consideration of race as one factor in their holistic student admissions policies.²

SUMMARY OF ARGUMENT

This Court has consistently and repeatedly recognized that promoting diversity within higher education is a “compelling interest that can justify the use of race” as part of university admissions processes. *See, e.g., Grutter v. Bollinger*, 539 U.S. 306, 325 (2003). Such diversity enhances the educational experience for all students and allows our nation’s universities to cultivate civic, government, and business leaders capable of engaging with the broad range of individuals who live and work across our nation. Holistic race-conscious admissions policies, which promote the inclusion of women of color, are necessary to create this diversity and secure its well-recognized benefits.

Some of the benefits of racial diversity at universities include promoting the social and academic interactions

2. *Amici* recognize the contributions to this brief of Pam Shores, Max Blinder-Acenal, Adam Fitzgerald, and Lillian Childress.

necessary to further cross-racial understanding, diminishing harmful stereotypes, and reducing bias and discrimination. Diversity in education allows for the breakdown of negative stereotypes, including those gendered and racialized stereotypes that affect the intersectional identities of women of color and contribute to marginalization within educational institutions and fields of study. A student body with diverse racial groups also promotes the robust exchange of ideas and experiences, including the indispensable contributions of women of color, that contributes to an enriching educational experience that benefits all students and their universities at large.

Creating university experiences where students can engage with others as part of a diverse student body also better prepares them for a society in which they must increasingly work with people of different backgrounds and experiences. Businesses have recognized the importance of both gender and racial diversity to their success, and need universities to educate future employees who have the skills and experience required to participate and succeed in environments with racially diverse workforces, clients, and constituencies.

Eliminating the consideration of race as one factor in admissions policies would, as confirmed by statistics and social science research, greatly diminish student body diversity by reducing the number of students from already underrepresented groups, including women of color, in higher education. It would deepen the isolation and exacerbate the discrimination women of color face, and would deprive university communities and greater society of the talent, intellect, and experiences that members of

this group contribute. The resulting so-called “colorblind” environments—where women of color would be more isolated and lack peers sufficient to form a “critical mass” within the student body—would both harm women of color and significantly erode the long-recognized benefits of diverse student bodies, to the detriment of our universities and our nation as a whole.

ARGUMENT

I. The inclusion of women of color is central to achieving the benefits of a diverse student body that this Court has long recognized, including countering harmful stereotypes, fostering the exchange of ideas, and preparing students for a diverse society.

For the greater part of the last half century, this Court has affirmed that universities may use race as one factor in holistic admissions policies to achieve the many benefits, both educational and societal, of a diverse student body. *See, e.g., Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 320 (1978); *Grutter*, 539 U.S. at 328-30. Just a few years ago, this Court again endorsed this practice, reiterating the benefits that flow from student body diversity, including breaking down racial stereotypes, promoting learning outcomes, and better preparing students for an increasingly diverse workforce and society. *Fisher v. Univ. of Tex.*, 579 U.S. 365, 381 (2016) [hereinafter *Fisher II*] (citing *Grutter*, 539 U.S. at 330).

The inclusion of women of color in educational environments through race-conscious admissions is crucial to achieving these well-recognized benefits, particularly because women of color have intersecting identities, including race and gender, that are powerfully impacted by deep-rooted negative stereotypes about their roles and capabilities. Women of color may also have a range of other overlapping identities—such as LGBTQ, immigrant, or disabled—and may belong to a myriad of other important communities, including religious faith communities, all of which add to the diversity of universities. Thus, the inclusion of women of color is essential to creating an educational setting that fully embodies the benefits of diversity.

A. Racial diversity in higher education is necessary to counter harmful stereotypes regarding women of color, and to benefit from the indispensable contributions that women of color bring to the educational environment.

As this Court has consistently recognized, women and people of color have long been restricted by “overbroad generalizations about the[ir] different talents, capacities, or preferences,” *United States v. Virginia*, 518 U.S. 515, 533 (1996); *see also Brown v. Board of Education*, 347 U.S. 483, 494 (1954) (discrimination based on racial stereotypes “generates a feeling of inferiority as to [one’s] status in the community”), *supplemented by* 349 U.S. 294 (1955).³ For women of color in particular, the intersection

3. *See also Roberts v. U.S. Jaycees*, 468 U.S. 609, 625 (1984) (“archaic and overbroad assumptions about the relative needs and capacities of the sexes force[] individuals to labor under

of race- and sex-based stereotypes compounds their effects, impacting self-perception and others' perceptions. Indeed, "the intersectional experience is greater than the sum of racism and sexism," Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 Univ. of Chi. Legal F. 139, 140 (1989), meaning that for women of color, both gender and race are crucial components of identity that cannot be disentangled.⁴

Harmful negative stereotypes can manifest differently for women of different races and ethnicities, but often include negative assumptions regarding intellectual capabilities. *See e.g.*, Maria Ong et al., *Research Literature on Women of Color in Undergraduate Engineering*

stereotypical notions that often bear no relationship to their actual abilities," thus "depriv[ing] persons of their individual dignity and den[ying] society the benefits of wide participation in political, economic, and cultural life"); *Associated Gen. Contractors of Cal., Inc. v. City & Cnty. of S.F.*, 813 F.2d 922, 939 (9th Cir. 1987) ("[M]any of the disadvantages women have suffered result from stereotypes concerning their proper roles and abilities.").

4. Over and above harmful stereotypes, women of color often face severe economic barriers to educational and career success. Sophia Kerby, *The State of Women of Color in the United States: Although They've Made Incredible Strides, Many Barriers Remain for This Growing Population*, Ctr. for Am. Progress, at 6 (July 17, 2012), <https://www.americanprogress.org/article/the-state-of-women-of-color-in-the-united-states/> ("Women of color are disproportionately represented among low-income [college] students...[M]ore than one-third—34.9 percent—of all women students are low income, but more than half of African American women students (52.6 percent) and Latina students (50.8 percent) are low income.").

Education: A Systematic Thematic Synthesis, 109 J. Eng'g Educ. 581, 597 (2020) (synthesizing empirical studies examining women of color in undergraduate engineering programs, noting that women of color “carried the burden of disproving negative stereotypes about their group’s intellectual abilities”).

Other specific racialized and gendered stereotypes may include, for example, the expectation that Black women should defer to white and male counterparts. See Lori Walkington, *How Far Have We Really Come? Black Women Faculty and Graduate Students’ Experiences in Higher Education*, 39 Humboldt J. Soc. Rels. 51, 52-53 (2017). Surveys of women of color in the workplace have also identified the “angry” Black woman trope as a particularly demeaning negative stereotype. Rangita de Silva de Alwis et al., *Dismantling “Dilemmas of Difference” in the Workplace*, 27 Va. J. Soc. Pol’y & L. 193, 218-19 (2020). Hispanic women in computer science programs have also reported exclusion due to not fitting the male-associated “nerd” stereotype. Nuria Jaumot-Pascual et al., *Women of Color in Computing Graduate Education: Structural Supports and Navigation Strategies for a Hostile Culture*, Conf. on Rsch. in Equitable & Sustained Participation in Eng’g, Computing, and Tech. (RESPECT), at 4-6 (2021).

Asian American women are also harmed by racialized and gendered stereotypes. A recent study highlighted several damaging dynamics that affect Asian American women in STEM doctoral programs, including: stereotypes of women as low performers in technical fields; backlash for behaving in stereotypically masculine ways; pressure to conform to traditional gender roles; and racialized sexual harassment stemming from stereotypes of Asian

women as “exotic.” Athena R. Castro & Christopher S. Collins, *Asian American Women in STEM in the Lab with “White Men Named John,”* 105 *Sci. Educ.* 33, 39 (2021). Even where Asian American women are the subject of “positive” stereotypes in the form of the so-called “model minority” myth,⁵ these judgments have negative effects by “reduc[ing] [individuals] to generic members of a larger social group,” Jessica D. Remedios & Samantha H. Snyder, *Intersectional Oppression: Multiple Stigmatized Identities and Perceptions of Invisibility, Discrimination, and Stereotyping,* 74 *J. Soc. Issues* 265, 267 (2018), and downplaying significant challenges faced by certain subgroups of Asian Americans (including Southeast Asians), and Native Hawaiians and Pacific Islanders, as further detailed in Section II.

These stereotypes continue to persist in educational environments, as illustrated by the studies discussed herein, and have been well documented in the instant cases. *See Students for Fair Admissions, Inc. v. Univ. of N.C.*, 567 F. Supp. 3d 580, 594, 666-67 (M.D.N.C. 2021) (discussing the stereotyping, disparaging racial

5. This myth presents Asian Americans as a “homogenous population experiencing exceptional academic and socioeconomic success” and references attributes of “studiousness, seriousness, submissive obedience, and social introversion, as well as being hardworking, adaptive, demure, shy, and possessing strong family values.” Oi Yan Poon et al., *A Critical Review of the Model Minority Myth in Selected Literature on Asian Americans and Pacific Islanders in Higher Education*, 86 *Rev. Educ. Rsch.* 469, 480 (2016). It is often used to “undercut[] claims of systemic racism made by other racially minoritized populations, especially African Americans” and “bolsters cultural racism and color-blind racist ideology.” *Id.* at 469, 474.

remarks, bias, loneliness, isolation, and experiences of tokenism caused by underrepresentation of students of color on campus). Joint Appendix Volume IV at JA2553-54, *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 980 F.3d 157 (1st Cir. 2020) (No. 19-2005) (recounting negative stereotyping in classes and on campus); *id.* Volume VII at JA4957-58 (describing student accounts of stereotyping and micro-aggressions).

When underrepresented in predominantly white institutions, such as law schools and STEM programs, women of color report experiencing bias and stereotyping, a lower sense of belonging, exclusion from chosen fields of study, disrespect, and harassment. See Elizabeth Bodamer, *Do I Belong Here? Examining Perceived Experiences of Bias, Stereotype Concerns, and Sense of Belonging in U.S. Law Schools*, 69 J. Legal Educ. 455, 457 (2020) (examining women of color in law schools); DeeDee Allen et al., *Racism, Sexism and Disconnection: Contrasting Experiences of Black Women in STEM Before and After Transfer from Community College*, 9 Int'l J. STEM Educ. 1, 18 (2022) (analyzing racism and sexism as factors excluding Black women from STEM); Seanna Leath & Tabbye Chavous, *Black Women's Experiences of Campus Racial Climate and Stigma at Predominantly White Institutions: Insights from a Comparative and Within-Group Approach for STEM and Non-STEM Majors*, 87 J. Negro Educ. 125, 126 (2018) (examining experiences of Black women in predominantly white institutions).

Women of color in institutions where they are underrepresented also report having opinions undervalued by peers, feeling like a token, and experiencing pressure to represent racial and gender identities in class. Janice

McCabe, *Racial and Gender Microaggressions on a Predominantly-White Campus: Experiences of Black, Latina/o and White Undergraduates*, 16 *Race, Gender & Class* 133, 140-43 (2009). *See also* Silva de Alwis, *supra*, at 221 (underrepresentation causes “women of color [to] become the archetypal examples of their particular demographic group in the eyes of white, male colleagues. They are forced to take on a quasi-representative status and are denied the freedom to demonstrate the breadth of individual diversity.”); Kerrie Wilkins-Yel, et al., *Linking Intersectional Invisibility and Hypervisibility to Experiences of Microaggressions Among Graduate Women of Color in STEM*, 113 *J. Vocational Behav.* 51, 52 (2019) (“Reports to date have highlighted the extent to which women of color are not regarded as people or future scientists but instead as representatives of their race and gender.”); Frank Fernandez et al., *The Color of Law School: Examining Gender and Race Intersectionality in Law School Admissions*, 128 *Am. J. Educ.* 455, 478 (2022) (“Although more women than men now enroll in legal education, Women of Color continue to suffer tokenizing and alienating experiences as students and faculty in law schools.”) (internal citations omitted).

The costs of this exclusion are high. Academically successful students of color who are exposed to harmful stereotypes experience a “heavy psychological cost.” Ebony O. McGee & Danny B. Martin, “*You Would Not Believe What I Have to Go Through to Prove My Intellectual Value!*” *Stereotype Management Among Academically Successful Black Mathematics and Engineering Students*, 48 *Am. Educ. Rsch. J.* 1347, 1362 (2011) (examining resilience among 23 high-achieving Black mathematics and engineering college students).

It can be “emotionally debilitating” for students of color to shoulder the “burden of dealing with these racial stereotypes and the daily hassles and fears that come from functioning in racially stressful environments.” *Id.* at 1363. Ensuring women of color are included as part of a diverse student body helps counter these harmful negative stereotypes.

Against this backdrop, this Court has correctly stressed the critical importance of racial diversity in student bodies for “promot[ing] cross-racial understanding, help[ing] to break down racial stereotypes, and enabl[ing] [students] to better understand persons of different races.” *Grutter*, 539 U.S. at 330 (internal citation and quotation marks omitted). The Court in *Grutter* aptly described the process of stereotype breakdown: “[W]hen a critical mass of underrepresented minority students is present, racial stereotypes lose their force because nonminority students learn there is no ‘minority viewpoint’ but rather a variety of viewpoints among minority students.” 539 U.S. at 319-20 (citing Expert Report of Kent D. Syverud). The more racially diverse a student body is, the more likely that students will have experiences and discussions that challenge their assumptions and beliefs. *See The Benefits of Socioeconomically and Racially Integrated Schools and Classrooms*, Century Found. (Apr. 29, 2019), <https://tcf.org/content/facts/the-benefits-of-socioeconomically-and-racially-integrated-schools-and-classrooms/?session=1> (collecting studies showing that classroom diversity leads to “a dramatic decrease in discriminatory attitudes and prejudice”). Accordingly, ensuring that women of color are adequately represented as part of a diverse student body—by considering race as one factor in a holistic admissions process, as further detailed below in Section II—is critical for breaking down harmful stereotypes.

Unsurprisingly in light of the above, there is also a clear correlation between campus racial diversity and reduced discrimination and harassment. See Sylvia Hurtado & Adriana Ruiz, *The Climate for Underrepresented Groups and Diversity on Campus*, UCLA Higher Educ. Rsch. Inst., at 2 (June 2012) (“[I]ncidents of stereotyping or harassment...[O]ccur at a significantly lower rate at the most diverse institutions.”); Rebecca L. Stotzer & Emily Hossellman, *Hate Crimes on Campus: Racial/Ethnic Diversity and Campus Safety*, 27 *J. Interpersonal Violence* 644, 644 (2012) (schools most successful in recruiting students of color from underrepresented groups report fewer hate crimes on campus). This phenomenon contradicts Petitioner’s assertions that considering race “exacerbate[s] rather than reduce[s] racial prejudice,” Brief for Petitioner at 54, *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, Nos. 20-1199, 21-707 (May 2, 2022) (internal citation and quotation marks omitted), and indeed shows that race-conscious admissions help lessen racial divisions.

The same interactions that help break down stereotypes also help achieve another long-recognized benefit of diversity: exposure to, and vigorous exchange among, students with a wide range of ideas, backgrounds, and viewpoints. This benefit has remained critical since this Court’s opinion in *Bakke*, which focused on the ways that diversity promotes an “atmosphere of ‘speculation, experiment and creation’” by exposing students to different people and ideas. 438 U.S. at 312 (opinion of Powell, J.) (quoting *Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957)). In *Grutter*, too, this Court recognized that classes are “simply more enlightening and interesting when the students have the greatest possible variety

of backgrounds.” 539 U.S. at 330 (internal citation and quotation marks omitted). Therefore, maximizing the variety of students’ perspectives best serves a university’s goals of creating both a “robust exchange of ideas” (*see Bakke*, 438 U.S. at 313 (opinion of Powell, J.) (internal quotation marks omitted)) and a vibrant academic community.

The benefits of diversity in fostering a vigorous exchange of ideas and vibrant academic community have been repeatedly confirmed by social science,⁶ and the

6. A large body of empirical evidence shows that interactions within a diverse student body enhance learning outcomes including student grades, retention, overall college satisfaction, and intellectual and social self-confidence, among all students. *See Grutter*, 539 U.S. at 330 (citing expert studies and reports showing that student body diversity produces better learning outcomes); *see also* Liliana M. Garces & Courtney D. Cogburn, *Beyond Declines in Student Body Diversity: How Campus-Level Administrators Understand a Prohibition on Race-Conscious Postsecondary Admissions Policies*, 52 *Educ. Pol’y Stud.* 828, 830 (2015) (“Racial and ethnic diversity provide unique benefits both inside and outside the classroom, including enhanced critical and complex thinking skills, improved cross-racial understanding and cultural awareness, civic engagement, cross-cultural workforce competencies, and leadership skills.”); Deborah Son Holoien, *Do Differences Make a Difference? The Effects of Diversity on Learning, Intergroup Outcomes, and Civic Engagement*, Trustee Ad Hoc Comm. on Diversity Princeton Univ., at 6 (Sept. 2013), <https://inclusive.princeton.edu/sites/inclusive/files/pu-report-diversity-outcomes.pdf> (citing several studies on the positive impact of diversity on learning outcomes for both white students and students of color, such as “increased intellectual engagement (*e.g.*, drive to achieve, interest in attending graduate school),” “acquisition of intellectual, practical/vocational, scientific/technological, and personal/social skills,” “growth in

inclusion of women of color is central to achieving these benefits. Increasing the proportion of women of color in fields of study that are traditionally less racially diverse improves academic success in the classroom. *See, e.g.,* Christina N. Baker, *Gender Differences in the Experiences of African American College Students: The Effects of Co-ethnic Support and Campus Diversity*, 3 *Women, Gender, & Families of Color* 36, 52 (2015) (“[C]o-ethnic support from a student group is positively associated with college satisfaction for African American women and...co-ethnic support from faculty is positively associated with academic performance for African American women.”). Admissions policies that allow consideration of race as part of a holistic process that considers the valuable contributions of women of color are therefore crucial to securing the benefits of academic exchange for all students.

In light of the considerable benefits of diversity in enriching the educational experiences for all students, it is no surprise that a survey of 8,000 students and faculty asking them to make hypothetical admissions decisions found that the participants selected a diverse student body in line with how race and other factors are currently considered in undergraduate admissions policies. John M. Carey et al., *It’s College Admissions Season, and Students Are Looking for Diverse Campuses*, *Wash. Post* (Apr. 14, 2020), <https://www.washingtonpost.com/politics/2020/04/14/its-college-admissions-season-students-are-looking-diverse-campuses/>. Their preferences mirror this Court’s reasoning in *Grutter* that “[e]nsuring that public institutions are open and

the accumulation of general knowledge,” and increased “critical thinking”).

available to all segments of American society, including people of all races and ethnicities, represents a paramount government objective.” 539 U.S. at 331-32 (internal citation and quotation marks omitted).

B. Racial diversity in higher education prepares students for a diverse society.

As this Court has repeatedly confirmed, “student body diversity...better prepares students for an increasingly diverse workforce and society.” *Fisher II*, 579 U.S. at 381 (citing *Grutter*, 539 U.S. at 330) (quotation marks omitted). This long-recognized truth is only more important today as our nation continues to become more racially diverse.⁷ Experience with and aptitude for working with others from a diverse range of backgrounds are foundational requirements for students, businesses, and institutions across our society to succeed.

As this Court recognized in *Grutter*, “major American businesses have made clear that the skills needed in today’s increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints.” 539 U.S. at 330. A university student

7. In 1980, Black residents comprised 11.5% of the U.S. population; Hispanic or Latino 6.5%, and Asian American 1.8%. As of 2019, Black residents were 12.5% of the population, with Hispanic or Latino comprising 18.5%, Asian American 5.9%, and those identifying as two or more races 2.2%. William H. Frey, *The Nation is Diversifying Even Faster than Predicted, According to New Census Data*, Brookings Inst. (July 1, 2020), <https://www.brookings.edu/research/new-census-data-shows-the-nation-is-diversifying-even-faster-than-predicted/> (analyzing 2020 U.S. Census data).

body is often the first and most important opportunity for students to experience, understand, and learn to operate within a diverse environment, given that even today, our nation's elementary and secondary schools are predominantly racially homogeneous. *See, e.g.*, Sarah Mervosh, *How Much Wealthier Are White School Districts Than Nonwhite Ones? \$23 Billion, Report Says*, N.Y. Times (Feb. 27, 2019), <https://www.nytimes.com/2019/02/27/education/school-districts-funding-white-minorities.html> (discussing a nonprofit research report that found, in the 2015-16 school year, “more than half of the nation’s schoolchildren [were] in racially concentrated districts, where over 75 percent of students are either white or nonwhite”) (internal citations omitted).

Students who experience diversity in higher education become better, more productive, more successful, and more capable employees possessing the skills required to succeed in a diverse global economy. *See, e.g.*, Barbara L. Wolfe & Jason M. Fletcher, *Estimating Benefits from University Level Diversity*, 17 (Nat'l Bureau of Econ. Rsch., Working Paper No. 18812, 2013), <https://ssrn.com/abstract=2219070> (“[T]he experience of diversity is likely to make an individual more comfortable with, and more productive, [sic] in a global setting, making them more productive workers for international firms.”); 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, 641 (2008) (“[E]thnic and racial diversity in higher education serves to promote growth in whites’ cross-cultural workforce competencies, as defined by both pluralistic orientation and leadership skills.”); Sylvia Hurtado, *Linking Diversity and*

Educational Purpose: How Diversity Affects the Classroom Environment and Student Development, in Diversity Challenged: Evidence on the Impact of Affirmative Action 187, 199-200 (Gary Orfield ed. 2001) (“[I]nteraction across racial/ethnic groups, particularly of an academic nature, is associated with important... [C]ivic outcomes [such] as acceptance of people of different races/cultures, cultural awareness, tolerance of people with different beliefs, and leadership ability,...learning outcomes such as critical thinking and problem-solving skills[, and] important skills related to a diverse work force, including the ability to work cooperatively with others.”).

Businesses also recognize that diverse teams of employees are better at problem solving, are more innovative, and engage in more critical thinking and enhanced decision-making. *See, e.g.*, David Rock & Heidi Grant, *Why Diverse Teams Are Smarter*, Harv. Bus. Rev. (Nov. 4, 2016), <https://hbr.org/2016/11/why-diverse-teams-are-smarter> (discussing studies showing that racially diverse juries made fewer factual errors; ethnically diverse teams were more likely to price stocks correctly; groups with at least one outsider more often correctly guessed murder suspects in a simulation; companies with more women were more likely to introduce innovations; and culturally diverse companies were more likely to develop new products).

Consequently, greater workforce and executive diversity leads to improved performance, profits, and success. McKinsey’s most recent annual business diversity study, covering more than 1,000 companies in 15 countries, showed that companies in the top quartile for gender

diversity on executive teams were 25% more likely to outperform those in the bottom quartile, while executive teams with ethnic and cultural diversity in the top quartile outperformed those in the bottom by an even larger 36%. Sundiatu Dixon-Fyle et al., *Diversity Wins: How Inclusion Matters*, McKinsey & Co., at 3-4 (May 2020), <https://www.mckinsey.com/~media/mckinsey/featured%20insights/diversity%20and%20inclusion/diversity%20wins%20how%20inclusion%20matters/diversity-wins-how-inclusion-matters-vf.pdf?shouldIndex=false>. See also Dieter Holger, *The Business Case for More Diversity*, Wall St. J. (Oct. 26, 2019), <https://www.wsj.com/articles/the-business-case-for-more-diversity-11572091200> (independent research report showing that the most diverse companies had better operating results and share performance, reporting better product development and more innovation leading to sales and profit growth). Indeed, a two-year national sample of businesses showed that racial diversity was “associated with increased sales revenue, more customers, greater market share, and greater relative profits,” and that “[g]ender diversity [was] associated with increased sales revenue, more customers, and greater relative profits.” Cedric Herring, *Does Diversity Pay?: Race, Gender, and the Business Case for Diversity*, 74 Am. Socio. Rev. 208, 208 (2009).⁸

8. Moreover, a study that analyzed the performance of over 2,600 equity funds from January 2008 through September 2021 showed that “[m]aximizing gender diversity in active equity investment teams correlates with as much as a 38.9 basis point improvement in fund performance after controlling for characteristics of the fund and its investments as well as other dimensions of diversity.” Stephen Lawrence, *Diversity Matters: The Role of Gender Diversity on US Active Equity Fund Performance*, Vanguard Grp. (Mar. 2022), <https://papers.ssrn.com/>

Accordingly, companies with women and people of color on their boards are well-known to outperform their competitors. A 2014 study by Credit Suisse Research Institute showed that boards with at least one woman outperformed those without in share price performance over the previous six years. Dorothee Enskog, *Gender Diversity and Corporate Performance*, Credit Suisse Rsch. Inst., at 6 (Sept. 23, 2014). The evidence in favor of board diversity is so strong that the U.S. Securities and Exchange Commission has approved, and Nasdaq has implemented, a rule change requiring diversity-related disclosures and minimum recommended targets. The SEC’s approval noted “an extensive body of empirical research demonstrat[ing] that diverse boards are positively associated with improved corporate governance and company performance” as well as “substantial evidence that board diversity promotes investor protection, including by enhancing the quality of a company’s financial reporting, internal controls, public disclosures, and management oversight.” Order Approving Proposed Rule Changes, Exchange Act Release No. 34-92590 at 27-28 (Aug. 6, 2021), <https://www.sec.gov/rules/sro/nasdaq/2021/34-92590.pdf>.

In recognition of the value that racially diverse candidates and employees bring to today’s competitive business environment, leading national businesses have repeatedly urged this Court and other courts to recognize

sol3/papers.cfm?abstract_id=4081494. *See also* Paul Gompers & Silpa Kovvali, *The Other Diversity Dividend*, Harv. Bus. Rev. 72 (July 2018), <https://hbr.org/2018/07/the-other-diversity-dividend> (venture capital firms that increased female partner hires by 10% saw a 1.5% average spike in annual overall fund returns and 9.7% more profitable exits).

the need for race-conscious admissions policies, including in both cases here. *See, e.g.*, Brief of Amgen Inc., et al. as Amici Curiae in Support of Appellee, *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 980 F.3d 157 (1st Cir. 2020) (No. 19-2005); Brief of Amici Curiae of Arcelormittal USA LLC, et al., *Students for Fair Admissions, Inc. v. Univ. of N. C.*, 567 F. Supp. 3d 580 (M.D.N.C. 2021) (No. 1:14CV954); Brief for 3M et al. as Amici Curiae, *Grutter v. Bollinger*, (No. 02-241); Brief for General Motors Corp. as Amicus Curiae in Support of Respondents, at 3-4, *Grutter*, (No. 02-241). The companies' briefs enumerate the extensive efforts that many of our nation's leading companies are undertaking to invest in and recruit women and students of color, *see* Brief of Amgen Inc., et al. as Amici Curiae, at 10-12, 16-19, 23-24, although a great deal of progress remains to be made, including at the board level. *See Missing Pieces Report: The Board Diversity Census of Women and Minorities on Fortune 500 Boards*, Deloitte (6th ed. 2021), <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/center-for-board-effectiveness/missing-pieces-fortune-500-board-diversity-study-sixth-edition.pdf>. As detailed in these briefs, U.S. businesses cannot make progress ensuring a racially diverse workforce if racially diverse candidates do not make it into the employment pipeline.

Stakeholders from a variety of sectors—including science and healthcare—consistently affirm that diversity produces stronger, more effective institutions. *See* Douglas L. Medin & Carol D. Lee, *Diversity Makes Better Science*, Ass'n for Psych. Sci. (Apr. 27, 2012) (“[B]oth equity outcomes as well as knowledge production in the sciences are enhanced by attention to cultural diversity[,] specifically diversity of ideas, methods,

populations, and sites of scientific practice.”); Liliana M. Garces & David Mickey-Pabello, *Racial Diversity in the Medical Profession: The Impact of Affirmative Action Bans on Underrepresented Student of Color Matriculation in Medical Schools*, 86 J. Higher Educ. 264, 289 (2015) (“[A] racially diverse student body has been shown to produce more culturally competent physicians, and physicians who are from underrepresented minority groups are more likely than their non-minority peers to serve minority populations and provide care to other medically underserved populations, such as socioeconomically disadvantaged individuals.”).

This Court has also recognized the importance of this interest in developing our civic leaders. Indeed, “it is not too much to say that the ‘nation’s future depends upon leaders trained through wide exposure’ to the ideas and mores of students as diverse as this Nation of many peoples.” *Bakke*, 438 U.S. at 313 (opinion of Powell, J.) (quoting *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967)). Universities with racially diverse student bodies result in enhanced civic engagement and cultivate in students the qualities that will make them future leaders. See Nicholas A. Bowman, *Promoting Participation in a Diverse Democracy: A Meta-Analysis of College Diversity Experiences and Civic Engagement*, 81 Rev. Educ. Rsch. 29, 46 (2011) (a quantitative meta-analysis showed that college experiences of diversity had a significant relationship with multiple civic outcomes, leading to increased civic engagement); Gina A. Garcia & Marcela G. Cuellar, *Exploring Curricular and Cocurricular Effects on Civic Engagement at Emerging Hispanic-Serving Institutions*, 120 Tchrs. Coll. Rec. 1, 1 (2018) (“[S]tudents’ perceptions of...a curriculum of inclusion in the classroom,

as well as their involvement in campus-facilitated diversity programs, positively predict their civic engagement.”).

This Court has repeatedly recognized, since *Bakke* and *Grutter*, the need to admit and educate racially diverse students as a compelling interest, and the important role this interest plays in our economy and our society. Empirical evidence in the intervening years has continued to reveal that these interests remain equally, if not more, compelling today. There is no factual or legal justification for overturning the well-settled precedent of this Court, which would impede the development of our future students, workers, innovators, and leaders, irreparably harming our nation.

II. Considering race as one factor in higher education admissions policies is necessary to ensure the inclusion of women of color and to achieve the well-recognized benefits of diverse student bodies.

Race-conscious admissions policies are an indispensable tool for achieving the “critical mass” this Court, in *Grutter*, recognized as necessary to access the many educational benefits racial diversity provides. Such policies are particularly indispensable for both ensuring the inclusion of women of color in university settings and fostering an enriching educational experience for everyone.

Eliminating race-conscious admissions policies would greatly diminish the number of students of color, including women of color, in higher education. In state after state that has banned or severely restricted race-conscious admissions, empirical analyses show that representation

of students of color decreases, especially at flagship universities. *E.g.*, Mark C. Long & Nicole A. Bateman, *Long-Run Changes in Underrepresentation After Affirmative Action Bans in Public Universities*, 42 *Educ. Evaluation & Pol’y Analysis* 188, 197-98 (2020) (showing significant long-term decreases in the admission and enrollment of students of color at flagship public universities in states with such bans); Huacong Liu, *How Do Affirmative Action Bans Affect the Racial Composition of Postsecondary Students in Public Institutions?*, *Educ. Pol’y* 1, 1, 18-19 (2020) (in smaller states with bans (Arizona, Michigan, Nebraska, New Hampshire, and Oklahoma), there were significant average declines in the enrollment of students of color at public four-year institutions and four of five flagship universities).

In California, the representation of students of color decreased at the University of California’s more selective campuses after Proposition 209 banned the consideration of race in 1997. A comprehensive study of UC applicants from 1994 to 2002 showed that ending race-conscious admissions decreased degree attainment for students of color and shifted students of color away from higher-ranked institutions. Zachary Bleemer, *Affirmative Action, Mismatch, and Economic Mobility After California’s Proposition 209*, 137 *Q. J. Econ.*, 115, 117, 156 (2022). Decreases were particularly notable at UC Berkeley and UCLA, currently the nation’s two highest-ranked public universities. Between 1995 and 2002, admissions for people of color from underrepresented groups (African Americans, American Indians, and Chicano/Latinos) at UC Berkeley dropped from 54.6% to 23.3% and enrollment from 24.3% to 15.6%, and at UCLA, from 52.4% to 20.2%, and from 30.1% to 19.3%, respectively. Univ. of Cal., Office

of the President, *Undergraduate Access to the University of California After the Elimination of Race-Conscious Policies*, at 19-22 (2003). These decreases have persisted in the two decades since. Long & Bateman, *supra*, at 191.

In Texas, the end of race-conscious admissions and the implementation of the state's "Top Ten Percent Plan," which guarantees admission for top-performing public high school students, corresponded with an immediate decrease in the percentage of African American and Hispanic applicants and attendees at Texas's flagship universities (Angel L. Harris & Marta Tienda, *Minority Higher Education Pipeline: Consequences of Changes in College Admissions Policy in Texas*, 627 *Annals Am. Acad. Pol. & Soc. Sci.* 60, 78 (2010)) as well as decreased odds of admission (Mark C. Long & Marta Tienda, *Winners and Losers: Changes in Texas University Admissions post-Hopwood*, 30 *Educ. Eval. Pol'y Analysis* 255, 255 (2008)).

Similarly, in Michigan, the enrollment of students of color at the University of Michigan plunged after Proposition 2 banned race-conscious admissions in the state in 2006. African American enrollment dropped almost 10% over the next three years and has comprised only 4% of the entire university since 2010, while the cumulative percentage of *all* underrepresented students of color was only 12.8% as of 2017. Adam Harris, *What Happens When a College's Affirmative-Action Policy Is Found Illegal*, *The Atlantic* (Oct. 26, 2018).

Advanced statistical projections put forward by Harvard and UNC show that racial diversity would fall precipitously without the use of race-conscious admissions policies. Findings by the District of Massachusetts,

affirmed by the First Circuit, showed that African American student representation at Harvard would decrease by an astonishing 32%, a reduction the Court found to be “clearly meaningful,” and one which student and alumni testimony made clear “would make Harvard less attractive and hospitable to minority applicants while limiting all students’ opportunities to engage with and learn from students with different backgrounds from their own.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 980 F.3d 157, 195 (1st Cir. 2020). As one student testified, “that type of reduction [50% reduction in the number of Black and Latinx students on Harvard’s campus] would have been, frankly, catastrophic for a student like me....[T]here are so few students of color and under-represented minority groups at Harvard as it is that any sort of reduction in any of those groups would be really detrimental to the community at Harvard, both for students of color, but also just for students in general.” Joint Appendix Volume IV at JA2555, *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 980 F.3d 157 (1st Cir. 2020) (No. 19-2005).⁹

These decreases would be particularly devastating with respect to women of color. Without race-conscious admissions policies, women of color would be even less represented on campuses, resulting in more harmful stereotyping and bias and making it even more difficult to

9. It is also not evident that the minority interests purportedly represented by Students for Fair Admissions (“SFFA”) would be served by the elimination of race-conscious admissions, given that even under SFFA’s preferred statistical model, being Asian American had a *positive* effect on an applicant’s chances of admission for several of the modeled years. *Harvard*, 980 F.3d at 203.

include the contributions of women of color in university communities. See Section I.A., *supra*. This is because, as studies have shown, stereotyping and bias are more prevalent in universities that decline to consider race as any part of the admissions process. See Adriane Kayoko Peralta, *A Market Analysis of Race-Conscious University Admissions for Students of Color*, 93 Denv. L. Rev. 173, 174, 212, 217 (2015) (showing through cost-benefit analysis that attendance at a university that does not use race-conscious admissions policies leads to increased “racial isolation, stereotype threat, racial microaggressions, identity performance, and forced racial labor”); Deirdre M. Bowen, *Brilliant Disguise: An Empirical Analysis of a Social Experiment Banning Affirmative Action*, 85 Ind. L.J. 1197, 1199 (2010) (students of color from underrepresented groups in states that allow race-conscious admissions encounter less hostility and stigma than those in states that do not).

Similarly, viewpoints that deny or minimize the existence of racism are linked to attitudes such as greater anti-Black prejudice, less openness to diversity, and lower cross-racial and ethnocultural empathy. Jacqueline Yi et al., *Ignoring Race and Denying Racism: A Meta-Analysis of the Associations Between Colorblind Racial Ideology, Anti-Blackness, and Other Variables Antithetical to Racial Justice*, J. Counseling Psych. 1 (2022), <https://www.apa.org/pubs/journals/releases/cou-cou0000618.pdf>. Furthermore, ignoring the difficulties of race simply creates greater pressures on racial minorities. See Patricia Williams, *Seeing a Colorblind Future, The Paradox of Race* (1st Am. ed. 1998) (illustrating the ways in which even minor aversions to race-related social tensions pathologize people of color). In light of these dynamics, ending race-conscious admissions would further isolate

women of color who would then be less able to contribute to the university community and become the leaders that our nation needs today.

Asian Americans would also be harmed by the elimination of race-conscious admissions policies. As noted above in Section I.A, the many groups and sub-groups that make up “Asian Americans” are from various national backgrounds, regions, cultures, ethnic groups, religions, and socio-economic strata, including low-income communities that face substantial barriers to higher education. *See* Kristy Y. Shih et al., *Impacts of the Model Minority Myth on Asian American Individuals and Families: Social Justice and Critical Race Feminist Perspectives*, 11 J. Fam. Theory & Rev. 412 (2019) (discussing the diversity of Asian American communities, and the wide disparities in educational attainment and median household income between sub-groups). Asian Americans also face significant stereotyping and discrimination. *See supra* I.A; *see, e.g., id* at 420-21. Race-conscious admissions allow universities to take account of these experiences in evaluating these students for who they are and what they would contribute. *See* Jonathan P. Feingold, *SFFA v. Harvard: How Affirmative Action Myths Mask White Bonus*, 107 Cal. L. Rev. 707, 730 (2019) (illustrating that colorblind admissions would harm Asian American applicants’ ability to present comprehensive self-narratives, especially those that illustrate the varying backgrounds and experiences of their underrepresented communities).

The alternatives that SFFA proposes would not be effective because they try to find imperfect proxies for race, such as socioeconomic status, that neither target nor achieve the specific benefits conferred by racial diversity.

Mounting evidence demonstrates that consideration of socioeconomic status alone cannot provide the same positive outcomes for diverse student bodies as admissions policies that include a direct consideration of race. *See UNC*, 567 F. Supp. 3d at 645 (recounting testimony that, since *Grutter*, “researchers from across the board, economists, sociologists[,] using lots of different data sets kept coming to the same conclusion, that you couldn’t get racial and ethnic diversity from [a socio-economic status]-based plan”) (internal citation and quotation marks omitted) (alteration in original). Here, every fact finder that considered SFFA’s proposed alternative models found that there were no workable alternatives to the two universities’ race-conscious approach that would maintain the level of student body racial diversity required to achieve its important and compelling benefits. *See Harvard*, 980 F.3d at 192; *UNC*, 567 F. Supp. 3d at 648.

Each of the universities has shown that its plan is narrowly tailored to achieve “the benefits of a student body diversity that ‘encompasses a...broa[d] array of qualifications and characteristics of which racial or ethnic origin is but a single though important element.’” *Fisher v. Univ. of Tex.*, 570 U.S. 297, 314-15 (2013) (quoting *Bakke*, 438 U.S. at 315 (opinion of Powell, J.)) (ellipses and alteration in the original). They have implemented their admissions policies with a focus on the leaders they aim to foster, the exchange of ideas they expect to cultivate, and the innovation they hope to catalyze, and each has properly considered every aspect of applicants’ “talents, experiences, and potential to contribute to the learning of those around them.” *Grutter*, 539 U.S. at 315 (internal quotation marks omitted). These holistic admissions processes that allow for some consideration of race are necessary to treat applicants as integrated individuals

and to consider all the characteristics that a student may contribute to a university community. Thus, race is an important—but not the only—factor that schools consider in order to achieve the benefits of diversity. As part of holistic admissions processes, universities may also consider other aspects of students’ identities, such as religion, sex, sexual orientation, gender identity, disability, geographic region, and other backgrounds and beliefs, to help ensure a diverse student body.

Eliminating race from this evaluation altogether would deny many students an essential part of their identity. These so-called “colorblind” evaluations of applicants would not only result in admissions processes failing to attain a racially diverse student body, but also would threaten the dignity of student applicants and disrespect their lived experiences by requiring that a key element of their identity be ignored. *See* Deirdre Bowen, *American Skin: Dispensing with Colorblindness and Critical Mass in Affirmative Action*, 73 *Univ. Pitt. L. Rev.* 339, 387 (2012) (“[D]iversity in a colorblind society creates invisibility.”); Elise C. Boddie, *The Indignities of Color Blindness*, 64 *UCLA L. Rev. Discourse* 64, 72, 77 (2016) (“Because colorblindness obscures the existence and complexity of racial difference, it perpetuates whiteness as a social norm....Under the colorblindness rubric, the state is compelled to disregard an individual’s racial identity, despite the continued social salience of race. As a result of this dynamic, the state fails to treat the racially-identified person in a manner that is consistent with how she defines and sees herself.”).

As noted above in Section I.A, sex and race together are fundamental aspects of the identities of women of color; excising race from the equation renders women of

color into artificial categories that are incomplete. Laura M. Padilla, *Intersectionality and Positionality: Situating Women of Color in the Affirmative Action Dialogue*, 66 Fordham L. Rev. 843, 859 (1997) (“[F]emale students of color are often asked to excise portions of their identity by being forced to choose between outsider status on the basis of either gender or race. Thus, their wholeness vanishes.”). Unsurprisingly, therefore, simply attempting to advance the position of women in universities and in the workplace, without consideration of race, has been shown time and again to leave women of color behind. See Aida Harvey Wingfield, *Women Are Advancing in the Workplace, but Women of Color Still Lag Behind*, Brookings Inst. (Oct. 2020), <https://www.brookings.edu/essay/women-are-advancing-in-the-workplace-but-women-of-color-still-lag-behind/> (“[R]ace and racism create specific, unique challenges for women of color that are too easily ignored with broad platitudes that seek to advance women’s representation without questioning *which* women are most likely to benefit.”) (emphasis in original). See Fernandez, *supra*, Section I.A. (despite more women than men enrolling in legal education, women of color continue to face tokenization and alienation).

We cannot fix the problem of racial discrimination by pretending it does not exist. Whether we like it or not, the hoped-for “logical end point,” *Grutter*, 539 U.S. at 342, where the “use of racial preferences will no longer be necessary,” *id.* at 343, has not been reached, and we cannot pretend that it has. Ignoring race in university admissions processes would not only hurt applicants from all communities of color, including women of color, but also weaken the mission of universities, deprive all students of the benefits of a racially diverse university environment, and cause deep and lasting harm to our society.

CONCLUSION

Universities must be allowed to continue considering race as one part of their holistic admissions processes in order to foster robust learning environments that prepare students to thrive in our diverse nation. *Amici* urge the Court to uphold its decisions in *Bakke*, *Grutter*, and *Fisher II* and affirm the ruling below.

Respectfully submitted,

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APPENDIX — LIST OF *AMICI CURIAE*

1. American Medical Women’s Association
2. Athlete Ally
3. California Women Lawyers
4. Center for Reproductive Rights
5. Chicago Foundation for Women
6. Family Equality
7. GLBTQ Legal Advocates & Defenders
8. Human Rights Campaign
9. If/When/How: Lawyering for Reproductive Justice
10. KWH Law Center for Social Justice and Change
11. Lambda Legal Defense and Education Fund, Inc.
12. League of Women Voters of the United States
13. Legal Aid at Work
14. Legal Momentum, the Women’s Legal Defense and Education Fund
15. Minority Veterans of America
16. NARAL Pro-Choice America

Appendix

17. National Association of Social Workers
18. National Association of Women Lawyers
19. National Center for Lesbian Rights
20. National Coalition on Black Civic Participation
21. National LGBTQ Task Force
22. National Organization for Women Foundation
23. Ohio Council of Churches
24. People For the American Way
25. Planned Parenthood Federation of America, Inc.
26. Reproaction
27. Shriver Center on Poverty Law
28. Southern Poverty Law Center
29. Southwest Women's Law Center
30. Tom Homann LGBTQ+ Law Association
31. The Center for Constitutional Rights
32. The Leadership Conference on Civil and Human Rights

Appendix

33. The Women's Law Center of Maryland
34. Women Employed
35. Women Lawyers On Guard Inc.
36. Women's Bar Association of the State of New York
37. Women's Law Project