

Nos. 20-1199 & 21-707

In The Supreme Court of the United States

STUDENTS FOR FAIR ADMISSIONS, INC.,
Petitioner,

v.

PRESIDENT & 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 THE AMERICAN EDUCATIONAL
RESEARCH ASSOCIATION, ET AL. AS *AMICI
CURIAE* IN SUPPORT OF RESPONDENTS**

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TABLE OF CONTENTS

| | Page |
|---|------|
| TABLE OF AUTHORITIES..... | iii |
| INTEREST OF <i>AMICI CURIAE</i> | 1 |
| SUMMARY OF ARGUMENT | 2 |
| ARGUMENT | 4 |
| I. RESEARCH SUPPORTS THE COMPELLING GOVERNMENTAL INTEREST IN STUDENT BODY DIVERSITY | 4 |
| A. Research Studies Demonstrate That Student Body Diversity Leads to Significant Educational Benefits | 6 |
| 1. Student Body Diversity Promotes Cross-Racial Understanding and Reduces Prejudice..... | 7 |
| 2. Student Body Diversity Leads to Educational Benefits such as Improvements in Cognitive Abilities, Critical Thinking, and Self- Confidence..... | 10 |
| 3. Student Body Diversity Leads to Improved Classroom Environments | 12 |
| 4. Student Body Diversity Promotes Civic Engagement and Advances Professional Development and Leadership | 13 |

| | | |
|-----|--|----|
| B. | Research Demonstrates the Harms Associated with Tokenism, Racial Isolation, and Stereotyping | 17 |
| C. | Claims that Minority Students are Harmed by Race-Conscious Admissions Lack Strong Empirical Foundations | 22 |
| II. | RESEARCH SUPPORTS UPHOLDING RACE-CONSCIOUS ADMISSIONS POLICIES AS NARROWLY TAILORED | 26 |
| A. | Critical Mass is Not a Fixed Number or Percentage and Must Be Assessed by the University in Evaluating the Educational Benefits of Diversity | 27 |
| B. | Percentage-Based Admissions Plans are Either Infeasible or Ineffective in Attaining Diverse Student Bodies | 29 |
| C. | Race-Neutral Admissions Policies Focused on Socioeconomic Status are Not as Effective as Race-Conscious Plans | 32 |
| | CONCLUSION | 35 |

TABLE OF AUTHORITIES

| | Page |
|--|--------|
| Cases | |
| <i>Fisher v. University of Texas I</i> , 570 U.S. 297 (2013)..... | 6 |
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Universities* (2009)24, 25
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INTEREST OF *AMICI CURIAE*

Pursuant to Supreme Court Rule 37, the American Educational Research Association (AERA), et al. submit this brief as *amici curiae* in support of Respondents President and Fellows of Harvard College and the University of North Carolina, et al.¹ *Amici curiae* comprise several of the nation's leading research associations: the American Educational Research Association, the American Anthropological Association, the American Association for the Advancement of Science, the American Political Science Association, the American Sociological Association, the Association for the Study of Higher Education, and the Linguistic Society of America.

Amici curiae have longstanding interests in the accurate presentation of research relevant to the important questions of law raised by these cases. *Amici curiae* are also concerned about the possible misapplication of research findings in these cases and with the possibility that the Court's ruling might be influenced by the presentation of flawed research and unreliable findings. It is well-accepted in scientific disciplines that the integrity of research relies not only on the validity and reliability of research but also on intellectual honesty in proposing, performing, and reporting research; it is thus critical for the Court to have access to information that represents the best

¹ All parties have filed their written consent to the filing of all *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*, their members, or their counsel has made a monetary contribution to the preparation or submission of this brief.

knowledge available at the time. Accordingly, this brief provides citations and summaries of pertinent studies to assist the Court's understanding of the research evidence available in the records below and in the broader scientific literature.

SUMMARY OF ARGUMENT

For decades, scientific research has provided extensive support for upholding the compelling governmental interest in student body diversity and for ruling that race-conscious admissions policies are narrowly tailored to the diversity interest. The research literature was already well-established by the time of *Grutter v. Bollinger*, and has been reaffirmed and further refined during the two decades since *Grutter*.

The work supporting the compelling interest in student body diversity is expansive. Research shows that student body diversity leads to important educational benefits. Among these benefits are improvements in intergroup contact and increased cross-racial interaction among students; reductions in prejudice; improvements in cognitive abilities, critical thinking skills, and self-confidence; greater civic engagement; and the enhancement of skills needed for professional development and leadership.

Research studies examining the harms associated with racial isolation and tokenism reinforce the interest in obtaining a diverse student body. Among the harms ameliorated by increased diversity are racial stereotyping, stereotype threat that undermines minority student achievement, and overt discrimination.

Research further demonstrates that the purported harms to students associated with race-conscious admissions lack solid empirical bases. The claim that stigma increases because of race-conscious admissions and the claim that students suffer academic harms when their credentials do not match their institutions find little support in the scientific literature.

Extensive research also supports the conclusion that the holistic, race-conscious admissions policies of both Harvard College and the University of North Carolina are narrowly tailored to their respective diversity interests. Although Petitioner attempts to resurrect the assertion that “critical mass” lacks sufficient specificity to guide the courts, this Court, supported by contemporary research, has made clear that critical mass must be defined in relation to the educational benefits of diversity and changes in the composition of state and national populations, and not by inflexible numbers. Consistent with the Court’s prohibition on racial balancing, the research literature has not identified a precise number or percentage to define critical mass.

Research also demonstrates that race-conscious admissions policies are essential because race-neutral alternatives, such as percent plans and class-based policies, are either infeasible or do not yield adequate

numbers of minority students necessary to produce the benefits of diversity documented in the literature.

ARGUMENT

I. RESEARCH SUPPORTS THE COMPELLING GOVERNMENTAL INTEREST IN STUDENT BODY DIVERSITY

Nearly twenty years ago in *Grutter v. Bollinger*, this Court concluded that student body diversity is a compelling governmental interest that can justify the use of race-conscious admissions in higher education. 539 U.S. 306, 327-33 (2003). Recognizing that an institution’s diversity interest exists “not simply ‘to assure within its student body some specified percentage of a particular group,’” but “by reference to the educational benefits that diversity is designed to produce,” the *Grutter* Court relied on well-settled research findings demonstrating the substantial and widespread benefits of diversity. *Id.* at 329-30.

The *Grutter* Court’s extensive citation of research studies demonstrates that the value of educational diversity had already been the subject of scientific study for many years and had been widely accepted within multiple research communities. As the Court stated: “numerous studies show that student body diversity promotes learning outcomes, and ‘better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals.’” *Id.* at 330 (quoting Brief of the American Educational Research Association et al. as *Amici Curiae* at 3 (discussing over 20 books, articles, and book chapters supporting diversity rationale); see also Brief of the American Educational Research Association et al. as *Amici Curiae*, *Gratz v. Bollinger*,

539 U.S. 244 (2003) (discussing over 35 books, articles, book chapters, and dissertations supporting diversity rationale)).

Moreover, the Court explicitly referenced several of the leading studies and compilations of the day. 539 U.S. at 330 (citing William G. Bowen & Derek Bok, *The Shape of the River* (1998) (examining race-conscious policies and effects of diversity on institutions and on the success and lifelong contributions of over 45,000 students); *Diversity Challenged: Evidence on the Impact of Affirmative Action* (Gary Orfield & Michal Kurlaender eds., 2001) (compilation of 13 studies examining diversity from multiple perspectives, including undergraduate education, professional schools, K-16 pipelines, and faculty); *Compelling Interest: Examining the Evidence on Racial Dynamics in Colleges and Universities* (Mitchell J. Chang, Daria Witt, James Jones & Kenji Hakuta eds. 2003) (multi-chapter volume summarizing findings of research on several diversity-related issues, as well as the findings of a group of leading national experts)).

Research since *Grutter* has deepened scientific understanding of the mechanisms underlying the benefits of diversity. See Expert Report of Mitchell J. Chang, Ph.D., *Students for Fair Admissions v. University of North Carolina*, No. 21-707, J.A. Vol. III, at JA1479, JA1486-JA1501; Expert Report of Dr. Uma Jayakumar, *id.*, at JA1601, JA1606-JA1638. See generally *Affirmative Action and Racial Equity* (Uma M. Jayakumar & Liliana M. Garces eds. 2015) (compiling legal analyses and scientific research on diversity and race-conscious admissions); Edna Chun & Alvin Evans, *Affirmative Action at a Crossroads:*

Fisher and Forward (2015) (summarizing legal developments and empirical research on higher education diversity).

Contrary to the assertions of Petitioner and its *amici curiae*, racial identity and racial inequality are often central elements of students' experiences before, during, and after college. See Sylvia Hurtado, Adriana Ruiz Alvarado & Chelsea Guillermo-Wann, *Thinking About Race: The Salience of Racial Identity at Two and Four-Year Colleges and the Climate for Diversity*, 86 J. Higher Educ. 127 (2015). See generally Gary Orfield, *The Walls Around Opportunity* 46-90 (2022) (documenting cumulative racial inequalities and effects on higher education opportunities). Student body diversity has thus long been identified as the key to improving campus racial climates and to advancing the types of positive cross-racial interactions that lead to reduced prejudice and improved academic learning.

A. Research Studies Demonstrate That Student Body Diversity Leads to Significant Educational Benefits

The *Grutter* Court recognized that student body diversity “promotes ‘cross-racial understanding,’ helps to break down racial stereotypes, and ‘enables [students] to better understand persons of different races.’” 539 U.S. at 330. The Court reaffirmed *Grutter*’s core holding in *Fisher v. University of Texas I*, 570 U.S. 297, 308 (2013), making clear that “[t]he attainment of a diverse student body . . . serves values beyond race alone, including enhanced classroom dialogue and the lessening of racial isolation and stereotypes.” And, in upholding the University of Texas’s holistic policy in *Fisher II*, the Court endorsed the University’s admissions goals, including “the

destruction of stereotypes, the promotion of cross-racial understanding, the preparation of a student body for an increasingly diverse workforce and society, and the cultivation of a set of leaders with legitimacy in the eyes of the citizenry.” 136 S. Ct. 2198, 2211 (2016) (internal quotation marks omitted). Decades of research literature continue to support these core holdings.

1. Student Body Diversity Promotes Cross-Racial Understanding and Reduces Prejudice

Research has demonstrated that racially diverse educational settings are effective in reducing prejudice by promoting greater intergroup contact—both informally and in classroom settings—and by encouraging friendships across group lines. *See, e.g.,* Mitchell J. Chang, Alexander W. Astin & Dongbin Kim, *Cross-Racial Interaction Among Undergraduates: Some Consequences, Causes, and Patterns*, 45 Res. Higher Educ. 529 (2004); Gretchen E. Lopez, *Interethnic Contact, Curriculum, and Attitudes in the First Year of College*, 60 J. Soc. Issues 75 (2004); Victor B. Saenz, Hoi Ning Ngai & Sylvia Hurtado, *Factors Influencing Positive Interactions Across Race for African American, Asian American, Latino, and White College Students*, 48 Res. Higher Educ. 1 (2007).

For instance, a post-*Grutter* study by Denson and Chang found that cross-racial interactions had strong positive effects on racial and cultural engagement; students who attended institutions where students were generally more engaged with diversity from cross-racial interactions showed greater improvements in their knowledge and their ability to get along

with people of different races or cultures. Nida Denson & Mitchell J. Chang, *Racial Diversity Matters: The Impact of Diversity-Related Student Engagement and Institutional Context*, 46 *Am. Educ. Res. J.* 322, 336 (2009).

Indeed, the literature in the area of intergroup contact and cross-racial interaction has become sufficiently extensive that “meta-analyses”—statistical analyses that synthesize research from many separate studies and that draw overall conclusions based on the cumulative data and findings—are commonplace. The leading meta-analysis published in 2006 by Pettigrew and Tropp remains highly relevant. The study analyzed over 500 studies from a range of educational, workplace, and informal settings, including college campuses, and reached the clear conclusion that positive intergroup contact reduces prejudice and that greater intergroup contact is associated with lower levels of prejudice. Thomas F. Pettigrew & Linda R. Tropp, *A Meta-Analytic Test of Intergroup Contact Theory*, 90 *J. Personality & Soc. Psychol.* 751, 766 (2006); *see also* Thomas F. Pettigrew & Linda R. Tropp, *How Does Intergroup Contact Reduce Prejudice? Meta-analytic Test of Three Mediators*, 38 *Eur. J. Soc. Psychol.* 922 (2008) (meta-analyses showing that intergroup contact is especially effective in reducing prejudice because it diminishes anxiety and enhances empathy between groups). Later generations of intergroup-contact research continue to affirm and refine these core findings, demonstrating positive effects across a wide range of contexts in higher education and other settings. *See* Stefania Paolini, et al., *Intergroup Contact Research in the 21st Century: Lessons Learned and Forward Progress If We Remain Open*, 77 *J. Soc. Issues* 11

(2021) (summarizing literature and introducing journal issue with 12 research articles on mechanisms and effects of intergroup contact).

Studies focusing on friendships developed in diverse settings also show the positive effects of cross-racial interaction: “Exposure to other races, particularly in friendship, can be a powerful way to reduce bias and change cultural beliefs.” Deborah L. Plummer, Rosalie Torres Stone, Lauren Powell & Jeroan Allison, *Patterns of Adult Cross-Racial Friendships: A Context for Understanding Contemporary Race Relations*, 22 *Cultural Diversity & Ethnic Minority Psych.* 479, 480 (2016).

One representative study examining how student body diversity fosters meaningful interactions and the development of relationships across racial lines concluded that exposure to greater diversity results in more cross-group friendships by the end of the first year of college. Mary J. Fischer, *Does Campus Diversity Promote Friendship Diversity? A Look at Interracial Friendships in College*, 89 *Soc. Sci. Q.* 631 (2008). Similarly, a multi-year study with data from over 2,000 college students showed that greater cross-ethnic friendships early in college predicted lower intergroup anxiety and more positive interethnic attitudes by the end of college. Shana Levin, Colette van Laar & Jim Sidanius, *The Effects of Ingroup and Outgroup Friendship on Ethnic Attitudes in College: A Longitudinal Study*, 6 *Group Processes & Intergroup Rel.* 76 (2003).

A subsequent meta-analysis examined studies of friendships across groups and showed that cross-group friendships promote positive intergroup attitudes, and that time spent together and self-

disclosure to individuals from other groups were strongly associated with improved attitudes. Kristin Davies, Linda R. Tropp, Arthur Aron, Thomas F. Pettigrew & Stephen C. Wright, *Cross-Group Friendships and Intergroup Attitudes: A Meta-Analytic Review*, 15 *Personality & Soc. Psychol. Rev.* 332 (2011).

Cross-racial interaction also affects curricular activities that lead to prejudice reduction. One meta-analysis found that participation in diversity-related activities during college reduces racial bias among undergraduate students and that specific types of activities such as participating in prejudice reduction workshops were even more effective when they also incorporated a cross-racial interaction component. Nida Denson, *Do Curricular and Cocurricular Diversity Activities Influence Racial Bias? A Meta-Analysis*, 79 *Rev. Educ. Res.* 805 (2009).

2. Student Body Diversity Leads to Educational Benefits such as Improvements in Cognitive Abilities, Critical Thinking, and Self-Confidence

As the *Grutter* Court recognized, a central benefit of student body diversity is that it “promotes learning outcomes,” 539 U.S. at 330, and research has confirmed that learning is enhanced by both campus and classroom diversity. “Because of the persistent power of race to shape life experiences, racial and ethnic compositional diversity can create a rich and complex social and learning environment that can subsequently be applied as an educational tool to promote students’ learning and development.” Mitchell J. Chang, Nida Denson, Victor Saenz & Kimberly Misa, *The Educational Benefits of*

Sustaining Cross-Racial Interaction Among Undergraduates, 77 *J. Higher Educ.* 430, 432 (2006).

Multiple studies have shown that student body diversity fosters improvements in students' cognitive skills, such as critical thinking and problem solving. Because of students' exposure to individuals different from themselves—as well as to the novel ideas and situations that such exposure brings—their thinking is challenged on several fronts, which leads to cognitive growth. *See, e.g.*, Anthony Lising Antonio, Mitchell J. Chang, Kenji Hakuta, David A. Kenny, Shana Levin & Jeffrey F. Milem, *Effects of Racial Diversity on Complex Thinking in College Students*, 15 *Psychol. Sci.* 507 (2004); Chang, Denson, Saenz & Misa, *supra*; Jiali Luo & David Jamieson-Drake, *A Retrospective Assessment of the Educational Benefits of Interaction Across Racial Boundaries*, 50 *J.C. Student Dev.* 67 (2009).

For example, one study analyzed data from over 4,400 students at nine public universities and concluded that student interaction with diverse peers contributed in positive ways to student education by a student's second year of college. Sylvia Hurtado, *The Next Generation of Diversity and Intergroup Relations Research*, 61 *J. Soc. Issues* 595 (2005). Among the positive effects were improvements in cognitive abilities (e.g., analytical problem-solving skills and complex thinking skills), socio-cognitive skills (e.g., cultural awareness and leadership), and democracy-related skills (e.g., dealing with pluralistic settings and valuing civic contributions). *Id.* at 600-06. A similar study found that students with greater exposure to diversity are more likely to score higher on academic self-confidence, social agency (the belief

in taking personal action to improve society), and dispositions toward critical thinking. Thomas F. Nelson Laird, *College Students' Experiences with Diversity and Their Effects on Academic Self-Confidence, Social Agency, and Disposition Toward Critical Thinking*, 46 Res. Higher Educ. 365 (2005).

These and similar findings are reinforced by a meta-analysis that analyzed twenty-three higher education studies focusing on diversity and cognitive skills, and concluded that college diversity experiences are significantly and positively related to cognitive development. Nicholas A. Bowman, *College Diversity Experiences and Cognitive Development: A Meta-Analysis*, 80 Rev. Educ. Res. 4, 20 (2010). The study concluded that interactions with racial diversity are more strongly linked to cognitive growth than are interactions with non-racial diversity, thus reinforcing the importance of racial diversity. *Id.* at 22.

3. Student Body Diversity Leads to Improved Classroom Environments

In addition to the educational benefits that accrue to students enrolled in colleges and universities with diverse student bodies, institutional benefits affecting the breadth of classroom discussions have been recognized by the Court and have been well documented in recent research. *See Grutter*, 539 U.S. at 330 (“classroom discussion is livelier, more spirited, and simply more enlightening and interesting’ when the students have ‘the greatest possible variety of backgrounds”).

For instance, an analysis of survey and focus group data from over 500 respondents at the Uni-

versity of Michigan documented how interactions among students in general—and in the classroom specifically—have contributed to the benefits of diversity in improving the overall educational experience. Meera E. Deo, *The Promise of Grutter: Diverse Interactions at the University of Michigan Law School*, 17 Mich. J. Race & L. 63 (2011). The study found that “a) greater structural diversity [i.e., diversity in the student body] leads to increased classroom diversity and improved learning; b) classroom diversity results in open minds and engaging classroom conversations; and c) more structural diversity leads to greater participation [by minority students] and less tokenism.” *Id.* at 97. The study also concluded that livelier and more engaging conversations occur when diversity discussions are included in the classroom, and improved learning occurs because abstract concepts are tied directly to concrete examples drawn from personal experience. *Id.* at 110-11; see also Richard Pitt & Josh Packard, *Activating Diversity: The Impact of Student Race on Contributions to Course Discussions*, 53 Soc. Q. 295, 312-13 (2012) (finding improved learning outcomes resulting from classroom diversity, where Black and white students added different personal experiences to discussion).

4. Student Body Diversity Promotes Civic Engagement and Advances Professional Development and Leadership

This Court has “repeatedly acknowledged the overriding importance of preparing students for work and citizenship.” *Grutter*, 539 U.S. at 331. Both Harvard College and the University of North Carolina share these goals, and central elements of their educa-

tional missions aspire to prepare students for leadership at both the national and state levels. See *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 397 F. Supp. 3d 126, 152 (D. Mass. 2019) (finding that College seeks to prepare students “to assume leadership roles in the increasingly pluralistic society into which they will graduate”); Mission Statement of the University of North Carolina at Chapel Hill, *Students for Fair Admissions v. University of North Carolina*, No. 21-707, J.A., Vol. III, at JA1371 (among goals is “to teach a diverse community of undergraduate, graduate, and professional students to become the next generation of leaders”).

Several studies have documented the positive relationships between diversity and a range of benefits that have long-term implications for civic engagement, professional growth, and the preparation of leaders for an increasingly diverse society. See, e.g., Hurtado, *supra*; Mark E. Engberg, *Educating the Workforce for the 21st Century: A Cross-Disciplinary Analysis of the Impact of the Undergraduate Experience on Students’ Development of a Pluralistic Orientation*, 48 Res. Higher Educ. 283 (2007). See generally Patricia Gurin, Biren (Ratnesh) A. Nagda & Ximena Zuñiga, *Dialogue Across Difference: Practice, Theory, and Research on Inter-group Dialogue* (2013).

Improvements in measures of civic engagement, including (1) civic attitudes toward democratic participation, (2) civic behaviors such as participating in community activities, and (3) intentions to participate in civic activities, have been well documented in multiple studies. One meta-analysis synthesized twenty-

seven studies examining the effects of diversity on civic engagement and reached the conclusion that college diversity experiences are positively related to increased civic engagement and that “this relationship is significant for several types of civic outcomes (attitudes or skills, behaviors, and behavioral intentions) and several types of diversity experiences.” Nicholas A. Bowman, *Promoting Participation in a Diverse Democracy: A Meta-Analysis of College Diversity Experiences and Civic Engagement*, 81 Rev. Educ. Res. 29, 46 (2011). The study concluded that “the civic benefits of racial diversity cannot be replaced by teaching about diversity abstractly in courses or workshops,” and highlighted the ongoing need for institutions to attain diverse student bodies and to facilitate meaningful interactions among students of different backgrounds. *Id.* at 49.

Additional benefits of diversity include gains in “pluralistic orientation,” a measurement tied to capacities for thinking and social interaction that enable students to “engage in cooperative behaviors, manage controversial issues, and develop a high regard for others’ perspectives, beliefs, and backgrounds.” Mark E. Engberg & Sylvia Hurtado, *Developing Pluralistic Skills and Dispositions in College: Examining Racial/Ethnic Group Differences*, 82 J. Higher Educ. 416, 417 (2011). Building on earlier research, Engberg and Hurtado’s study confirmed across multiple racial and ethnic groups that students’ positive interactions with individuals of other races were associated with positive effects on their pluralistic orientation. *Id.* at 429.

Leadership skills and pluralistic orientation have also been recognized as key competencies for effective

participation in a diverse workforce. A study by Jayakumar analyzed the relationship between white individuals' exposure to racial diversity during college and their post-college cross-cultural workforce competencies, including leadership ability, public speaking, social self-confidence, and ability to discuss and negotiate controversial issues. 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 (2008). The study concluded that for white students from both segregated and diverse pre-college neighborhoods, post-college leadership skills and levels of pluralistic orientation are significantly related to the degree of student body diversity and to the racial climate of institutions, as well as to the level of cross-racial interaction during college. *Id.* at 636-41.

The long-term advantages of these types of benefits are underscored by research showing that many of the benefits extend well beyond a student's undergraduate years. For instance, a study by Bowman et al. tracked students during college and for thirteen years after their graduation, and found that diversity experiences were positively related to personal growth, purpose in life, recognition of racism, and volunteering behavior among college graduates in their mid-30s. Nicholas A. Bowman, Jay W. Brandenberger, Patrick L. Hill & Daniel K. Lapsley, *The Long-Term Effects of College Diversity Experiences: Well-Being and Social Concerns 13 Years After Graduation*, 52 J.C. Student Dev. 729, 737 (2011).

B. Research Demonstrates the Harms Associated with Tokenism, Racial Isolation, and Stereotyping

The compelling interest in student body diversity is rooted not only in the positive effects of diversity but also in avoiding the negative effects of racial isolation and tokenism, since “diminishing the force of . . . stereotypes is both a crucial part of [an institution’s] mission, and one that it cannot accomplish with only token numbers of minority students.” *Grutter*, 539 U.S. at 333.

Nonetheless, the records below reveal that racial isolation is a persistent problem. As the district court in the North Carolina litigation found: “Student-intervenors credibly testified that there were far fewer students of color on campus than they expected and that they experienced low minority representation. This underrepresentation causes minority students to experience loneliness and tokenism. Underrepresented minority students also report feelings of isolation and unfair pressure to represent their race or ethnicity—effects that do not create the experience the University wants, or the students deserve.” Trial Findings of Fact and Conclusions of Law in the United States District Court for the Middle District of North Carolina at 16 (Oct. 18, 2021) (citations omitted); *see also Students for Fair Admissions v. President & Fellows of Harvard College*, No. 20-1099, J.A. Vol. II, at JA823, JA912-JA913 (testimony regarding minority student alienation and isolation at Harvard). *See generally* Expert Report of Dr. Uma Jayakumar, *supra*, at JA1647-JA1670 (discussing obstacles to diversity and summarizing

student perspectives on conditions that stimulate or impede interactions on campus).

The research literature continues to demonstrate that minority students in racially isolated settings are at risk of significant harms, including negative stereotyping, discrimination, and “stereotype threat” that can undermine their academic achievement. The interest in securing student diversity is therefore compelling at multiple levels—within the overall student body, within schools and majors, and within classrooms.

Isolation, subordination, and negative stereotyping are problems that arise in a wide range of settings when minority numbers are low and the norms and behaviors of majority groups predominate. See Mischa Thompson & Denise Sekaquaptewa, *When Being Different is Detrimental: Solo Status and the Performance of Women and Racial Minorities*, 2 *Analyses Soc. Issues & Pub. Pol’y* 183 (2002); Rosabeth Moss Kanter, *Men and Women of the Corporation* (1977) (describing tokenism effects when the proportion of minorities is very low within an institution). Recent research “consistently calls attention to the isolation, alienation, and stereotyping with which [minority] students are often forced to contend.” 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, 12.

Problems of stereotyping that arise from race- and gender-based isolation pose serious problems, including fostering “stereotype threat,” the well-documented harm that occurs when individuals feel pressured because of the fear that their academic performance

could confirm a negative group stereotype, and the resulting pressure interferes with their intellectual functioning. Numerous studies have documented how stereotype threat contributes to diminished academic performance among racial minorities, as well as women in mathematics and science fields. *See, e.g.*, Christine R. Logel et al., *Unleashing Latent Ability: Implications of Stereotype Threat for College Admissions*, 47 *Educ. Psychol.* 42 (2012) (summarizing stereotype threat literature); Gregory M. Walton & Steven J. Spencer, *Latent Ability: Grades and Test Scores Systematically Underestimate the Intellectual Ability of Negatively Stereotyped Students*, 20 *Psychol. Sci.* 1132 (2009) (meta-analyses of recent studies). *See generally* Claude M. Steele, *Whistling Vivaldi: And Other Clues to How Stereotypes Affect Us* (2010).

Moreover, national surveys of Black and Latino students have indicated that the isolation of under-represented minority students exacerbates feelings of exclusion, reinforces stereotypes, and results in discrimination and bias. One analysis found that problems of exclusion and discrimination were considerably more extensive on low-diversity campuses compared to high-diversity campuses. Sylvia Hurtado & Adriana Ruiz, *The Climate for Underrepresented Groups and Diversity on Campus* (UCLA Higher Educ. Research Inst. 2012), *available at* <http://heri.ucla.edu>. Among Black students, 55.4% of students in low-diversity institutions reported exclusion from campus events and activities, while only 20.3% of students in high-diversity institutions reported feelings of exclusion. *Id.* at 2-3. Similarly, 67.2% of Black students in low-diversity institutions reported being the target of discriminatory verbal comments, compared to 37.5% in high-diversity

institutions. *Id.* A later study found comparable patterns among Latino students. Sylvia Hurtado & Adriana Ruiz Alvarado, *Discrimination and Bias, Underrepresentation, and Sense of Belonging on Campus* (UCLA Higher Educ. Research Inst. 2015), available at <http://heri.ucla.edu>. The study showed that at low-diversity campuses, 62.3% of Latino students reported discriminatory verbal comments, and 44.3% felt excluded from events and activities—figures that were significantly higher than those at high-diversity campuses. *Id.* at 2.

One recent study examining students' sense of belonging, defined as a sense of connection to or integration into their community, concluded that experiences of discrimination and bias strongly contribute to minority students' diminished sense of belonging. Maryam Hussain & James M. Jones, *Discrimination, Diversity, and Sense of Belonging: Experiences of Students of Color*, 14 *J. Diversity Higher Educ.* 63 (2021). The study's findings further suggested that more frequent cross-racial interactions, as well as positive perceptions of the institution's commitment to diversity, could buffer against the diminished sense of belonging.

Research also indicates that stereotyping by white students can be exacerbated if they experience segregated pre-college and college environments. A 2015 study found that white students who were primarily socialized in segregated white environments prior to college are more likely to remain in white-dominant environments on campus, and also less likely to engage in casual cross-racial interactions. Uma M. Jayakumar, *The Shaping of Postcollege Colorblind Orientation Among Whites:*

Residential Segregation and Campus Diversity Experiences, 85 Harv. Educ. Rev. 609 (2015).

Further, overt discrimination in the form of racial animosity and violence have occurred with greater frequency on campuses that lack significant numbers of minority students. One study examined both FBI data and educational data to assess the extent of racial hate crimes on campuses and found a significant relationship between minority underrepresentation and hate incidents. Rebecca L. Stotzer & Emily Hossellman, *Hate Crimes on Campus: Racial/Ethnic Diversity and Campus Safety*, 27 J. Interpersonal Violence 644 (2012). The authors found that “the percent of students who were Black or Latino at these institutions of higher education had a significant relationship with reported hate crimes, namely, as the percentage of Black and Latino students increased, the overall reported ethnic/race-based hate crimes decreased.” *Id.* at 654-55. The authors suggest that “when the percentage of Blacks and Latinos are too low, then there is actually increased risk of hate crime because of their token status.” *Id.* at 656.

It is because of these and other acute problems of tokenism and racial isolation, in tandem with promoting the positive effects of diversity, that Harvard College and the University of North Carolina have made attaining sufficient numbers of minority students such a central feature of their educational missions.

**C. Claims that Minority Students are
Harmed by Race-Conscious Admissions
Lack Strong Empirical Foundations**

The interest in student body diversity remains compelling, notwithstanding the contentions of Petitioner and its *amici curiae* that race-conscious admissions policies harm minority students and engender such high costs that they cannot be constitutionally justified. Multiple studies confirm instead that the purported problems of stigma due to race-conscious admissions and the educational harms resulting from the so-called “mismatch” of minority students at selective institutions have not been established, and they are regularly contradicted by sounder and more widely accepted research.

Numerous studies have undercut the largely speculative arguments contending that minority students feel more stigmatized because of race-conscious admissions policies. For instance, a study by Bowen compared students enrolled in universities with race-conscious admissions policies with students enrolled in universities in states that had barred race-conscious admissions, and posed several questions focusing on both “internal stigma” (minority students’ own feelings of doubt or inferiority) and “external stigma” (non-minority students questioning of minority students’ abilities and qualifications). Deirdre M. Bowen, *Brilliant Disguise: An Empirical Analysis of a Social Experiment Banning Affirmative Action*, 85 Ind. L.J. 1197 (2010). Bowen found that approximately three-fourths of students in states that bar race-conscious admissions felt pressure to prove themselves because of their race, compared to fewer than half of the students who were in schools with

race-conscious admissions; these results indicate that internal stigma was *lower* among students in schools with race-conscious admissions. *Id.* at 1223-24. The study also found that only about one-quarter of the students at schools with race-conscious admissions reported that non-minority students had questioned their qualifications, compared to nearly one-half of the students who were enrolled in states with bans. *Id.* at 1224-25; *see also* Angela Onwuachi-Willig, Emily Houh & Mary Campbell, *Cracking the Egg: Which Came First—Stigma or Affirmative Action?*, 96 Calif. L. Rev. 1299 (2008) (examining stigma among students at seven public law schools, four of which employed race-conscious admissions and three of which did not, and finding minimal differences in multiple forms of stigma at the law schools).

Recent research also undermines the so-called mismatch hypothesis proposed by Petitioner's *amici curiae*. This hypothesis predicts lower graduation rates and reduced economic gains for minority students who attend selective institutions because their admissions credentials do not match their institution's average; a central assertion is that these students would have fared better if they had attended less selective institutions. A mere handful of researchers have reached such conclusions, and their studies have been critiqued for having serious methodological flaws and for yielding results that are inconsistent with the findings of the majority of scientists who have studied the issue. *See generally* William C. Kidder & Richard O. Lempert, *The Mismatch Myth in U.S. Higher Education: A Synthesis of the Empirical Evidence at the Law School and Undergraduate Levels, in Affirmative Action and Racial Equity* 105, 114-22 (Uma M. Jayakumar &

Liliana M. Garces eds. 2015); William C. Kidder & Angela Onwuachi-Willig, *Still Hazy After All These Years: The Data and Theory Behind “Mismatch,”* 92 Tex. L. Rev. 895 (2014) (book review of Richard H. Sander & Stuart Taylor Jr., *Mismatch* (2012) and summary of literature undermining mismatch hypothesis).

Reviews of recent studies reveal that the mismatch hypothesis remains unproven. For instance, a national study focusing on minority students who entered selective public institutions in 1999 found that “black male students who went to more selective institutions graduated at *higher*, not lower rates than black students in the same GPA interval who went to less selective institutions.” William G. Bowen, Matthew W. Chingos & Michael S. McPherson, *Crossing the Finish Line: Completing College at America’s Public Universities* 209 (2009) (emphasis in original). A similar study examining educational outcomes for a cohort of college freshmen attending twenty-eight selective institutions nationwide found no evidence supporting the mismatch hypothesis with respect to first-year grades or dropout rates. Mary J. Fischer & Douglas S. Massey, *The Effects of Affirmative Action in Higher Education*, 36 Soc. Sci. Res. 531 (2007). Instead, the study found that the effect of diversity admissions on first-semester grades “was *positive*, precisely opposite the direction predicted by the mismatch hypothesis” *id.* at 539 (emphasis in original), and, with respect to dropouts, “the degree of an individual’s likely benefit from affirmative action is *negatively* related to the likelihood of leaving school,” *id.* at 541 (emphasis in original).

The stigma and mismatch arguments ignore the extensive data showing that minority students gain significant educational and economic benefits through their attendance at selective institutions—including higher graduation rates and increased earnings and labor force participation following graduation. The Court has long recognized these basic findings, *see Grutter*, 539 U.S. at 330 (citing William G. Bowen & Derek Bok, *The Shape of the River* (1998)), and research continues to support this point. *See, e.g.*, Bowen et al., *Crossing the Finish Line*, *supra*, at 209-15 (minority students who attend public flagship universities are more likely to graduate than comparable students at less selective institutions); Mark C. Long, *Changes in the Returns to Education and College Quality*, 29 *Econ. Educ. Rev.* 338 (2010) (educational attainment and college quality raise earnings, with larger increases in the effects of education on earnings and labor force participation for men, Blacks, and Latinos). For instance, one study found that Black and Latino students who attended more selective universities subsequently earned higher wages compared to carefully matched minority students who had the same range of admission offers but chose to enroll at less selective institutions. Stacy Dale & Alan Krueger, *Estimating the Effects of College Characteristics over the Career Using Administrative Earnings Data*, *J. Hum. Resources* 323, 325-26 (2014).

These findings underscore the Court's prior determination that "universities . . . represent the training ground for a large number of our Nation's leaders," as well as the importance of the University's ensuring that "the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity." *Grutter*, 539 U.S. at 332.

II. RESEARCH SUPPORTS UPHOLDING RACE-CONSCIOUS ADMISSIONS POLICIES AS NARROWLY TAILORED

The records below demonstrate that both Harvard College and the University of North Carolina have engaged in extensive analyses and reviews of their admissions policies, as well as alternatives to race-conscious admissions. Each institution has carefully tied those analyses to complying with the standards of *Grutter* and *Fisher*, and to assessing the effectiveness of holistic admissions and other key educational policies in securing the educational benefits of diversity.

Decades of research further support the argument that admissions policies typified by the Harvard and University of North Carolina programs are narrowly tailored to the interest in student body diversity. Research makes clear that “critical mass” is a sufficiently defined concept that courts can deploy to determine whether a race-conscious policy is narrowly tailored; it need not be defined by inflexible terms or numbers that would only lead to the invalidation of a policy as a form of racial balancing. Moreover, a well-developed literature shows that race-conscious admissions policies are essential to help achieve the diversity interest, since race-neutral alternatives such as class-based admissions or “percent plans,” either are insufficient or, in the case of private institutions such as Harvard College, are not at all feasible to advance a diversity interest.

A. Critical Mass is Not a Fixed Number or Percentage and Must Be Assessed by the University in Evaluating the Educational Benefits of Diversity

Petitioner and its *amici curiae* have repeatedly criticized the use of “critical mass” as too vague for courts to assess narrow tailoring and insufficient to justify race-conscious policies. But, as this Court has made clear, critical mass does not correspond to a rigid numerical figure; instead, it is “defined by reference to the educational benefits that diversity is designed to produce.” *Grutter*, 539 U.S. at 330. Consistent with the Court’s prohibitions on quotas and racial balancing, the research literature has not identified a fixed number or percentage to define critical mass; nor do the courts need such a figure in order to assess the constitutionality of an institution’s policy. A reviewing court, while employing meaningful strict scrutiny analysis, can assess an institution’s diversity admissions goals by attending to the *process* by which it establishes a numerical goal or range, not just the numbers alone.

The leading research-based analysis of critical mass shows that critical mass should be examined dynamically, and that critical mass is contingent upon several factors beyond simple numerical targets, including a campus’s racial climate, its historical legacies and institutional signals, impediments to productive interactions, and the nature of cross-racial interactions. Liliana M. Garces & Uma M. Jayakumar, *Dynamic Diversity: Toward a Contextual Understanding of Critical Mass*, 43 *Educ. Researcher* 115, 117-21 (2014).

Relying on multiples lines of diversity-related research, Garces and Jayakumar propose that critical mass should be seen as a component of a “dynamic diversity” formulation: a multifactor analysis that takes into account the relationship between the composition of the student body and the campus learning and living environments. For instance, campus climate, which reflects community members’ attitudes, behaviors, and perceptions of discrimination and intergroup contact, is highly relevant to and dependent upon the composition of the student body. Garces & Jayakumar, *supra*, at 118.

Research has shown that a positive racial climate is essential to fostering cross-racial interactions, and perceptions of campus climate also moderate how students experience such interactions, in both positive and negative ways. *See, e.g.*, Denson & Chang, *supra*. Moreover, recent research has shown a positive relationship between minority group numbers and reductions in the gaps between racial groups in rates of graduation. *See* Nicholas A. Bowman & Nida Denson, *Institutional Racial Representation and Equity Gaps in College Graduation*, 93 J. Higher Educ. 399 (2022).

Similarly, historical legacies and institutional signaling are highly relevant to campus climate and to recruitment and admissions policies designed to constitute a diverse student body. Garces & Jayakumar, *supra*, at 118. Distinct from the remediation of past discrimination—a goal different from the diversity interest and not implicated in the instant cases—the consideration of historical legacies is germane to an institution’s admissions process, because these legacies can directly affect the racial

climate and students' perceptions of how welcoming a campus may be. In the case of the University of North Carolina, for example, the state's unfortunate history of legal segregation and exclusion, as well as the disincentives to minority students to attend the University, can be highly relevant in determining critical mass.

Moreover, attention to the nature of cross-racial interactions and to impediments that might prevent productive interactions can be taken into account in determining critical mass. Garces & Jayakumar, *supra*, at 118. The record in the University of North Carolina litigation in particular has documented problems of tokenism and racial isolation in numerous programs and classes, and these problems can be particularly acute for Black students.

The ability of colleges and universities to produce diverse student bodies is conditioned on the widely varying population compositions in different states and recruitment areas, as well as by differing programs with varying academic goals. As in other aspects of higher education, no single answer is possible for all schools or programs. Institutions must make a contextual assessment of the educational benefits they have so far achieved and determine where they have fallen short of attaining critical mass.

B. Percentage-Based Admissions Plans are Either Infeasible or Ineffective in Attaining Diverse Student Bodies

Petitioner contends that race-conscious admissions policies are unnecessary because sufficient minority student enrollments can be achieved through

race-neutral alternatives such as “percent plans” that guarantee admission to a state university to students finishing within a specified upper percentage of their high school graduating classes. This Court has already recognized several of the major limitations of percent plans, having noted their inapplicability to graduate and professional school admissions and recognizing the barriers they impose to “conducting the individualized assessments necessary to assemble a student body that is not just racially diverse, but diverse along all the qualities valued by the university.” *Grutter*, 539 U.S. at 340. Indeed, the Court upheld the University of Texas’s holistic plan in *Fisher II* as necessary to make up for the weaknesses of its percent plan. And, in the case of private institutions such as Harvard College that seek a student body representative of the entire nation, percent plans simply cannot be implemented as an alternative measure. *See Students for Fair Admissions v. President & Fellows of Harvard College*, No. 20-1099, J.A. Vol. III, at JA1307-JA1325 (Harvard Report of the Committee to Study Race-Neutral Alternatives).

The University of North Carolina, like many other state institutions, has thoroughly studied and rejected percent plans as ineffective substitutes for race-conscious admissions. Research has long identified problems with percentage-based policies, which must rely on the state’s racial and ethnic demographic mix, including patterns of residential segregation in many areas of the state and their effects on secondary school enrollments. Numerous studies have shown that percent plans yield insufficient numbers of racial and ethnic minority students. *See generally* Stella M. Flores & Catherine L. Horn, *Texas Top Ten Percent*

Plan: How It Works, What Are Its Limits, and Recommendations to Consider (2015) (summarizing literature and findings on Texas and other state percent plans), available at <http://www.ets.org>.

For instance, a 2012 percent-plan study examined outreach and recruitment measures in Texas, as well as the application and enrollment patterns of eligible high school students; the study found differential rates among racial groups: white students enrolled at considerably higher rates at the Texas flagship institutions (University of Texas and Texas A&M) than Black or Latino students. Catherine L. Horn & Stella M. Flores, *When Policy Opportunity is Not Enough: The Complexity of College Access and Enrollment*, 3 J. Applied Res. Children 1 (2012). During a twelve-year period under study, an average of approximately 60% of eligible white students enrolled at a flagship campus, compared to approximately 45% of the eligible Latino students and just over 30% of eligible Black students. *Id.* at 15-16. The authors thus concluded that “the Top Ten Percent Plan has not proven to be a successful stand-alone race-neutral alternative in the creation of diverse student bodies from which the benefits of that diversity can be reaped.” *Id.* at 19.

In addition, recent studies employing simulations of race-neutral plans employed in multiple states suggest that the implementation of such plans would have negative effects on minority student enrollments. For instance, a 2010 study found that implementing race-neutral admissions across the nation would decrease minority enrollment at selective four-year colleges by 10.2%. Jessica S. Howell, *Assessing the Impact of Eliminating Affirmative Action in*

Higher Education, 28 J. Labor Econ. 113, 116 (2010). A later study examining national data also found comparable declines in minority enrollments in highly selective colleges in states banning race-conscious admissions; moreover, the study found that the decline in the use of race-conscious admissions in states with bans also negatively affected students who live in adjacent states that lack highly selective colleges, such as Nevada, Arizona, and Idaho. Grant H. Blume & Mark C. Long, *Changes in Levels of Affirmative Action in College Admissions in Response to Statewide Bans and Judicial Rulings*, 36 *Educ. Eval. & Pol'y Analysis* 228 (2014).

C. Race-Neutral Admissions Policies Focused on Socioeconomic Status are Not as Effective as Race-Conscious Plans

The lower courts in both the Harvard College case and the University of North Carolina case have made clear findings of fact showing that class-based admissions policies are insufficient substitutes for race-conscious policies. Numerous research studies have also demonstrated the limits of these types of race-neutral alternatives, such as favoring applicants of lower socioeconomic status (SES) or with low family income. While encouraging the admission of students from lower economic classes may itself be a desirable end, these alternatives are not as effective as race-conscious admissions in achieving racial diversity and could lead to reductions in the numbers of minority students in selective colleges and universities. Although the percentage of low-income families is typically higher among minority groups than among whites in a target area, the alignment is far from perfect; relying on class-based admissions may

therefore yield a more socioeconomically diverse student body, but not one that is racially diverse.

As one study noted, “the 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.” Harry J. Holzer & David Neumark, *Affirmative Action: What Do We Know?*, 25 *J. Pol’y Analysis & Mgmt.* 463, 476 (2006). Other researchers have similarly observed that “[t]he 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.” Alan Krueger et al., *Race, Income and College in 25 Years: Evaluating Justice O’Connor’s Conjecture*, 8 *Am. L. & Econ. Rev.* 282, 309 (2006).

One recent analysis demonstrates that employing race-neutral economic or socioeconomic models does not necessarily yield racially diverse student bodies comparable to those produced by explicitly race-conscious models. Sigal Alon, *Race, Class and Affirmative Action* 160-87 (2015). Alon conducted multiple simulations looking at variables such as family income, wealth and assets, and parental education level, and compared these simulations to results produced by race-conscious policies. The study found that, in replacing race-based policies with socioeconomic policies, the share of minority students fell dramatically, declining “nearly one-third, from 16 percent to around 10 percent.” *Id.* at 174. The study concluded that “no race-neutral model of preferential treatment can match the level of racial and ethnic

diversity achieved by race-based affirmative action.”
Id. 249.

Similarly, recent computational simulations of admissions and enrollment processes have produced results that suggest a striking misalignment between promoting racial diversity and employing class-conscious means to achieve those ends. One study using agent-based modeling drew on data that could incorporate family income, parental education, and parental occupation into simulated admissions processes to compare socioeconomic admissions with race-conscious admissions. Sean F. Reardon, Rachel Baker, Matt Kasman, Daniel Klasik & Joseph Townsend, *What Levels of Racial Diversity Can Be Achieved with Socioeconomic-Based Affirmative Action? Evidence from a Simulation Model*, 37 *J. Policy Analysis & Mgmt.* 630 (2018). The study found, among other things, that reasonable SES-based admissions policies do not replicate the effects of race-based policies on diversity, and produce lower levels of racial diversity. Although SES policies could be paired with race-conscious recruitment, the study concluded that such efforts would likely be prohibitively expensive, in order to even attempt to come close to the racial diversity levels attained through race-conscious admissions.

CONCLUSION

For the foregoing reasons, the Court should reaffirm the compelling governmental interest in student body diversity and affirm the lower court judgments upholding the Harvard College and the University of North Carolina admissions policies.

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