

Nos. 20-1199, 21-707

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 MASSACHUSETTS, CALIFORNIA,
COLORADO, CONNECTICUT, DELAWARE,
THE DISTRICT OF COLUMBIA, HAWAII,
ILLINOIS, MAINE, MARYLAND, MINNESOTA,
NEVADA, NEW JERSEY, NEW MEXICO,
NEW YORK, OREGON, PENNSYLVANIA,
RHODE ISLAND, WASHINGTON, AND
THE ATTORNEY GENERAL OF WISCONSIN AS
AMICI CURIAE IN SUPPORT OF RESPONDENTS**

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INTERESTS OF *AMICI CURIAE*

Massachusetts, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawai‘i, Illinois, Maine, Maryland, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Washington, and the Attorney General of Wisconsin file this brief to underscore the States’ compelling interest in ensuring that students at our colleges and universities receive the educational benefits that flow from diversity of all kinds amongst their peers, including racial diversity. Indeed, the practical necessity of diversity in higher education has never been clearer.¹

Colleges and universities educate a significant portion of our state workforces, including in fields of vital importance to the well-being of our residents—like medicine and education—as well as in key industries for our state economies. Our colleges and universities, and particularly selective institutions like Harvard College and the University of North Carolina, are also gateways to leadership in both the private and public sectors across our States.

Preparing these students to work in and serve our States and our country by ensuring they receive the educational benefits of a diverse student body continues to be of utmost interest to the States. As

¹ Counsel for all parties have consented to this brief’s filing. Under this Court’s Rule 37.6, *Amici* affirm that no counsel for a party authored this brief in whole or in part, and no person or entity other than *Amici* and their counsel made a monetary contribution intended to fund the preparation or submission of the brief.

Grutter v. Bollinger recognized was already well established, “numerous studies show that student body diversity promotes learning outcomes, and better prepares students for an increasingly diverse workforce and society.” 539 U.S. 306, 330 (2003) (quotation marks omitted). Since *Grutter*, yet more evidence has emerged of the benefits students gain from learning amidst a diverse student body that brings different experiences, perspectives, and ideas to the classroom and daily life of the school. And, as described further below, diversity in the ranks of our highly educated workforces and the ability to work among and serve our diverse populations are crucial to meeting the needs of our residents: in delivering healthcare to all; educating our children; staffing and running local, national, and global businesses that must in turn meet the needs of diverse people; and leading governmental institutions across our States.

The States also share “compelling state interests of the highest order” in eradicating pernicious discrimination, including discrimination on the basis of race. *Roberts v. United States Jaycees*, 486 U.S. 696, 624 (1984). And under our Constitution, all state laws and policies that employ race classifications are subject to strict scrutiny—including holistic race-conscious admissions policies seeking to create meaningful diversity at our colleges and universities. *Fisher v. Univ. of Texas at Austin*, 579 U.S. 365, 376 (2016) (*Fisher II*). Yet, as this Court has repeatedly recognized, while colleges and universities have experimented with and continue to pursue methods of achieving meaningful diversity that do not consider race, those alternate methods have often fallen short, particularly at the selective institutions that produce

a disproportionate number of our leaders in both the private and public sectors. *See, e.g., Fisher II*, 579 U.S. at 381-88; *Grutter*, 539 U.S. at 339-40.

Amici States therefore continue to have a compelling governmental interest in ensuring our students receive the educational benefits of diversity in higher education—an interest that can warrant use of holistic race-conscious admissions policies where a college or university can “demonstrate with clarity that its purpose or interest is both constitutionally permissible and substantial, and that its use of the classification is necessary to the accomplishment of its purpose.” *Fisher II*, 579 U.S. at 376 (quotation marks and alterations omitted).

SUMMARY OF THE ARGUMENT

Amici States urge this Court to reject petitioner’s invitation to overturn more than 40 years of precedent since *Regents of University of California v. Bakke*, 438 U.S. 265 (1978). Instead, the Court should adhere to its decisions in *Grutter v. Bollinger*, *Gratz v. Bollinger*, and the *Fisher v. University of Texas at Austin* cases and again reaffirm that, while all governmental race classifications must meet strict scrutiny under our Constitution, a holistic race-conscious admissions policy designed to achieve meaningful diversity is constitutional where it is necessary and narrowly tailored to achieve its aim. *See Grutter*, 539 U.S. at 326, 343; *Gratz v. Bollinger*, 539 U.S. 244, 270 (2003); *Fisher v. University of Texas at Austin*, 570 U.S. 297, 310 (2013); *Fisher II*, 579 U.S. at 376.

The States continue to have a compelling interest in ensuring our students gain the educational benefits of diversity, including racial diversity, in higher education. These benefits have been well established for decades, as reflected in this Court's cases, and the evidence of these benefits has only grown stronger—while our country has grown yet more racially diverse. It thus has never been more important that our students graduate with the skills to work and thrive among diverse colleagues; serve our States' diverse residents; and bring diverse experiences to positions of leadership in our society.

Imparting to our students the educational benefits of diversity in higher education serves additional critical state interests as graduates go on to join our States' workforces, participate in civic life, and take on leadership roles. Diversity in the healthcare workforces that serve residents across our States—and the ability to work among and serve people of diverse backgrounds—improves health outcomes and healthcare access, particularly for medically underserved communities. Increasing the diversity of the States' primary school educators improves public school students' academic performance and college attendance rates. The businesses that fuel our States' economies rely on the contributions of diverse graduates equipped with the skills to work in our diverse country and increasingly global economy. And our democratic institutions gain strength and legitimacy when the pathways to leadership in our States produce future leaders with the skills to work among and serve diverse communities, while also representing diverse backgrounds and experiences themselves.

Achieving the educational benefits of meaningful student-body diversity thus remains of paramount importance to *Amici* States. But, as some of the *Amici* States have experienced following state bans on race-conscious admissions, achieving meaningful student-body diversity while altogether excluding any consideration of race has proven challenging, particularly at selective institutions that produce so many of the States’ civic, professional, and business leaders. Accordingly, our Nation’s institutions of higher education continue to require the flexibility, where necessary, to use the kind of holistic race-conscious admissions policies—“flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant” and narrowly tailored to serve this compelling governmental interest—that this Court has approved for decades. *Grutter*, 539 U.S. at 334 (quoting *Bakke*, 438 U.S. at 317 (opinion of Powell, J.)).

ARGUMENT

I. The States Have a Compelling Interest in Ensuring Our Students Receive the Benefits of Diversity in Higher Education.

This Court has long recognized the educational benefits of diversity in higher education. As the Court has repeatedly observed, “enrolling a diverse student body ‘promotes cross-racial understanding, helps to break down racial stereotypes, and enables students to better understand persons of different races.’” *Fisher II*, 579 U.S. at 381 (quoting *Grutter*, 539 U.S. at 330). “Equally important, ‘student body diversity promotes learning outcomes, and better

prepares students for an increasingly diverse workforce and society.” *Id.* (quoting *Grutter*, 539 U.S. at 330). In the four decades since *Bakke* and two decades since *Grutter*, the evidence of the benefits of diversity for all students has only increased. And for the States in particular, the critical practical importance of our students receiving these benefits of diversity in higher education—for the delivery of healthcare, for our schools, and indeed for the legitimacy of our democratic institutions—is manifest.

**A. Diversity in Higher Education
Confers Essential Educational
Benefits on Our Students.**

Decades of research demonstrates the educational benefits of diversity in higher education. This Court’s longstanding recognition of the States’ compelling interest in ensuring our students receive these benefits thus remains in “agreement with experience.” *Vasquez v. Hillery*, 474 U.S. 254, 266 (1986) (quotation marks omitted).

Demonstrating diversity’s impact on “learning outcomes,” *Grutter*, 539 U.S. at 330, empirical research has consistently shown a “positive relationship between college diversity experiences and cognitive development.”² Indeed, education among

² See, e.g., Nicholas A. Bowman, *College Diversity and Cognitive Development: A Meta-Analysis*, 80 Rev. Educ. Res. 4, 14, 17-18 (Mar. 2010) (meta-analysis including studies of 77,029 undergraduate students finding a positive relationship between college diversity and cognitive development, including gains in complex thinking and problem-solving skills, and further finding

racially diverse peers has been found to promote problem solving as well as complex and critical thinking.³

Extensive evidence has also reaffirmed *Grutter's* recognition that diversity in higher education “better prepares students for an increasingly diverse workforce and society.” 539 U.S. at 330. Such diversity promotes inter-group learning and builds cognitive skills “that enable students to engage in cooperative behaviors, manage controversial issues, and develop a high regard for others’ perspectives, beliefs, and backgrounds.”⁴ Experiencing diversity in college thus allows students to develop cultural awareness and openness to pluralism, skills that

that interacting with racially diverse people promoted the most cognitive development, while diversity coursework, diversity workshops, and interpersonal interactions with nonracial diversity, such as socioeconomic diversity, had significantly smaller, but still meaningful, effects).

³ Anthony Lising Antonio *et al.*, *Effects of Racial Diversity on Complex Thinking in College Students*, 15 *Psychol. Sci.* 507, 509 (2004).

⁴ Mark E. Engberg & Sylvia Hurtado, *Developing Pluralistic Skills and Dispositions in College: Examining Racial/Ethnic Group Differences*, 82 *J. Higher Educ.* 416, 417, 429 (2011) (finding a “common effect across race groups pertaining to the positive influence diversity courses and diversity co-curricular programming exert on intergroup learning” and noting that this “suggests that students’ participation in campus-facilitated diversity initiatives is a catalyst in promoting intergroup learning and helping students build confidence in their pluralistic skills”).

prepare students to work with colleagues, clients, and stakeholders from different backgrounds.⁵

Additional research has also confirmed that experiencing diversity in the university setting benefits our society by “help[ing] to break down racial stereotypes.” *Fisher II*, 579 U.S. at 380 (quoting *Grutter*, 539 U.S. at 330). Further refuting petitioner’s assertion that this empirical fact repeatedly acknowledged by the Court is somehow “contrary to this Court’s precedent,” Br. 54, meta-analyses show that university diversity programs reduce racial biases in college students, especially where such programs foster cross-racial interaction.⁶ The benefits of diversity in education for “the civic life of our Nation” thus extend beyond college campuses to “the dream of one nation, indivisible.” *Grutter*, 539 U.S. at 332.

⁵ See, e.g., Jiali Luo & David Jamieson-Drake, *A Retrospective Assessment of the Educational Benefits of Interaction Across Racial Boundaries*, 50 J. C. Student Dev. 67, 67-68 (2009) (collecting research on the relationship between campus diversity and cultural awareness and understanding, interpersonal and leadership abilities, social connection, civic engagement, problem solving, and critical thinking among other benefits).

⁶ Nida Denson, *Do Curricular and Cocurricular Diversity Activities Influence Racial Bias? A Meta-Analysis*, 79 Rev. Educ. Res. 805, 825 (2009); see, e.g., Johanne Boisjoly *et al.*, *Empathy or Antipathy? The Impact of Diversity*, 96 Am. Econ. Rev. 1890, 1891 (2006), <https://tinyurl.com/2p9y86zw> (study finding beneficial effects where students were randomly matched with different-race roommates, including that such students were more empathetic with the social groups to which their roommates belonged).

In light of this continuing and indeed continually growing evidence of the educational benefits for students, there is no reason for this Court to revisit its longstanding recognition, reaffirmed only six years ago, *Fisher II*, 579 U.S. at 381, of the States’ compelling interest in achieving meaningful diversity, including racial diversity, in higher education. See *Vasquez*, 474 U.S. at 266.

B. The Educational Benefits of Diversity Further Benefit Our States in Numerous Ways.

Beyond the educational benefits for students themselves, diversity in higher education fosters broad societal benefits that are of tremendous practical importance to our States. As the Court has recognized, “student body diversity . . . better prepares students for an increasingly diverse workforce and society.” *Fisher II*, 579 U.S. at 381 (quoting *Grutter*, 539 U.S. at 330). As the 2020 U.S. Census illustrates, “[t]he overall racial and ethnic diversity of the country has increased” even since 2010: “the chance that two people chosen at random will be from different racial or ethnic groups has increased to 61.1% in 2020 from 54.9% in 2010.”⁷ In

⁷ Eric Jensen *et al.*, U.S. Census Bureau, *2020 U.S. Population More Racially and Ethnically Diverse Than Measured in 2010* (Aug. 12, 2021), <https://tinyurl.com/bd7w6xby>; see also Nicholas Jones *et al.*, U.S. Census Bureau, *2020 Census Illuminates Racial and Ethnic Composition of the Country* (Aug. 12, 2021), <https://tinyurl.com/2mvc2hxx> (“The Multiracial population has changed considerably since 2010. It was measured at 9 million people in 2010 and is now 33.8 million people in 2020, a 276% increase.”).

such a diverse country, the educational benefits of student-body diversity flow not only directly to students, but also in turn to our residents and civic life more generally. To highlight just three examples, diversity in higher education carries with it salutary benefits for our States in providing healthcare to our residents; educating our primary school students; and cultivating civic and business leaders from and for diverse communities across our States.

First, greater diversity in higher education leads to increases in the number of students from communities that are historically underrepresented in the medical professions joining the ranks of medical professionals and, in so doing, improves healthcare access and health outcomes in medically underserved communities.⁸ These benefits are vital to the States' ability to grapple with inequities in access to healthcare and improve health outcomes for our increasingly diverse citizenries. Justice Powell's opinion announcing the judgment of the Court in *Bakke* indeed assumed that "in some situations a State's interest in facilitating the health care of its citizens is sufficiently compelling to support the use of a suspect classification," though found that the record there contained "virtually no evidence" that the admissions policy at issue furthered this interest. 438 U.S. at 310. Yet the States now well know from abundant research the myriad ways in which medical

⁸ See Bureau of Community Health and Prevention, Massachusetts Department of Public Health, *Shortage Designation Management System*, <https://tinyurl.com/54mbry92> (describing medically underserved communities, which have a shortage of primary care providers, experience high infant mortality, or have high poverty or elderly populations).

student and clinician diversity leads to improved health outcomes, healthcare access, and patient satisfaction for patients from persistently burdened, medically underserved communities.⁹

To begin with, there is a positive correlation between increased diversity among healthcare workforces and improved health outcomes for patients from medically underserved communities.¹⁰ Healthcare providers from diverse racial, ethnic, and cultural backgrounds can “provide more appropriate prevention and treatment recommendations” and

⁹ See, e.g., Efain Talamantes *et al.*, *Closing the Gap—Making Medical School Admissions More Equitable*, 380 *New Eng. J. Med.* 9, 803-05 (2019) (“Large segments of the U.S. population face persistent inequalities in health care quality and access.”); Lyndonna M. Marrast *et al.*, *Minority Physicians’ Role in the Care of Underserved Patients: Diversifying the Physician Workforce May Be Key in Addressing Health Disparities*, 174 *JAMA Internal Med.*, 2, 289-91 (2014) (“Disparities in access to care persist despite efforts to improve care for underserved patients: racial and ethnic minorities, the uninsured, the poor, Medicaid recipients, and non-English speakers.”); Institute of Medicine, *In the Nation’s Compelling Interest: Ensuring Diversity in the Nation’s Health-Care Workforce 3* (Brian D. Smedley *et al.*, eds., 2004), <https://tinyurl.com/jeke2fex> (“Health professions disciplines are grappling with the impact of major demographic changes in the United States population, including a rapid increase in the proportions of Americans who are nonwhite, who speak primary languages other than English, and who hold a diverse range of cultural values and beliefs regarding health and health care.”).

¹⁰ See L.E. Gomez & Patrick Bernet, *Diversity Improves Performance and Outcomes*, 111 *J. Nat’l Med. Ass’n* 383, 391 (Aug. 2019), <https://tinyurl.com/nh37bch3> (compiling research on the healthcare industry and concluding that “[d]iversity is associated with . . . higher quality of patient care”).

“better understand and address social issues related to access to care, including cultural practices, language barriers, and stigma.”¹¹ Consequently, “a diverse health-care workforce can mitigate the negative effects of social determinants on health.”¹² In one stark example of such mitigation, based on 23 years of data from Florida’s Agency for Healthcare Administration, researchers found that the mortality rate for Black newborns decreased by 53 percent when the doctor of record was Black as opposed to white.¹³

Moreover, research shows that clinicians from historically marginalized groups are more likely to work in medically underserved communities, resulting in improved healthcare access in these communities.¹⁴ In the field of psychology, for example,

¹¹ Thomas A. LaVeist *et al.*, *Integrating the 3Ds—Social Determinants, Health Disparities, and Health-Care Workforce Diversity*, 129 *Pub. Health Reps.* 9, 10 (Supp. 2 Jan.-Feb. 2014), <https://tinyurl.com/48xbnks7>.

¹² *Id.*

¹³ Brad N. Greenwood *et al.*, *Physician-Patient Racial Concordance and Disparities in Birthing Mortality for Newborns*, 117 *Proc. Nat’l Acad. Sci.* 21194, 21196 (2020), <https://tinyurl.com/3ncf4vdk>.

¹⁴ Talamantes *et al.*, *supra* note 9, at 803 (“Nonwhite physicians care for a disproportionate share of people from underserved populations, thereby helping to reduce disparities in access to care.”); Marrast *et al.*, *supra* note 9, at 289 (“Nonwhite physicians provide a disproportionate share of care to underserved populations. Hence, increasing the racial and ethnic diversity of the physician workforce may be key to meeting national goals to eliminate health disparities.”); Institute of Medicine, *supra* note 9, at 29 (“Racial and ethnic minority health-care clinicians are significantly more likely than their white

service providers from historically marginalized communities treat a disproportionately greater share of patients from medically underserved communities than their counterparts who are not from historically marginalized communities.¹⁵

And diversity among medical school students aids the development of cross-cultural competencies for all students that enable them in their roles as clinicians to serve an increasingly diverse patient population effectively.¹⁶ Evidence thus continues to bear out Justice Powell’s observation in *Bakke* that “[a]n otherwise qualified medical student with a particular background—whether it be ethnic, geographic, culturally advantaged or disadvantaged—may bring

peers to serve minority and medically underserved communities, thereby helping to improve problems of limited minority access to care.”).

¹⁵ Institute of Medicine, *supra* note 9, at 29-30 (highlighting study finding that “[r]acial and ethnic minority psychologists treated more than twice the proportion of racial and ethnic minority patients than nonminority psychologists (24.0 percent v. 11.7 percent, respectively”).

¹⁶ Institute of Medicine, *Unequal Treatment: Confronting Racial and Ethnic Disparities in Healthcare* 123 (Brian D. Smedley *et al.*, eds., 2003) (“Racial and ethnic diversity of health professions faculty and students helps to ensure that all students will develop the cultural competencies necessary for treating patients in an increasingly diverse nation.”); Autumn L. Saizan *et al.*, *A Diverse Nation Calls for a Diverse Healthcare Force*, 34 *EClinicalMedicine* 100846, at 1 (2021), <https://tinyurl.com/3dydxs8y> (“Inclusive leadership and diverse, interprofessional healthcare teams have proven fundamental for bridging cultural divides, strengthening collaborations, and ultimately providing comprehensive care to underserved populations by reducing health disparities, healthcare costs, and inefficient use of the healthcare system.”).

to a professional school of medicine experiences, outlooks, and ideas that enrich the training of its student body and better equip its graduates to render with understanding their vital service to humanity.” 438 U.S. at 314.

Recent data on the racial and ethnic composition of medical school matriculants and physicians underscores the necessity of holistic race-conscious admissions policies to ensure future clinicians receive these educational benefits and help close the representation gap between our healthcare workforces and our residents. For example, despite Black Americans representing 12.8 percent of our country’s population, as recently as 2018, only 5.4 percent of all physicians were Black.¹⁷ Without the ability to craft holistic admissions policies that enhance student diversity, including racial diversity, our medical schools will likely see a decline in the enrollment of students from historically marginalized groups.¹⁸

¹⁷ Dan P. Ly, *Historical Trends in the Representativeness and Incomes of Black Physicians, 1900-2018*, 37 J. Gen. Internal Med. 1310, 1310-12 (2022), <https://tinyurl.com/yc6ker96>.

¹⁸ See, e.g., Dan P. Ly, *Affirmative Action Bans and Enrollment of Students from Underrepresented Racial and Ethnic Groups in U.S. Public Medical Schools*, 175 *Annals Internal Med.* 873, 875 (2022), <https://tinyurl.com/4d4bvuj8> (quantifying likely declines); 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, 266 (2015) (concluding that banning race-conscious admissions “impede[s] the ability of postsecondary institutions to train a racially and ethnically diverse physician workforce and, as a result, to address the health crisis facing the nation”); Miriam

Indeed, studies of state-level bans on race-conscious admissions programs show that enrollment of medical students from historically marginalized groups decreased by over 37 percent in a five-year period in the States that implemented these restrictions.¹⁹ A nationwide ban on holistic race-conscious admissions policies would thus diminish the States' capacity to improve healthcare access and outcomes for our medically underserved communities, undermining our interest in ensuring the health and well-being of our residents.

As a second example of the importance of diversity in higher education to fundamental state interests, a growing body of research shows that a diverse teaching workforce in public primary schools can improve student academic achievement, as well as high school graduation and college enrollment rates. Data from one longitudinal field study in Tennessee public schools illustrates the benefits of teacher diversity in public primary education: "Black students randomly assigned to at least one Black teacher in grades K-3 are 9 percentage points (13%) more likely to graduate from high school" and "6 percentage points (19%) more likely to enroll in college than their same-

Komaromy *et al.*, *The Role of Black and Hispanic Physicians in Providing Health Care for Underserved Populations*, 334 *New Eng. J. Med.* 1305, 1310 (1996) ("Our data suggest that physicians who are black or Hispanic fill an important role in caring for poor people and members of minority groups. Changes that result in a decrease in the number of physicians from minority groups are also likely to result in poorer access to health care and may ultimately result in reduced health and well-being for a substantial proportion of the population.").

¹⁹ Ly, *supra* note 18, at 875.

school, same-cohort Black peers.”²⁰ These results have been replicated in other States as well.²¹ For our students to reap these benefits, however, greater diversity within our teacher workforces is required.²²

Nationally, nearly 80 percent of teachers are white and non-Hispanic.²³ By contrast, 54 percent of students in public primary and secondary schools were Black, Hispanic, Asian, Pacific Islander, American Indian or Alaska Native, or multiracial in 2020.²⁴ In Massachusetts, for example, almost 40 percent of public primary and secondary school students are students of color, whereas only ten

²⁰ Seth Gershenson *et al.*, *The Long-Run Impacts of Same Race Teachers* 1-2 (Nat’l Bureau of Econ. Res., Working Paper No. 25254, 2021), <https://tinyurl.com/yttjcdpc> (describing study conducted between 1986 and 1989).

²¹ Anna J. Egalite *et al.*, *Representation in the Classroom: The Effect of Own-Race Teachers on Student Achievement*, 45 *Econ. Educ. Rev.* 44, 44 (2015).

²² See Jason A. Grissom *et al.*, *Teacher and Principal Diversity and the Representation of Students of Color in Gifted Programs*, 117 *Elementary Sch. J.* 396, 411, 416 (2017) (finding that “larger percentages of Black teachers in [a] school correlate to increased gifted representation among Black students,” with an association of “almost identical magnitude” found between “Hispanic teacher representation and Hispanic student presence in [a] school’s gifted program,” and noting evidence that a critical mass of teachers of color is necessary).

²³ U.S. Department of Education, *Percentage Distribution of Public School Teachers, by Race/Ethnicity and State: 2017-2018*, <https://tinyurl.com/ybebfcpw>.

²⁴ U.S. Department of Education, *Racial/Ethnic Enrollment in Public Schools* fig. 1 (2022), <https://tinyurl.com/uxh5477s>.

percent of their teachers are people of color.²⁵ Given these disparities, as well as the evident benefit for students of experiencing diversity among their teachers, the States need every tool at our disposal both to increase the diversity of the teachers-to-be graduating from our colleges and universities and to ensure that those teachers have gained the educational benefits of diversity in higher education themselves.²⁶

Third and finally, ensuring meaningful diversity, including racial diversity, in college and university admissions remains vital to the goal of enhancing the skills and increasing the diversity of our States' leaders. It remains the case that institutions of higher education, and particularly selective institutions like Harvard and the University of North Carolina, "represent the training ground for a large number of our Nation's leaders." *Grutter*, 539 U.S. at 332. Graduates of highly selective undergraduate colleges and universities are more likely to attend and complete degrees from graduate or professional schools,²⁷ and these top-ranked schools serve as a

²⁵ Massachusetts Department of Elementary and Secondary Education, *Diverse and Culturally Responsive Workforce* (2021), <https://tinyurl.com/u9f7md5e>.

²⁶ See Ana María Villegas & Jacqueline Jordan Irvine, *Diversifying the Teaching Force: An Examination of Major Arguments*, 42 Urb. Rev. 175, 185 (2010), <https://tinyurl.com/5n8bzpht> (collecting research on benefits of educator diversity and educator competencies promoted through the educational benefits of diversity in higher education).

²⁷ See Joni Hersch, *Affirmative Action and the Leadership Pipeline*, 96 Tul. L. Rev. 1, 36-37 & nn. 181-84 (Nov. 2021),

pipeline for their graduates to leadership in the public and private sectors. Indeed, although selective institutions educate only two to five percent of all undergraduates in the United States, by one estimate their graduates occupy almost fifty percent of leadership roles in our businesses and governments.²⁸ Ensuring that these training grounds produce graduates who bring diverse perspectives and the skills to lead in our diverse States is more important than ever.

Our States' businesses benefit from a robust pipeline of diverse graduates bringing different perspectives to leadership positions in their fields. Companies with racially and ethnically diverse executive teams outperform their peers in innovation and profitability.²⁹ And the value of diverse

<https://tinyurl.com/yspan2tu> (collecting research tying elite undergraduate education to graduate study).

²⁸ Jonathan Wai & Heiner Rindermann, *What Goes Into High Educational and Occupational Achievement? Education, Brains, Hard Work, Networks, and Other Factors*, 28 *High Ability Stud.* 127, 136 (2017); see also Jonathan Wai & Heiner Rindermann, *The Myth of the College Dropout*, *The Conversation* (Apr. 17, 2017), <https://tinyurl.com/yckswr83> (noting findings that, for example, more than 80 percent of people listed among "Forbes' most powerful people" were graduates of elite colleges, as were 41 percent of U.S. senators).

²⁹ See, e.g., Rocío Lorenzo *et al.*, Boston Consulting Group, *How Diverse Leadership Teams Boost Innovation* (Jan. 23, 2018), <https://tinyurl.com/3whxupwv> (reporting that companies with more diverse leadership teams "reported better overall financial performance: EBIT margins that were 9 percentage points higher than those of companies with below-average diversity"); Toyah Miller & María del Carmen Triana, *Demographic Diversity in the*

backgrounds and perspectives—whether in improving healthcare organizations’ patient outcomes as discussed, or in ensuring that increasingly prevalent technology functions well for diverse users and consumers³⁰—is manifest. Our States’ economies thus benefit from a pipeline of diverse graduates who go on to fill the ranks of leadership at the businesses that operate within our borders.

Boardroom: Mediators of the Board Diversity-Firm Performance Relationship, 46 J. Mgmt. Stud. 755, 774-75 (2009) (finding positive relationship between racial diversity on boards and both innovation and firm reputation); Paul Gompers & Silpa Kovvali, *The Other Diversity Dividend*, Harvard Bus. Rev. (July-Aug. 2018), <https://tinyurl.com/bdd9wwmv> (reporting study of venture capital companies finding that “the more similar the investment partners, the lower their investments’ performance,” and that “[t]he effect of shared ethnicity” was particularly strong, “reducing an investment’s comparative success rate by 26.4% to 32.2%”).

³⁰ See, e.g., Caitlin Kuhlman *et al.*, *No Computation Without Representation: Avoiding Data and Algorithm Biases Through Diversity*, Proc. of the 26th Ass’n of Computing Mach. Int’l Conf. on Knowledge Discovery & Data Mining 1 (Aug. 2020), <https://tinyurl.com/2p8sxtuv> (describing how the effective and fair construction of artificial intelligence systems is compromised by datasets which poorly reflect the diversity of the population); Nicol Turner Lee, *Detecting Racial Bias in Algorithms and Machine Learning*, 16 J. Commc’n, Info. & Ethics Soc’y 252, 254-57 (2018) (collecting examples of inaccuracies and harms caused by unconscious bias in digital technology and the need for more diverse workforces at technology firms); Simar Bajaj, *Racial Bias Is Built into the Design of Pulse Oximeters*, Wash. Post (July 27, 2022), <https://tinyurl.com/y4ur8nxe> (describing adverse impacts on medical treatment caused by pulse oximeters not designed to render accurate oxygen level readings for people with darker skin).

Beyond the impact on our state economies, our democratic institutions themselves benefit from diversity in higher education. “In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity.” *Grutter*, 539 U.S. at 332. We thus need to cultivate diverse leaders from and for every corner of our States, to serve in positions of leadership in our governments—whether as legislators, judges, mayors, city councilors, sheriffs, or any of the other elected and non-elected officials who together govern our communities. Moreover, as the myriad documented educational benefits of diversity in higher education described above make clear, “the [N]ation’s future depends upon leaders trained through wide exposure to the ideas and mores of students as diverse as this Nation of many peoples.” *Id.* at 324 (quoting *Bakke*, 438 U.S. at 313 (opinion of Powell, J.) (citation and quotation marks omitted)). And research concerning the increased leadership skills students gain through education among diverse peers has found that college diversity experiences are associated with increased levels of civic engagement and service.³¹

In sum, ensuring meaningful diversity, including racial diversity, in college and university admissions remains vital to our States. Diversity in our States’ institutions of higher learning prepares our graduates to work, serve, and lead with the skills and diverse

³¹ Nicholas A. Bowman, *Promoting Participation in a Diverse Democracy: A Meta-Analysis of College Diversity Experiences and Civic Engagement*, 81 Rev. Educ. Res. 29, 46-47, 49-50 (2011).

perspectives our patients, classrooms, businesses, civic organizations, and governments need.

II. Colleges and Universities Must Retain the Ability to Use Race-Conscious Admissions Policies Where Necessary to Secure the Educational Benefits of Diversity for Students.

In the States where race-conscious admissions policies have been banned, public colleges and universities have often struggled to maintain diverse student bodies, despite extensive efforts to do so through race-neutral means. Our colleges and universities therefore must retain the ability to consider race among other forms of diversity, when necessary, as part of holistic admissions policies aiming to build more diverse student bodies in order to confer the educational benefits of diversity before students graduate to the workforce and civil society.

Several States have banned or severely restricted race-conscious admissions in higher education,³² and Texas was also barred from using race-conscious admissions from 1997 until 2003, *Fisher II*, 579 U.S. at 370-71. Some of these States have pursued race-neutral means to build diverse student bodies in public higher education. But even long-standing, highly-regarded efforts have struggled to maintain racial diversity at public institutions in the absence of

³² See Ariz. Const. art. II, § 36 (2010); Cal. Const., art I, § 31(a) (1996); Fla. Exec. Order 99-281 (Nov. 9, 1999); Mich. Const. art. I, § 26 (2006); Neb. Const. art. I, § 30 (2008); H.B. 623, 162d Leg., 2011 Sess. (N.H. 2011); Okla. Const. art II, § 36A (2012); Wash. Rev. Code Ann. § 49.60.400(1) (West 1998).

holistic race-conscious application review—with selective institutions bearing the greatest impacts.³³

Texas’s experience is well known to this Court. In an effort to increase diversity in the absence of race-conscious admissions following *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996), the Texas legislature developed the Top Ten Percent Plan. Under this plan, the top ten percent of graduating seniors at Texas high schools were automatically eligible for admission to any Texas state college or university. *Fisher II*, 579 U.S. at 371-72. As this Court subsequently found, the result was “significant evidence, both statistical and anecdotal,” that “[t]he use of race-neutral policies and programs ha[d] not been successful in achieving sufficient racial diversity at the University” of Texas at Austin. *Id.* at 383-84 (quotation marks omitted).

The impact of the elimination of race-conscious admissions in Texas’s public higher education system and the implementation of its Top Ten Percent Plan has now been extensively studied for over two decades. Admissions rates and enrollment of Black and Latinx students suffered as a result of the ban, particularly at selective institutions.³⁴ Indeed, even the number of

³³ See Hersch, *supra* note 27, at 20-23 (collecting research on bans’ impact at selective institutions in particular).

³⁴ Mark C. Long & Marta Tienda, *Winners and Losers: Changes in Texas University Admissions Post-Hopwood*, 30 *Educ. Evaluation Pol’y Analysis* 255, 269, Figure 1 (2008) (analyzing ban’s impacts on Black and Hispanic applicants’ share of admitted students); Angel Harris & Marta Tienda, *Hispanics in Higher Education and the Texas Top Ten Percent Law*, 4 *Race & Soc. Probs.* 57, tbl. 3 (2012) (showing relative declines in Hispanic

applications from Latinx students to Texas’s selective institutions dropped precipitously in 1997, the first year the ban on race-conscious admissions was in effect, and only partially recovered between 1998 and 2003, despite the fact that the Latinx population of Texas was growing.³⁵

Today, Texas’s public higher education institutions, and in particular its flagship institutions, continue to struggle to achieve meaningful diversity. In the 2020-2021 school year, for example, Texas’s elementary and secondary student population was 12.7 percent Black and 52.9 percent Latinx.³⁶ Meanwhile, in the fall of 2021 at Texas A&M University, which does not explicitly consider race but has incorporated a holistic review for a portion of its available seats, the student body was 3.21 percent Black and 22.37 percent Latinx.³⁷ In Texas more broadly, white students have at times comprised the majority of students admitted under the Top Ten

admissions and enrollments after ban, and lack of rebound at Texas A&M University after Top Ten Percent Plan’s enactment).

³⁵ Harris & Tienda, *supra* note 34, at tbl. 1. The ban’s lifting in 2003 increased the probability that an underrepresented minority student would apply to “at least one Texas college by 3 percentage points (16%)” in the years that followed. Mitra Akhtari *et al.*, *The Effects of Race-Based Affirmative Action in Texas* 3, 5 (Educ. Res. Ctr., The Univ. of Tex. at Austin Nov. 2018), <https://tinyurl.com/53wurd8e>.

³⁶ Division of Research and Analysis, Texas Education Agency, *Enrollment in Texas Public Schools 2020-2021* 7 (June 2021), <https://tinyurl.com/2n2nz6wt>.

³⁷ Texas A & M Accountability, Student Demographics, <https://tinyurl.com/z2aynh3k> (accessed July 17, 2022); Texas A&M University Admissions, *Freshman*, <https://tinyurl.com/2p84ssjs> (accessed July 17, 2022).

Percent Plan despite not making up the majority of seniors at Texas public high schools, and the percentages of Black and Latinx students admitted to the University of Texas at Austin through the Top Ten Percent Plan are substantially smaller than their share of the eligible population.³⁸ Thus, as the Court found in *Fisher II*, while the Top Ten Percent Plan has supported some forms of diversity—particularly geographic diversity—it has had far more limited success in enrollment of historically underrepresented racial and ethnic groups at Texas’s public higher education institutions, especially its flagships. 579 U.S. at 382-83.

As a second example, California has a long history of race-neutral programs intended to build diverse student bodies at public institutions of higher education, including through additional outreach and funding, as well as automatic admissions—but these efforts, too, have not proved sufficient at some institutions. The University of California tracks outcomes for thirteen different programs that attempt to engage with younger students and communities beyond the university.³⁹ Its Early Academic Outreach Program, started in 1976, is now offered at every

³⁸ Shakira D. Pleasant, *More than Just the Numbers: Fisher v. Texas and the Practical Impact of Texas’s Top Ten Percent Law*, 24 U. Miami Bus. L. Rev. 111, 112, 114-16 (2016).

³⁹ See University of California Office of the President, *Information Center: Student Academic Preparation and Education Partnerships (SAPEP) Outcomes* (accessed July 28, 2022), <https://tinyurl.com/2p96yxttd>.

University of California campus,⁴⁰ and, as of the 2017-2018 school year, reached 218 California secondary schools.⁴¹ This program provides low-income and educationally-disadvantaged students with “individualized college counseling, help filling out applications and financial aid forms, free PSAT and SAT prep, campus visits, [and] even enrichment classes on Saturdays and during the summer.”⁴² Other programs target low-income and educationally-disadvantaged students at high schools and community colleges, focusing on those who are interested in pursuing mathematics, engineering, and science, or writing and community leadership.⁴³

The University of California system has also attempted to build diversity through automatic-admission and affordability programs. One such program, for example, promises admission to students who have a grade-point average in the top nine percent at their participating high school, so long as they have completed the required core classes.⁴⁴ Once admitted, a financial aid program waives tuition and

⁴⁰ Brenda Iasevoli, *Making Colleges More Diverse Even Without Affirmative Action: Lessons from California’s Early Academic Outreach Program*, The Atlantic, Feb. 28, 2014, <https://tinyurl.com/2s39edn6>.

⁴¹ University of California Office of the President, *Student Academic Preparation and Educational Partnerships: 2017-18 Program Outcomes* 21 (2019), <https://tinyurl.com/465kjt95>.

⁴² Iasevoli, *supra* note 40.

⁴³ University of California Office of the President, *supra* note 41, at 8, 24-30.

⁴⁴ University of California Office of the President, *Eligibility in the Local Context (ELC) Program*, <https://tinyurl.com/3432jhz3>.

fees for students who qualify for financial aid and have a total family income of less than \$80,000, and provides additional funding for students with greater need to help cover the cost of books, housing, and other education-related expenses.⁴⁵

And yet, despite California's long history of extraordinary efforts, it has struggled to sustain diverse student bodies at its public institutions of higher education since the ban on race-conscious admissions took effect for entering classes starting in the fall of 1998. In the immediate aftermath of the ban, "[a]pplication and enrollment numbers for [Black] and [Latinx] students plummeted."⁴⁶ Black student enrollment has not rebounded.⁴⁷ Although Latinx student enrollment has increased in the last two decades, this improvement is in part attributable to the overall growth in the Latinx population,⁴⁸ and, "despite some marginal improvement in enrollment, [Latinx] students remain under-enrolled in the UC system as a whole."⁴⁹ Thus, "the magnitude of the gap between [Latinx students'] proportion of public high school graduates and UC freshman admissions offers

⁴⁵ University of California Admissions, *Blue and Gold Opportunity Plan*, <https://tinyurl.com/3mfwjcnm>.

⁴⁶ María C. Ledesma, *California Sunset: O'Connor's Post-Affirmative Action Ideal Comes of Age in California*, 42 Rev. Higher Educ. 227, 230 (Supp. 2019), <https://tinyurl.com/y6859kkt>.

⁴⁷ *Id.* at 232.

⁴⁸ *Id.* at 231.

⁴⁹ *Id.* at 232.

in 1995 was -14.2 points (30.0% versus 15.8%),⁵⁰ but by 2021, it widened to -26.2 points (52.2% versus 26.0%).⁵¹

Enrollment of Black and Latinx students at the University of California's elite institutions and graduate schools, in particular, has fallen since the ban on race-conscious admissions. For example, in 1995, over seven percent of applicants from California admitted to Berkeley were Black, but in 2004 the number was less than three percent.⁵² The percentage of Black admitted applicants thereafter rose only slightly, ranging between three and five percent from 2005-2021.⁵³ At UCLA's and Berkeley's law schools, one study found that admission rates for Black applicants have been cut in half since the ban on race-conscious admissions.⁵⁴ And enrollment of Black and Latinx students at University of California medical

⁵⁰ William C. Kidder & Patricia Gándara, *Two Decades After the Affirmative Action Ban: Evaluating the University of California's Race-Neutral Efforts*, The Civil Rights Project 16 (2015).

⁵¹ University of California, *Freshman Fall Admissions Summary* (2022), <https://tinyurl.com/427kf9rs>; California Department of Education, *2020-21 Four-Year Adjusted Cohort Graduation Rate, Data Quest* (2022), <https://tinyurl.com/4xzzv3mp>.

⁵² Kidder & Gándara, *supra* note 50, at 16 fig. 5.

⁵³ University of California, *supra* note 51.

⁵⁴ Danny Yagan, *Supply vs. Demand Under an Affirmative Action Ban: Estimates from UC Law Schools*, 137 J. Pub. Econ. 38, 47 (2016), <https://tinyurl.com/2f3s5avs>.

schools dropped by 38 percent and 29 percent, respectively.⁵⁵

Other States with bans on race-conscious admissions have tried to implement comparable strategies to build diversity. For example, since its ban took effect in 2008, Michigan has worked to create outreach initiatives with schools to support the enrollment of a diverse student body, including a K-12 Outreach Hub and an initiative concentrating on “highly effective urban schools.”⁵⁶ Michigan has also attempted to build a diverse student body in its public graduate programs through relationships with undergraduate institutions serving students of color.⁵⁷ And like California, Michigan has implemented college scholarship programs. One program, for example, is sited in majority-minority school districts and grants a full, four-year scholarship to students who complete the program and are admitted to the University of Michigan; another provides scholarships to high-achieving, low-income students in Michigan.⁵⁸ However, like California, Michigan has struggled to maintain meaningful diversity in the absence of race-conscious admissions. In 2006, before the ban was in effect, the freshman class at the University of Michigan was 6.4 percent

⁵⁵ Liliana M. Garces, *Racial Diversity, Legitimacy, and the Citizenry: The Impact of Affirmative Action Bans on Graduate School Enrollment*, 36 *Rev. Higher Educ.* 93, 101 (Supp. Fall 2012).

⁵⁶ University of Michigan, *Diversity, Equity & Inclusion Strategic Plan* 23 (Oct. 2016), <https://tinyurl.com/3s4nk4a6>.

⁵⁷ *Id.* at 25.

⁵⁸ *Id.* at 23-24.

Black⁵⁹; in 2021, under the ban, the freshman class was only 4.2 percent Black.⁶⁰

Some have attempted to dispute the potential impact of barring holistic race-conscious admissions altogether by focusing on data from select States where more recent and less well-researched bans on race-conscious admissions appear, at first glance, to have had smaller impacts on diversity.⁶¹ Such accounts are misleading, however, because as discussed above, bans on race-conscious admissions are most likely to affect more selective institutions.⁶² These States have smaller higher education systems overall and fewer highly selective institutions.⁶³

Thus, despite robust efforts at many institutions to foster meaningful diversity via solely race-neutral means, studies have shown that, consistent with

⁵⁹ 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 Am. Educ. Res. J. 828, 836 (2015).

⁶⁰ This data is available via University of Michigan Office of Budget & Planning, *University of Michigan – Ann Arbor Freshman Class Profile* (2021), <https://tinyurl.com/bd95az6e>, in University of Michigan Office of Budget & Planning, *Diversity, Equity & Inclusion Data Resources* (2021), <https://tinyurl.com/muybhmjf>.

⁶¹ See, e.g., Brief of *Amici Curiae* Oklahoma and 18 Other States in Support of Petitioner at 10-14.

⁶² See Hersch, *supra* note 27, at 20-23.

⁶³ Huacong Liu, *How do Affirmative Action Bans Affect the Racial Composition of Postsecondary Students in Public Institutions?*, Educ. Pol’y 2 (Oct. 2020) (defining highly selective institutions as those with an acceptance rate below 50% in comparing jurisdictions).

Texas’s experience recounted in *Fisher II*, 579 U.S. at 381-87, diversity in higher education has suffered in the States where institutions are precluded from using holistic race-conscious admissions, regardless of the institutions’ particular needs and circumstances. Belying petitioner’s attempt to dismiss these impacts as “marginal,” Br. 55, one study found that there was little change in enrollment and graduation at “middle or low selectivity [public] institutions,” but that selective public institutions saw a “highly significant drop” in enrollment—29 percent lower Black student enrollment and 20 percent lower Latinx student enrollment—as well as a drop in graduation rates.⁶⁴ And the study found little evidence that these declines in enrollment in public institutions were offset by increased enrollment at private institutions, two-year colleges, or out-of-state institutions.⁶⁵ Instead, bans may result in a cascading effect: without race-conscious admissions, underrepresented minorities are less likely to be admitted to more selective institutions, so they “cascade[] into less-selective colleges and universities,” displacing other underrepresented minorities who then cascade into even less-selective institutions or out of the system altogether.⁶⁶ Students who cascade into less-selective

⁶⁴ Ben Backes, *Do Affirmative Action Bans Lower Minority College Enrollment and Attainment? Evidence from Statewide Bans*, 47 J. Hum. Resources 435, 443, 445, 447, 450 (2012).

⁶⁵ *Id.* at 451.

⁶⁶ Zachary Bleemer, *Affirmative Action, Mismatch, and Economic Mobility After California’s Proposition 209* 2, 10 (Berkeley Center for Studies in Higher Education, Research & Occasional Paper Series: CSHE.10.2020, Aug. 2020), <https://tinyurl.com/2p9yrwj7> (analyzing impacts on Black, Latinx, and Native American students).

institutions ultimately were less likely to earn a bachelor's or graduate degree.⁶⁷ These effects threaten students from all underrepresented groups, including from within our States' diverse Asian American and Pacific Islander communities,⁶⁸ and thereby erode the diversity of our institutions and the corresponding educational benefits for all our undergraduates.

Public graduate schools have suffered even greater diminution of diversity. One study showed that enrollment of Black students dropped by nearly two-thirds, and Latinx student enrollment dropped by one-third, at five selective public law schools in California, Texas, and Washington.⁶⁹ And across graduate schools generally, one study found “that the bans in Texas, California, Washington, and Florida have reduced by about 12.2% the average proportion of graduate students who are students of color across all the degree programs . . . included.”⁷⁰ The impact has

⁶⁷ *Id.* at 3, 17.

⁶⁸ See, e.g., Vikash Reddy *et al.*, The Campaign for College Opportunity, *The State of Higher Education in California for Asian American, Native Hawaiian, Pacific Islander Californians* 55-64 (May 2022), <https://tinyurl.com/257x4vbk> (describing distinctions among Asian-American and Pacific Islander communities in California vis-à-vis barriers to education access and success, including in poverty rates, need for pre-college-level remedial education, English-language proficiency, and completion of coursework required to attend California's four-year public universities).

⁶⁹ William C. Kidder, *The Struggle for Access from Sweatt to Grutter: A History of African American, Latino, and American Indian Law School Admissions, 1950-2000*, 19 Harv. BlackLetter L.J. 1, 33, 35 & charts 7, 8 (2003).

⁷⁰ Garces, *supra* note 55, at 96.

been largest in engineering, natural sciences, and social sciences, where the percentage of students of color enrolled in engineering dropped 26 percent (from 6.2 percent to 4.6 percent); natural sciences dropped 19 percent (7.8 percent to 6.3 percent); and social sciences dropped 15.2 percent (from 12.1 percent to 10.2 percent).⁷¹

While petitioner advocates focusing heavily on other applicant characteristics, such as socioeconomic status, *see, e.g.*, Br. 33, as a replacement for race-conscious admissions policies in attempting to achieve student-body diversity, these alternatives have often been found to be insufficient even beyond the trial records below. For example, studies have found that even a strong socioeconomic-status-based preference would produce less diversity than a moderate race-based preference.⁷² And one data-based simulation found that eliminating race-conscious admissions nationwide would decrease Black and Latinx student enrollment nationally by 10.2% at selective four-year colleges.⁷³

⁷¹ Liliana M. Garces, *Understanding the Impact of Affirmative Action Bans in Different Graduate Fields of Study*, 50 *Am. Educ. Res. J.* 251, 275 (2013).

⁷² William C. Kidder, *How Workable Are Class-Based and Race-Neutral Alternatives at Leading American Universities?*, 64 *UCLA L. Rev. Discourse* 100, 105-06 (2016) (citing Sean F. Reardon *et al.*, *Can Socioeconomic Status Substitute for Race in Affirmative Action College Admissions Policies? Evidence from a Simulation Model*, 12 *fig. 2* (2015), <https://tinyurl.com/29w2k4e2>).

⁷³ Jessica S. Howell, *Assessing the Impact of Eliminating Affirmative Action in Higher Education*, 28 *J. Lab. Econ.* 113,

In sum, the States' experience shows that public institutions of higher education that use race-neutral approaches continue to struggle to ensure that students receive the educational benefits that flow from a meaningfully diverse student body. Many of our colleges and universities, and particularly selective colleges and universities, continue to require flexibility to choose to use race-conscious admissions policies where necessary as part of highly individualized, holistic consideration of students' applications in order to further the States' compelling interest in diversity in higher education. Where consideration of race as one dimension of diversity is thus "necessary to further [the States'] compelling interest," it is well "within constitutional constraints." *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 202 (1995).

CONCLUSION

The Court should affirm the decisions below.

116, 156 (2010) (further finding that "a top 10% program, intensified recruiting efforts by colleges, or programs to improve the perception or reputation of a college among minority communities" are not "predicted to successfully restore minority representation on the most selective campuses").

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