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 FOR AMICI CURIAE AMERICAN PSYCHOLOGICAL ASSOCIATION, MASSACHUSETTS PSYCHOLOGICAL ASSOCIATION, AND NORTH CAROLINA PSYCHOLOGICAL ASSOCIATION IN SUPPORT OF RESPONDENTS

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INTERESTS OF AMICI CURIAE[1]

The American Psychological Association (APA) is a nonprofit scientific and educational organization dedicated to increasing and disseminating psychological knowledge. With more than 133,000 members and affiliates, APA is the largest organization of psychologists in the world.

Psychology is a diverse discipline grounded in the rigorous application of scientific method to the study of the mind and human behavior. Some psychologists are researchers, developing and testing theories through observation, experimentation, and analysis. Others are practitioners, working in schools, on university campuses, within the judicial system, in corporations, and in private practice to serve patients.

Based on this broad spectrum of research, practice, and application, APA and its members are well-positioned to provide scientific insights regarding many important social phenomena. Among these are the causes, consequences, and means of addressing racial and ethnic discrimination and prejudice and the impact of racial and ethnic diversity on college campuses.

Since its founding in 1892, public engagement has been a key element of APA's mission. APA's Bylaws provide that an object of the Association is "to advance . . . the application of research findings to the

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[1] The parties have consented to the filing of this amicus brief. No counsel for any party authored this brief in whole or in part; no such counsel or any party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity, other than amici and their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

promotion of health, education and the public welfare."[2] As part of that mission, APA has submitted over 200 briefs as amicus curiae in this Court and other federal and state courts, including in *Grutter v. Bollinger,* 539 U.S. 306 (2003), *Fisher v. University of Texas at Austin*, 570 U.S. 297 (2013), and *Fisher v. University of Texas at Austin (Fisher II),* 579 U.S. 365 (2016). And courts have frequently cited APA's amicus briefs in decisions relating to important public matters. *See, e.g., Moore v. Texas,* 137 S. Ct. 1039, 1051 (2017); *Hall v. Florida,* 572 U.S. 701, 710 (2014).

APA has a rigorous approval process for amicus briefs, the touchstone of which is an assessment of whether there is sufficient scientific research, data, and literature on a question before a court such that APA can usefully contribute to the court's understanding and resolution of that question.

The Massachusetts Psychological Association (MPA) is the professional association for psychologists in the Commonwealth of Massachusetts. The purpose of MPA is to advance psychology as a science, as a profession, and as a means of promoting human welfare.

The North Carolina Psychological Association (NCPA) advocates for psychology as a science, a profession, and a means of promoting human welfare. NCPA provides an organized voice for psychology and promotes high standards for the profession.

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[2] *See* American Psychological Association, *Bylaws of the American Psychological Association. Article I: Objects* (2008), http://www.apa.org/about/governance/bylaws/article-1.

INTRODUCTION AND SUMMARY OF ARGUMENT

In *Grutter v. Bollinger,* this Court held that campus diversity is a compelling government interest. 539 U.S. 306 (2003). Substantial peer-reviewed scientific research supports that conclusion. And recent studies—conducted since this Court's decision in *Fisher v. University of Texas at Austin (Fisher II)*—demonstrate that the need for campus diversity remains compelling today. 579 U.S. 365 (2016).

Psychologists and other social scientists have studied the impact of student body diversity on the academic experience for decades. Their conclusions are clear. An overwhelming body of research has found that prejudice on college campuses and the underrepresentation of racial and ethnic minority groups in student bodies impose significant educational obstacles for both racial and ethnic minority and nonminority students. This research also demonstrates that campus diversity is an effective response, mitigating these educational deficiencies and improving the academic experience for all students. These scientific studies confirm that the educational benefits that flow from a diverse student body are not "elusory or amorphous." *Fisher II*, 579 U.S. at 381. They are "real" and "substantial." *Grutter*, 539 U.S. at 330.

Petitioner and its amici argue otherwise. In support, petitioner's amici advance one particularly troubling, discredited theory that cannot withstand sustained empirical inquiry. That theory claims that relatively lower graduation rates among minority students admitted under race-conscious admissions

programs are the result of a divergence between student ability and academic rigor. Numerous peer-reviewed studies have debunked this "academic mismatch" theory. In fact, universities that consider race as a factor in admissions *narrow* retention rate gaps between students of different racial and ethnic groups. This is but one example of the educational benefits interest this Court has identified.

Grutter's core premise—"the reasoning of the opinion itself"—has been put to the test, examined in the crucible of scientific method and peer review, and found to be verifiably sound. *Knick v. Twp. of Scott*, 139 S. Ct. 2162, 2178 (2019). The Court should reaffirm *Grutter* and affirm the judgments below.

ARGUMENT

For over four decades, this Court has acknowledged that the government has a "substantial interest that legitimately may be served by a properly devised admissions program involving the competitive consideration of race and ethnic origin." *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 320 (1978). In *Grutter v. Bollinger*, the Court identified the interest as "a diverse student body." 539 U.S. 306, 329-30 (2003). That interest is compelling because the "educational benefits that flow" from such diversity are "substantial." *Id.* at 330.

Discrimination, prejudice, and underrepresentation of certain racial and ethnic groups persist on college campuses today. Indeed, recent studies suggest that discrimination and prejudice have become more pronounced. And scientific research conducted since this Court's decision in *Fisher II* reaffirms that the experience of discrimination, prejudice, and underrepresentation

negatively impacts racial and ethnic minority students and inhibits academic success. Studies also confirm that a diverse student body helps alleviate those harms and confers benefits on all students—in the classroom and beyond. The scientific data thus reaffirm the central holding in *Grutter*: the interest in a diverse student body remains compelling.

A. Discrimination, Prejudice, And Underrepresentation Remain Prevalent On College Campuses

1. Discrimination is a negative act taken against another due to their membership in a certain group. Prejudice is an unfavorable attitude a person holds against another based solely on membership in a certain group. Discrimination and prejudice—both explicit (meaning directly endorsed and expressed) and implicit (meaning automatically and unintentionally activated)—remain prevalent on university campuses today.

Explicit biases may manifest as publicly held prejudicial beliefs or as openly hostile acts of discrimination.[3] Recent data on hate (or bias-motivated) crimes compiled by the Department of Education report a substantial increase in the number of overt discriminatory acts committed on college campuses.[4] Between 2010 and 2019, bias-

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[3] *See* Louis A. Penner et al., *Aversive Racism and Medical Interactions with Black Patients: A Field Study*, 46 J. Experimental Soc. Psychol. 436, 437 (2010); Anthony G. Greenwald et al., *Understanding and Using the Implicit Association Test: III. Meta-Analysis of Predictive Validity*, 97 J. Personality & Soc. Psychol. 17, 18 (2009).

[4] These figures exclude crimes that occur off-campus, even if committed by students. *See* National Center for Education

motivated assaults increased by 27%.[5] Acts of bias-motivated intimidation increased by 31%.[6] These criminal acts are often directed at people of color. In 2019, more than half of on-campus hate crimes were motivated by beliefs regarding race or ethnicity.[7]

Other forms of discrimination are subtle and unintentional. These non-overt acts can often be the result of implicit biases—automatic tendencies or beliefs regarding certain groups learned through thousands of social interactions over long periods of time.[8] These implicit biases inform one's treatment of those exhibiting other social characteristics or affiliations, including a person's perceived race, ethnicity, religion, or gender. Even those who outwardly express positive attitudes toward a given group may hold implicit biases that can cause prejudice-based and discriminatory behavior, despite being unintended or irrational.[9]

A number of recent psychological studies, published within the last four years and examining over 80,000 students in the aggregate, have found that racial and ethnic minority students regularly experience acts of discrimination in the educational

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Statistics, Institute of Education Sciences, U.S. Department of Educ., *Hate Crime Incidents at Postsecondary Institutions*, https://nces.ed.gov/programs/coe/indicator/a22 (last updated May 2022).

5 *Id.*

6 *Id.*

7 *Id.*

8 *See* Mahzarin Banaji & Anthony Greenwald, *Blindspot: Hidden Biases of Good People* (2016).

9 *See, e.g., id.* at 4.

setting.[10] These findings, grounded in samples from over 100 universities and colleges across the country, "underscore[] the ubiquity of experienced discrimination" for students from underrepresented racial and ethnic groups.[11]

2. Underrepresentation of certain racial and ethnic groups also remains a pressing concern on college campuses.

In 2020, the Bureau of Labor Statistics reported that 66.2% of the previous year's high school graduates enrolled in an institution of higher learning following graduation.[12] But enrollment rates were not equal among racial and ethnic groups: 89.9% of Asian students; 66.9% of White students; 63.4% of Latino students; and only 50.7% of Black students moved on to postsecondary studies.[13]

And in States that have banned race-conscious admissions programs, disparate enrollment rates and the resulting underrepresentation are even more dramatic. One recent study, examining enrollment

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[10] *See* Mitchell R. Campbell & Markus Brauer, *Is Discrimination Widespread? Testing Assumptions About Bias on a University Campus,* 150 J. Experimental Psychol.: General 756, 756 (2021); *see* Courtney Stevens et al., *Racial/ethnic Disparities in US College Students' Experience: Discrimination as an Impediment to Academic Performance*, 66 J. Am. Coll. Health 665 (2018)

[11] Stevens et al., 66 J. Am. Coll. Health at 669.

[12] U.S. Bureau of Labor Statistics, Economic News Release, *College Enrollment and Work Activity of High School Graduates*, (Apr. 28, 2020), http://www.bls.gov/news.release/archives/hsgec_04282020.htm.

[13] The Bureau's statistics do not report enrollment rates for other racial and ethnic groups, including Native Americans. *See id.*

data from 53 public medical schools in states with and without bans, found that having a ban *reduced* representation of racial and ethnic minorities by 37%. In states without bans, representation increased by 0.7%.[14] Other studies have observed similar impacts.[15]

B. Discrimination, Prejudice, And Underrepresentation Inflict Academic Harm

The persistence of discrimination, prejudice, and underrepresentation in higher education has tangible educational costs for students. Substantial scientific research has found that racial and ethnic minority students are especially susceptible to psychological influences that can impair academic performance when studying in environments in which either explicit or implicit prejudice and discrimination remain and that lack sufficient diversity. And for students that are the *only* representative of a group, these negative impacts are even more pronounced.

1. Experiencing overt, bias-related violence and discrimination inflicts the most severe psychological harm on racial and ethnic minority students and poses significant obstacles to educational achievement—even when an individual is not the direct victim. As psychological researchers have found, discrimination inflicts group harm. When one

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[14] Dan P. Ly et al., *Affirmative Action Bans and Enrollment of Students From Underrepresented Racial and Ethnic Groups in U.S. Public Medical Schools*, 175 Annals Internal Med. 873 (2022).

[15] *See, e.g.,* Liliana M. Garces, *Understanding the Impact of Affirmative Action Bans in Different Graduate Fields of Study*, 50 Am. Educ. Res. J. 251 (2013).

member of a group is the victim of discrimination, that discrimination can lead to poorer mental health outcomes for all members of the targeted group.[16] And this is harm that does not impact other non-minority group members within the same community.[17] These mental health strains can cause stress, anxiety, and depression which, in turn, significantly impact academic achievement.[18]

2. Other psychological harms flow from subtle discrimination and implicit bias in communities lacking sufficient racial and ethnic minority representation. One such harm is a feeling of distinctiveness and unbelonging. Psychologists have found that a member of a racial or ethnic minority group is more conscious of her minority identity—and others' implicit biases regarding that identity—when underrepresented.[19] These feelings of distinctiveness often create an internal fear that one will conform to

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[16] David S. Curtis et al., *Highly Public Anti-Black Violence Is Associated with Poor Mental Health Days for Black Americans,* 118 Proc. Natl. Acad. Sci. 1 (2021); *see also* Jacob Bor et al., *Police Killings and Their Spillover Effects on the Mental Health of Black Americans: a Population-based, Quasi-experimental Study*, 392 Lancet 302 (2018).

[17] *See* Bor, 392 Lancet at 302.

[18] *See* Janelle T. Billingsley & Noelle M. Hurd, *Discrimination, Mental Health and Academic Performance Among Underrepresented College Students: The Role of Extracurricular Activities at Predominantly White Institutions*, 22 Soc. Psychol. Educ. 421 (2019).

[19] Michael Johns et al., *Stereotype Threat and Executive Resource Depletion: Examining the Influence of Emotion Regulation*, 137 J. Experimental Psychol.: Gen. 691, 692 (2008); *see* Toni Schmader et al., *A Metacognitive Perspective on the Cognitive Deficits Experienced in Intellectually Threatening Environments*, 35 Pers. & Soc. Psychol. Bull. 584, 586 (2009).

others' implicit biases—that one's actions will prove the biases right.[20] Psychologists call this phenomenon "social identity threat."

Research has consistently shown that social identity threat negatively impacts educational outcomes. For example, Black and Latino students perform worse than their White peers on standardized tests when those tests are described as assessing verbal or intellectual ability. When the same tests are framed as simple exercises in problem solving, however, their performance is equivalent to that of White peers.[21] Likewise, when Christian students are told that there is a supposed incompatibility between science and religion, they underperform their non-Christian peers on scientific reasoning tasks.[22] The stress of perceiving others' biases—however unfounded or irrational they might be—inhibits performance.[23]

Many psychologists and other social scientists have examined how and why social identity threat

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[20] *See, e.g.,* Harriet E.S. Rosenthal & Richard J. Crisp, *Reducing Stereotype Threat by Blurring Intergroup Boundaries*, 32 Pers. & Soc. Psychol. Bull. 501, 502 (2006).

[21] *See* Toni Schmader et al., *An Integrated Process Model of Stereotype Threat Effects on Performance*, 115 Psychol. Rev. 336, 336-37 (2008); *see also* Patricia M. Gonzales et al., *The Effects of Stereotype Threat and Double-Minority Status on the Test Performance of Latino Women*, 28 Pers. & Soc. Psychol. Bull. 659, 665-66 (2002).

[22] Kimberly Rios et al., *Negative Stereotypes Cause Christians to Underperform in and Disidentify with Science*, 6 Soc. Psychol. & Pers. Sci. 959 (2015).

[23] Toni Schmader et al., 35 Pers. & Soc. Psychol. Bull. at 586.

disrupts cognitive function.[24] Their research has found that scenarios activating negative social identity biases cause individuals to try to *combat* those biases.[25] This natural fight-or-flight instinct generates increased mental effort—heightening stress, increasing self-monitoring of how one's behavior reflects others' biases, and activating efforts to push negative social identity thoughts and anxieties from the mind.[26]

These coping mechanisms are distracting; they interfere with mental performance; and they cause a deficit of cognitive resources with which to complete academic tasks.[27] The resulting cognitive load places racial and ethnic minority students at a particular disadvantage compared to otherwise similarly situated students. And it decreases confidence, increases anxiety, and undermines an individual's performance expectations.[28]

3. These negative consequences of social identity threat are quite concerning in their own right. But they are often compounded when someone is the *only* person of a social identity within a group. Such "solo

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[24] *See, e.g.,* Jean-Claude Croizet et al., *Stereotype Threat Undermines Intellectual Performance by Triggering a Disruptive Mental Load*, 30 Pers. & Soc. Psychol. Bull. 721, 728-29 (2004).

[25] *See* Schmader et al., 115 Psychol. Rev. at 337; Toni Schmader & Michael Johns, *Converging Evidence That Stereotype Threat Reduces Working Memory Capacity*, 85 J. Pers. & Soc. Psychol. 440, 450-51 (2003).

[26] Schmader et al., 115 Psychol. Rev. at 337-38.

[27] *Id.*

[28] *See* Mara Cadinu et al., *Stereotype Threat: The Effect of Expectancy on Performance*, 33 Euro. J. Soc. Psychol. 267, 269, 283 (2003).

status" causes extreme isolation that increases the likelihood that underrepresented students will be viewed as "tokens."[29]

Tokenism heightens the undue attention paid to racial and ethnic minority students, reducing perceptions of individuality and inhibiting academic achievement.[30] For example, psychologists have found that Blacks in otherwise all-White groups and women in otherwise all-male groups underperform as compared to when they are in groups with increased representation of their race or gender, respectively.[31] This is because "solo status" can cause the person to construe herself in terms of her racial or ethnic group and to feel pressure to act as a representative of that racial or ethnic group.[32]

4. In sum, the stresses of discrimination, prejudice, and underrepresentation, and the compounding impact of isolation, have profound academic consequences.[33] In a recent longitudinal

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[29] Jeffrey F. Milem et al., *Making Diversity Work on Campus: A Research-Based Perspective*, at 6 (2005), https://web.stanford.edu/group/siher/AntonioMilemChang_makingdiversitywork.pdf.

[30] *See id.*

[31] *See id.*; *see also* Denise Sekaquaptewa & Mischa Thompson, *Solo Status, Stereotype Threat, and Performance Expectancies: Their Effects on Women's Performance*, 39 J. Experimental Soc. Psychol. 68, 68-69 (2003).

[32] *See* Denise Sekaquaptewa et al., *Solo Status and Self-Construal: Being Distinctive Influences Racial Self-Construal and Performance Apprehension in African American Women*, 13 Cultural Diversity & Ethnic Minority Psychol. 321, 326 (2007).

[33] *See* Samuel D. Museus et al., *Modeling Racial Differences in the Effects of Racial Representation on 2-Year College Student Success*, 13 J. Coll. Student Retention 549, 550

study of nearly 2,000 Latino and Black students across 27 colleges and universities, researchers found that experiences of discrimination were predictive of poor physical health, increased depression, poorer academic outcomes, and lower graduation rates.[34] Indeed, the effects of social identity threat are so pronounced that some psychological studies have found that the added cognitive load and related stress can lead students to remove themselves from the classroom or campus altogether.[35] And researchers have found that students experiencing intense, tokenizing isolation have even worse academic outcomes. Tokenism can cause students to "experience relatively greater uncertainty about their belonging in school."[36] This uncertainty can be detrimental to "well-being and performance,"[37] and it

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(2012); Sekaquaptewa et al., 13 Cultural Diversity & Ethnic Minority Psychol. at 321.

[34] *See* Tiffany N. Brannon & Andy Lin, "*Pride and Prejudice" Pathways to Belonging: Implications for Inclusive Diversity Practices Within Mainstream Institutions*, 76 Am. Psychol. 488 (2020).

[35] Rosenthal & Crisp, 32 Pers. & Soc. Psychol. Bull. at 502; *see* Mary C. Murphy et al., *Signaling Threat: How Situational Cues Affect Women in Math, Science, and Engineering Settings*, 18 Psychol. Sci. 879, 883-84 (2007).

[36] Gregory M. Walton & Geoffrey L. Cohen, *A Brief Social-belonging Intervention Improves Academic and Health Outcomes of Minority Students*, 331 Sci. 1447, 1448 (2011).

[37] *Id.*; *see* Elizabeth Page-Gould et al., *Understanding the Impact of Cross-group Friendship on Interactions with Novel Outgroup Members*, 98 J. Pers. & Soc. Psychol. 775, 788-89 (2010).

can ultimately discourage students from remaining in an academic setting.[38]

C. Student Diversity Benefits All Students And The Nation

As this Court held in *Grutter*, and reaffirmed in *Fisher II*, campus diversity is a compelling government interest because it reduces the harm that discrimination, prejudice, and underrepresentation inflict—improving the educational experience for all students. Campus diversity fosters "cross-racial understanding" and enriches the academic enterprise, preparing students to lead lives as contributing citizens and strengthening the Nation. *Grutter,* 539 U.S. at 330.

1. To achieve the benefits that flow from campus diversity there must be sufficient diversity on campus. This Court acknowledged in *Fisher II* that "[i]ncreasing minority enrollment may be instrumental to [achieving the interest in] educational benefits" set forth in *Grutter*. 579 U.S. at 381. Significant psychological research confirms as much: sufficient representation of racial and ethnic minority groups is necessary for campus communities to enjoy the educational benefits that flow from a diverse student body.

The rationale is simple. For crucial educational encounters to occur—and to avoid the negative psychological and academic impacts of isolation, "solo status," and underrepresentation—a sufficiently

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[38] Angela M. Locks et al., *Extending Notions of Campus Climate and Diversity to Students' Transition to College*, 31 Rev. Higher Educ. 257, 260 (2008).

diverse body of students must be present.[39] There is no other way to achieve the educational benefits that flow from diverse student bodies.[40] Social science research firmly establishes the "relationship between numbers and achieving the benefits to be derived from a diverse student body." *Bakke*, 438 U.S. at 323.

But the analysis cannot, as this Court has observed, "be reduced to pure numbers." *Fisher II,* 579 U.S. at 381. The inquiry is more nuanced. The optimal composition of a diverse student body depends on numerous considerations and varies by institution.[41] Colleges and universities need flexibility to tailor their student bodies to secure a sufficient representation of racial and ethnic groups in order to achieve the educational benefits that flow from diversity.

2. As this Court has acknowledged, appropriately tailored campus diversity can reduce the worst psychological and academic impacts of discrimination, prejudice, and underrepresentation by "break[ing] down" biases and fostering environments in which all students can thrive. *Grutter*, 539 U.S. at 330. Rigorous scientific study confirms those conclusions are still sound. And

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[39] *See* Mitchell J. Chang et al., *Cross-Racial Interaction Among Undergraduates: Some Consequences, Causes, and Patterns*, 45 Res. in Higher Educ. 529, 544-545 (2004).

[40] *See, e.g.,* Nicholas A. Bowman, *Promoting Participation in a Diverse Democracy: A Meta-Analysis of College Diversity Experiences and Civic Engagement*, 81 Rev. Educ. Res. 29, 49 (2011) (noting that meaningful interaction "cannot be replaced by teaching about diversity abstractly in courses or workshops").

[41] *See, e.g.,* Dawn Richards Elliott et al., *Rethinking Racial Diversity Benchmarks in Higher Education*, 15 J. Diversity in Higher Educ. 1 (forthcoming 2022).

amici's arguments to the contrary—which rest on the academic mismatch theory—are empirically unsound.

a. Scientific research has consistently demonstrated that campus diversity relieves many of the negative educational impacts of discrimination and prejudice. As the influence of discrimination and prejudice is reduced, psychological phenomena inhibiting academic success for minority students become less dominant.[42] And as such phenomena subside, all students are able to engage uninhibited in the academic enterprise.[43]

Diversity in the educational community is necessary to secure these benefits. Psychological science has determined that exposure to diversity can reduce implicit bias, along with the discriminatory

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[42] *See* Nicholas A. Bowman et al., *Institutional Racial Representation and Equity Gaps in College Graduation*, 93 J. Higher Educ. 399 (2022); Ivuoma N. Onyeador et al., *The Value of Interracial Contact for Reducing Anti-Black Bias Among Non-Black Physicians: A Cognitive Habits and Growth Evaluation (CHANGE) Study Report*, 31 Psychol. Sci. 18 (2020); Thomas F. Pettigrew & Linda R. Tropp, *A Meta-Analytic Test of Intergroup Contact Theory*, 90 J. Pers. & Soc. Psychol. 751, 766-67 (2006).

[43] *See* Rebecca Carey et al., *Is Diversity Enough? Cross-Race and Cross-Class Interactions in College Occur Less Often Than Expected, but Benefit Members of Lower-Status Groups When They Occur*, 123 J. Pers. & Soc. Psychol. (forthcoming 2022); Maryam Hussain et al., *Discrimination, Diversity, and Sense of Belonging: Experiences of Students of Color*, 14 J. Diversity in Higher Educ. 63 (2021); *see also* Juan C. Garibay et al., *Racially Inclusive Climates Within Degree Programs and Increasing Student of Color Enrollment: An Examination of Environmental/Sustainability Programs*, 11 J. Diversity in Higher Educ. 201 (2018).

behavior and cognitive impairment it causes.[44] Although "[p]eople are remarkably adept at dividing up the world into us and them,"[45] individuals are not rigidly predisposed to draw these lines based on race. The lines are malleable: "by changing the basis of categorization from race to an alternative, inclusive dimension, one can alter who 'we' is and who 'they' are," in a way that undermines the mental processes that engender bias.[46]

Psychological studies have demonstrated the strength of such ingroup affiliation by measuring students' abilities to recognize the faces of peers.[47] When the faces were grouped simply by race, participants had superior recall for faces of those in their own racial group.[48] But when the faces were grouped by university, students had superior recall for faces of those in their university group and race had no effect.[49] Expanding the ingroup to include members of different races thus diminished

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[44] Jay J. Van Bavel & William A. Cunningham, *Self-Categorization with a Novel Mixed-Race Group Moderates Automatic Social and Racial Biases*, 35 Pers. & Soc. Psychol. Bull. 321, 322 (2009).

[45] *Id.*

[46] Adam R. Pearson et al., *The Nature of Contemporary Prejudice: Insights from Aversive Racism*, 3 Soc. & Pers. Psychol. Compass 3, 14 (2009).

[47] Eric Hehman et al., *Where the Division Lies: Common Ingroup Identity Moderates the Cross-Race Facial-Recognition Effect*, 46 J. Experimental Soc. Psychol. 445, 447 (2010).

[48] *Id.*; *see also* Daniel B. Wright et al., *Inter-racial Contact and the Own-race Bias for Face Recognition in South Africa and England*, 17 Applied Cognitive Psychol. 365, 371 (2003).

[49] Hehman et al., 46 J. Experimental Soc. Psychol. at 447.

automatic social categorization based on race.[50] Other studies have reached similar conclusions, finding that a greater sense of common identity in the university environment related to greater perceived similarities and prosocial orientations.[51]

Forming personal connections with members of an outgroup may reduce implicit bias even more.[52] A recent study conducted at the Air Force Academy found that White cadets who were randomly assigned to a sufficiently diverse squadron in their first year were more likely to choose a racial or ethnic minority colleague as a roommate in their second year.[53] Other studies show that individuals who have dated a member of another race or whose children have married a member of another race may replace negative implicit bias with favorable implicit attitudes.[54] And prolonged contact between members

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[50] *See id*. at 448; *see also* Van Bavel & Cunningham, 35 Pers. & Soc. Psychol. Bull. at 333.

[51] *See* Edward P. Lemay, Jr. et al., *Common Ingroup Identity, Perceived Similarity, and Communal Interracial Relationships,* 47 Pers. & Soc. Psychol. Bull. 985 (2021); Wendy J. Quinton, *Unwelcome on Campus? Predictors of Prejudice Against International Students,* 12 J. of Diversity in Higher Educ. 156 (2019).

[52] Andreas Olsson et al., *The Role of Social Groups in the Persistence of Learned Fear*, 309 Sci. 785, 785 (2005).

[53] *See* Scott Carrell, et al., *The Impact of College Diversity on Behavior Toward Minorities,* 11 Am. Econ. J.: Econ. Pol'y 159 (2019).

[54] *See* Anthony G. Greenwald & Linda Hamilton Kreiger, *Implicit Bias: Scientific Foundations*, 94 Cal. L. Rev. 945, 964-65 (2006).

of different racial groups frequently reduces implicit negative attitudes.[55]

b. A 2021 study indicates that diversity is an effective antidote to societal discrimination and prejudice.[56] This study is one of the most important empirical psychological field assessments of intergroup behavior on university campuses undertaken since the 1980s. And it suggests that discrimination—while still prevalent—can manifest *differently* on diverse campuses than in general society.

Most social science research has found that discrimination in general society follows a "dispersed discrimination" paradigm. What that means is a large proportion of individuals, often informed by implicit biases, engage in small acts of discriminatory behavior at least occasionally.[57] This dispersal of prejudice can make its harm particularly pronounced while also making the prejudice more challenging to address—requiring broad, intensive interventions.

This recent study found that bias on a diverse campus does not fit within the dispersed discrimination paradigm. Only about 20% of student colleagues were responsible for acts of discrimination.[58] Such a finding maps onto a distinct phenomenon psychologists refer to as "concentrated

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[55] *See* Christopher L. Aberson & Sarah C. Haag, *Contact, Perspective Taking, and Anxiety as Predictors of Stereotype Endorsement, Explicit Attitudes, and Implicit Attitudes*, 10 Group Processes & Intergroup Relations 179, 195 (2007).

[56] *See* Campbell, 150 J. Experimental Psychol: General at 759.

[57] *See id.* at 757.

[58] *Id.* at 756.

discrimination."[59] This alternative paradigm suggests that, even in communities with rising egalitarian attitudes, the biases of a subsection of the community can continue to exact harm on members. But because this bias is concentrated in a small group, it can be addressed with discrete, highly tailored interventions that can prevent discrimination with greater success. For example, research demonstrates that more frequent and positive contact between members of different groups not only reduces prejudice and discrimination generally,[60] but is particularly effective among people who hold strong biases.[61]

These findings suggest that campus diversity reduces the extent of prejudice and makes it easier for university communities to mitigate the impact of the prejudice that remains. And they confirm that *Grutter* works: social attitudes are indeed changed by the campus environment, the composition of the student body, the university's pedagogical priorities, and the educational experience.

c. Opponents of race-conscious admissions policies (including several amici here)[62] have argued the opposite. That is, they continue to advance the theory that minority students are harmed by race-

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[59] *Id.* at 756-758.

[60] Elizabeth Levy Paluck et al., *Prejudice Reduction: Progress and Challenges,* 72 Ann. Rev. Psychol. 533 (2021).

[61] Rhiannon N. Turner et al., *The Role of Individual Differences in Understanding and Enhancing Intergroup Contact*, 14 Soc. & Pers. Psychol. Compass 1 (2020).

[62] *See, e.g.,* Br. of National Association of Scholars in Supp. of Pet'r at 7-10; Br. of Pacific Legal Foundation et al. in Supp. of Pet'r at 22.

conscious admissions due to "a mismatch between their academic preparation . . . and the scholastic requirements of the schools that admitted them by taking race into account."[63] Empirical studies have discredited this "academic mismatch" hypothesis.

Over two decades ago, a pair of seminal studies demonstrated that graduation rates of all students, including racial and ethnic minority students, rise as the selectivity of the institution increases.[64] More recently, research has reaffirmed that "the mismatch hypothesis . . . is empirically groundless for black and Hispanic (as well as for white and Asian) students."[65] Another study, which examined nationwide data, found that "[i]n no case did . . . having an SAT score below the institutional average undermine[] the performance or well being of individual minority students. If anything minority students who benefited from affirmative action earned higher

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[63] Sigal Alon & Marta Tienda, *Assessing the "Mismatch" Hypothesis: Differences in College Graduation Rates by Institutional Selectivity*, 78 Sociol. Educ. 294, 295 (2005); *see* Terrance J. Pell, *Racial Preferences and Formal Equality*, 34 J. Soc. Phil. 309, 310 (2003).

[64] *See* William G. Bowen & Derek Bok, *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions* 53, 59 (1998); *see also* Thomas J. Kane, *Misconceptions in the Debate Over Affirmative Action in College Admissions*, *in Chilling Admissions: The Affirmative Action Crisis and the Search for Alternatives* 17, 17-18 (Gary Orfield & Edward Miller eds., 1998).

[65] Alon & Tienda, 78 Sociol. Educ. at 309.

grades and left school at lower rates than others . . . ."[66]

Studies supporting the academic mismatch hypothesis are fundamentally flawed because they assume a direct relationship between a student's entering credentials and resulting academic success. This proposition finds little support in scholarly research.[67] The hypothesis also ignores alternative explanations for racial and ethnic minority underperformance in certain academic settings. Phenomena such as social identity threat may explain not only racial and ethnic minority students' lower retention rates in college and graduate school generally but also in specific academic majors—especially in science, technology, engineering, and medical fields.[68] But, as discussed above, race-conscious admissions programs *redress* these negative psychological and academic effects; they do not cause them.[69]

When examined without these flawed assumptions, the evidence indicates that race-

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[66] Mary J. Fischer & Douglas S. Massey, *The Effects of Affirmative Action in Higher Education*, 36 Soc. Sci. Res. 531, 544 (2007).

[67] *See* Ian Ayres & Richard Brooks, *Does Affirmative Action Reduce the Number of Black Lawyers?*, 57 Stan. L. Rev. 1807, 1813 (2005).

[68] *See* Melissa Williams, et al., *The Face of STEM: Racial Phenotypic Stereotypicality Predicts STEM Persistence by—and Ability Attributions About—Students of Color*, 116 J. Personality & Soc. Psychol. 416 (2019); Mitchell J. Chang et al., *Considering the Impact of Racial Stigmas and Science Identity: Persistence Among Biomedical and Behavioral Science Aspirants*, 82 J. Higher Educ. 564, 586 (2011).

[69] Ayres & Brooks, 57 Stan. L. Rev. at 1838-39.

conscious admissions programs *narrow* retention rate gaps between different student groups.[70] Research also demonstrates that racial and ethnic minority students who attend selective colleges show an increase in "the completion of advanced degrees, earnings, and overall satisfaction with college experiences."[71]

3. The educational benefits of sufficient campus diversity inure to the benefit of *all* students. Scientific research has found that exposure to diversity enhances critical thinking and promotes deeper information processing, the objective review of information, and problem-solving skills.[72] Campus diversity also improves student satisfaction and motivation,[73] general knowledge,[74] intellectual self-

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[70] Alon & Tienda, 78 Sociol. Educ. at 309.

[71] *Id.* at 296.

[72] *See, e.g.,* Nida Denson & Shirley Zhang, *The Impact of Student Experiences with Diversity on Developing Graduate Attributes*, 35 Studies Higher Educ. 529, 540 (2010).

[73] Birenee A. Nagda et al., *Learning About Difference, Learning with Others, Learning to Transgress*, 60 J. Soc. Issues 195, 208 (2004).

[74] Nida Denson & Mitchell J. Chang, *Racial Diversity Matters: The Impact of Diversity-Related Student Engagement and Institutional Context*, 46 Am. Educ. Res. J. 322, 325 (2009) *see also* Jiali Luo & David Jamieson-Drake, *A Retrospective Assessment of the Educational Benefits of Interaction Across Racial Boundaries*, 50 J. Coll. Student Dev. 67, 80-81 (2009).

confidence,[75] and productive and cooperative communication and collaboration skills.[76]

These academic benefits flow largely from interaction with the "broader collection of thoughts, ideas, and opinions held by" the range of individuals present in diverse student bodies.[77] This exposure to differing perspectives creates an "atmosphere of 'speculation, experiment and creation,' [which is] essential to the quality of higher education." *Bakke*, 438 U.S. at 312. As social science research shows, "the mere inclusion of different perspectives, and especially divergent ones, in any course of discussion leads to the kind of learning outcomes" universities seek.[78] And while informal interactions produce important gains, "the formal interactions that take place in a course discussion offer the most potential for educators to extract the benefits of structural diversity on college campuses."[79] Scores of studies have continued to find that such educational

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[75] 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, 382-83 (2005); *see* Anthony L. Antonio, *The Influence of Friendship Groups on Intellectual Self-Confidence and Educational Aspirations in College*, 75 J. Higher Educ. 446, 455 (2004).

[76] *See* Rose Meleady, et al., *Evidence of a Dynamic Association Between Intergroup Contact and Intercultural Competence*, 24 Group Processes & Intergroup Rel. 1427 (2020).

[77] Milem, https://web.stanford.edu/group/siher/AntonioMilemChang_makingdiversitywork.pdf, at 7.

[78] Richard Pitt & Josh Packard, *Activating Diversity: The Impact of Student Race on Contributions to Course Discussions*, 53 Sociol. Q. 295, 298 (2012).

[79] *Id.* at 315.

experiences encourage the development of "cross-racial understanding." *Grutter*, 539 U.S. at 330.[80]

These formal and informal interactions directly impact intellectual growth and educational outcomes. Comparing homogeneous and heterogeneous discussion groups, one study showed that the presence of racial and ethnic minorities stimulates an increase in the complexity with which students—especially nonminority students—approach a given issue.[81] Members of homogeneous groups in this study exhibited no such cognitive stimulation nor complexity of thought.[82] "[W]hen a student is exposed to thoughts and ideas different from his or her own, it tends to produce cognitive disequilibrium, dissonance, or incongruity."[83] Resetting cognitive equilibrium requires complex processing and gathering of data, as well as consideration of revised viewpoints.[84] This process often causes students to develop a preference for "effortful" thinking and to seek nuanced explanations for human behavior.[85]

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[80] *See* Gary Pike et al., *Relationships Among Structural Diversity, Informal Peer Interactions and Perceptions of the Campus Environment,* 29 Rev. Higher Educ. 425, 435 (2006).

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

[82] *See id.*; *see also* Samuel R. Sommers et al., *Cognitive Effects of Racial Diversity: White Individuals' Information Processing in Heterogeneous Groups*, 44 J. Experimental Soc. Psychol. 1129, 1134-35 (2008).

[83] Chang et al., 45 Res. in Higher Educ. at 545.

[84] *See id.*

[85] Nicholas A. Bowman, *College Diversity Experiences and Cognitive Development: A Meta-Analysis,* 80 Rev. Educ. Res. 4, 6 (2010); *see* Sylvia Hurtado, *The Next Generation of Diversity and*

4. The educational benefits that flow from campus diversity also have lasting impacts that benefit students and society long after graduation. Sufficiently diverse campuses promote the development of a student's cultural competence and "pluralistic orientation: the ability to see multiple perspectives; the ability to work cooperatively with diverse people; the ability to discuss and negotiate controversial issues; openness to having one's views challenged; and tolerance of others with different beliefs."[86] These skills are essential for citizens to engage productively in a flourishing democracy. They are also necessary, as this Court noted in *Grutter*, for businesses to remain competitive "in today's increasingly global marketplace." 539 U.S. at 330.

Social scientists have observed societal benefits in other areas too—underscoring the widespread, positive impact of diverse educational experiences. Doctors who have studied in diverse medical schools and work on diverse teams provide better medical care, especially for racial and ethnic minority patients.[87] Police officers who have trained and served in diverse communities are less likely to use

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Intergroup Relations Research, 61 J. Soc. Issues 595, 598-599 (2005).

[86] 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, 285 (2007).

[87] *See* Onyeador, 31 Psychol. Sci. at 18; L.E. Gomez, et al., *Diversity Improves Performance and Outcomes*, 111 J. Natl. Med. Assoc. 383 (2019).

unnecessary or excessive force.[88] And members of the armed forces who have trained in diverse teams are more likely to build bonds with racial and ethnic minority colleagues—directly impacting national security interests.[89]

That is, the educational benefits that flow from diverse campuses are by no means limited to the lecture hall or dorm room. They continue to enrich our communities, enliven our constitutional values, and strengthen the Nation.

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[88] *See* Melody S. Sadler, et al., *The World Is Not Black and White: Racial Bias in the Decision to Shoot in a Multiethnic Context*, 68 J. Soc. Sci. Issues 286 (2012).

[89] *See, e.g.,* Carrell, 11 Am. Econ. J.: Econ. Pol'y at 159.

CONCLUSION

For the foregoing reasons, the Court should reaffirm *Grutter* and affirm the judgments below.

Respectfully submitted,

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