

No. 11-345

In the Supreme Court of the United States

ABIGAIL NOEL FISHER,

Petitioner,

v.

UNIVERSITY OF TEXAS AT AUSTIN, ET AL.,

Respondents.

**On Writ of Certiorari to
the United States Court of Appeals
for the Fifth Circuit**

**BRIEF OF NATIONAL WOMEN'S LAW CENTER,
ET AL., AS *AMICI CURIAE* IN SUPPORT OF
RESPONDENTS**

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**BRIEF OF NATIONAL WOMEN'S LAW CENTER,
ET AL., AS *AMICI CURIAE* IN SUPPORT OF
RESPONDENTS**

INTEREST OF THE *AMICI CURIAE*

Amici are organizations that share a common commitment to civil rights for all Americans, with a particular interest in eradicating discrimination against women. That interest is closely aligned with the interest in eliminating race discrimination. Social-science research demonstrates, and *amici*'s own experience confirms, that successfully breaking down one form of discrimination tends to reduce others as well. Moreover, racial stereotypes often incorporate discriminatory views about women; and women of color experience the overlapping effects of race-based and gender-based discrimination.¹

To ensure that there are no longer any barriers to academic achievement, career success, or any other aspect of a fulfilling life for women, therefore, it is necessary to eliminate all forms of sex discrimination, including those that are intertwined with race discrimination.

Because several *amici* have joined this brief, more detailed descriptions of each appear in the Appendix. The *amici* are:

- American Association of University Women.
- Association for Women in Science.

¹ Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici* or their counsel made a monetary contribution to its preparation or submission. The parties' letters consenting to the filing of *amicus* briefs have been filed with the Clerk's office.

- California Women's Law Center.
- Clearinghouse on Women's Issues.
- Connecticut Women's Education and Legal Fund.
- Equal Rights Advocates.
- Feminist Majority Foundation.
- Legal Momentum.
- National Alliance for Partnerships in Equity.
- National Association of Social Workers.
- National Association of Women Lawyers.
- National Center for Lesbian Rights.
- National Council of Women's Organizations.
- National Organization for Women Foundation.
- National Partnership for Women and Families.
- National Women's Law Center.
- 9to5, National Association of Working Women.
- Sargent Shriver National Center on Poverty Law.
- Society of Women Engineers.
- Southwest Women's Law Center.
- Washington Council of Lawyers.
- Women Employed.
- Women's Law Center of Maryland.
- Women's Law Project.

SUMMARY OF ARGUMENT

Diversity at a state university enhances the educational experience for all students, thereby furthering the State's compelling interest in cultivating a corps of civic, government, and business leaders who understand the interests of, and are capable of communicating and working with, all members of the public.

The persistent effects of impermissible stereotypes make it difficult, however, for universities to provide their students with the reality of a diverse educational experience. Stereotypical assumptions that were once grounded in law continue to exert significant influence—both on societal expectations and on individuals' perceptions of themselves. As a result of outmoded assumptions about their proper roles in society, minority students, and women of color in particular, tend to be clustered in certain fields of study. Thus, numerous degree programs and courses lack diversity despite university-wide statistics that seemingly show a significantly diverse student body. Many students are therefore deprived of the critical benefits of learning with and from people representing the widest array of backgrounds and experiences; and the future leaders of government and business that the university trains are insufficiently experienced in communicating with people of different backgrounds and experiences to fulfill those important roles effectively.

A state university seeking to ascertain whether it is in fact furthering the compelling interests served by educational diversity cannot necessarily rely, therefore, solely on gross, campus-wide statistics. It must have the discretion to undertake a program-level assessment to determine the actual diversity

that students will encounter in their day-to-day academic endeavors.

For example, in a field traditionally made up of white males, such as engineering or computer science, a woman of color may, because of her background, interests, and abilities, have the potential to contribute a unique perspective that will enhance the educational experience of her fellow students, regardless of whether she happens to be admitted through a Top Ten Percent Plan. And the same may be true for a white man who wishes to enter a field, such as education or nursing, that has traditionally been made up of women.

Accordingly, a state university should have the freedom to consider those factors, among all the others that go into its admissions decisions, in order to assemble an incoming class that best serves all students and advances the State's interests in achieving a diverse educational environment.

These assessments are entirely consistent with this Court's mandate in *Grutter v. Bollinger*, 539 U.S. 306 (2003), that race be considered only as part of an individualized, holistic review of each applicant. Far from preferring race above all other considerations, admissions procedures like the one at issue here appropriately recognize the often-complex interplay of race with sex, geography, upbringing, academic achievement, athletic ability, academic and extracurricular interests, and career and life goals in affecting any particular student's potential to contribute something unique to the intellectual and cultural life of the academy. Truly individualized admissions decisions that are undertaken with a sensitivity to the need for students throughout the university to experience the effects of diversity are

thus a critical complement to programs like the Top Ten Percent Plan. They not only offer an antidote to the persistent effects of stereotyping, but also help the university ensure that all students are receiving the education that will best prepare them for life, work, and public service in a diverse, pluralistic community.

ARGUMENT

An Educational Environment That Brings Together Individuals From Diverse Backgrounds—And Thereby Dispels Race- and Sex-Based Stereotypes—Is Essential To Enable All Students To Participate Effectively In Government, Civil Society, And The Business Community.

As Justice Powell explained, diversity, “whether it be ethnic, geographic, culturally advantaged or disadvantaged—may bring * * * experiences, outlooks, and ideas that enrich the training of [a university’s] student body and better equip its graduates to render with understanding their vital service to humanity.” *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 314 (1978) (opinion of Powell, J.).

That is the precise justification advanced by the University of Texas in support of the admissions plan at issue in this case. The University explained that in our pluralistic society, in which “Texas will [soon] have no majority race,” achieving these goals requires an educational climate that facilitates “a robust exchange of ideas, exposure to differing cultures, preparation for the challenges of an increasingly diverse workforce, and acquisition of competencies required of future leaders.” University of Texas at Austin, *Proposal to Consider Race and Eth-*

nicity in Admissions, June 25, 2004, at 23-24, available at <http://tinyurl.com/83wdz84> (quoted in *Fisher v. Univ. of Tex. at Austin*, 645 F. Supp. 2d 587, 602 (W.D. Tex. 2009), *aff'd*, 631 F.3d 213 (5th Cir. 2011), *cert. granted*, 132 S. Ct. 1536 (2012)).

Empirical research demonstrates that education in a diverse environment does in fact further these objectives. Students learn to identify and understand values that they share with individuals from different backgrounds. They also learn to respect each other as individuals, by discovering that there is no single viewpoint associated with any particular group. Daryl G. Smith, *DIVERSITY WORKS: THE EMERGING PICTURE OF HOW STUDENTS BENEFIT* 29 (1997); see also Sylvia Hurtado, *Linking Diversity and Educational Purpose: How Diversity Affects the Classroom Environment and Student Development*, in *DIVERSITY CHALLENGED: EVIDENCE ON THE IMPACT OF AFFIRMATIVE ACTION* 187, 189 (Gary Orfield ed., 2001) (students in interracial environments show “greater openness to diverse perspectives and a willingness to challenge their own beliefs”).

A diverse educational environment provides another important benefit, as well. Women and minorities have long been restricted by “[o]verbroad generalizations about the[ir] different talents, capacities, or preferences,” *United States v. Virginia*, 518 U.S. 515, 533 (1996)—a condition that applies with special force to women of color, for whom the combination of race-based and sex-based stereotypes has significantly enhanced the negative effects, both on the self-perception of these women and on the way that others perceive them. By helping to eradicate these negative effects, diversity expands the gov-

ernment, civic, and business opportunities open to minority women.

But universities face a significant practical problem in providing their students with the diverse educational environment that leads to these salutary results. The persistent effect of stereotypes—reflected in the choices of courses and educational programs made by most minority students, especially women of color—results in a striking lack of actual diversity in many students’ actual, day-to-day academic experiences. Unless a university is able to take steps to counteract these continuing effects of stereotypes, it will be unable to provide the diversity in fact that is necessary to fulfilling the university’s educational mission.

A. Diversity In A State University’s Student Body Promotes The Compelling State Interests In Educational Excellence, Effective Government And Civic Organizations, And Economic Competitiveness.

A diverse educational environment improves teaching and learning for all students. Engaging with a wide array of fellow students exposes individuals to a broader set of ideas, experiences, perspectives, and values, thus fostering greater understanding of each other, of the subject matter, and of the world around them. It also equips students to succeed in government, civic institutions, and business.

1. Diversity improves the quality of education.

Social-science research unequivocally confirms this Court’s conclusion that classes are “simply more enlightening and interesting when the students have the greatest possible variety of backgrounds.”

Grutter, 539 U.S. at 330 (internal quotation marks omitted). The “robust exchange of ideas” (*Bakke*, 438 U.S. at 313 (opinion of Powell, J.))—the heart and soul of higher education—can therefore best be served by maximizing the variety of perspectives that students contribute to a vibrant academic community.

Regular interaction with people of different races leads to greater cognitive development, more positive academic and social self-conceptions, higher graduation rates, growth in leadership skills and cultural awareness, higher levels of civic interest, and greater satisfaction with the college experience for students of all races. Mitchell J. Chang et al., *Cross-Racial Interaction Among Undergraduates: Some Consequences, Causes, and Patterns*, 45 RES. IN HIGHER EDUC. 529, 530 (2004) (summarizing numerous empirical studies).

Students in diverse educational environments become more adept at recognizing the complexity of issues, defending and challenging their own perspectives, and understanding opposing viewpoints. Sylvia Hurtado, *The Next Generation of Diversity and Intergroup Relations Research*, 61 J. SOC. ISSUES 595, 603 (2005) (“Students who reported frequent contact with diverse peers displayed greater attributional complexity, self-confidence in cultural awareness, [and] development of a pluralistic orientation.”); see also Hurtado, *Linking Diversity and Educational Purpose*, at 189 (students in interracial environments show “greater openness to diverse perspectives and a willingness to challenge their own beliefs”).

2. *Diversity is essential for preparing students both to lead and to participate in our nation's government and community organizations.*

Higher education—and especially education at a State's flagship university—prepares students to be leaders and participants in their communities, their State, and the nation. See generally, *e.g.*, *Grutter*, 539 U.S. at 331 (higher education “prepar[es] students for work and citizenship”); John Rawls, *A THEORY OF JUSTICE* 87 (rev. ed. 1999) (education “enabl[es] a person to enjoy the culture of [the] society and to take part in its affairs”).

Indeed, the connection between education and civic participation has been recognized since the earliest days of our nation. The charter of the first public university recognized that for “the common wishes of the People [to] become the Laws of the Land, their public prosperity and even existence very much depends upon suitably forming the minds and morals of their Citizens.” The University of Georgia Charter of 1785, available at <http://tinyurl.com/9or2tz4>.

It therefore was “among the first objects * * * to place the youth under the forming hand of society that by instruction they may be moulded to the love of Virtue and good Order.” *Ibid.* The Northwest Ordinance similarly emphasized that “schools and the means of education shall forever be encouraged,” because an informed citizenry is “necessary to good government and the happiness of mankind.” Northwest Ordinance art. 3 (1787), in *OUR DOCU-*

MENTS: 100 MILESTONE DOCUMENTS FROM THE NATIONAL ARCHIVES 27 (2003).²

These same concerns remain central to the work of public institutions of higher learning today. The University of Texas at Austin recognizes, for example, that its mission as the State’s flagship university is to “produc[e] future educational, cultural, business, and sociopolitical leaders.” *Proposal to Consider Race and Ethnicity, supra*, at 24.

And state universities do serve a unique role in preparing the future leaders of their States. For example, twenty-one of thirty-one state senators in the Texas Legislature—more than two-thirds—attended a Texas state university. Texas Tribune, *Elected Officials Directory*, available at <http://www.texas Tribune.org/directory/>.

What is true for community leaders in general is often even more so for minorities, who historically lacked the benefits of heredity, familial connections, and other traditional avenues to leadership positions. Thus, for example, eight of the nine Texas state senators who are black or Hispanic obtained their undergraduate or graduate degrees from public institutions in Texas; seven attended schools in the University of Texas system. And for those seeking

² See also, *e.g.*, *Ambach v. Norwick*, 441 U.S. 68, 75-76 (1979) (public-school teachers perform a task “that go[es] to the heart of representative government”) (internal quotation marks omitted); Brief of Maryland, New York, et al., as Amici Curiae in Support of Respondents at 8, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (No. 02-241), 2003 WL 538556 (“One of the many functions of public education at all levels is to nurture values necessary for good citizenship and the maintenance of a flourishing democracy—a quintessentially state role.”).

the highest offices, connections to a State's flagship university are often especially important: Five of Texas's seven black and Hispanic federal legislators attended the University of Texas at Austin. *Ibid.*

Experiencing diversity, day to day, is a critical part of that education: “[I]t is not too much to say that the ‘nation’s future depends upon leaders trained through wide exposure’ to the ideas and mores of students as diverse as this Nation of many peoples.” *Bakke*, 438 U.S. at 312-13 (opinion of Powell, J.) (quoting *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967)).

If our political and community leaders are to lead effectively, they must first “(1) learn to understand and consider the multiple perspectives that are inherent in a diverse environment; (2) deal with the conflicts that different perspectives sometimes entail; and (3) appreciate the common values and integrative forces that incorporate these differences in the pursuit of the broader common good.” Patricia Gurin, *The Compelling Need for Diversity in Education*, 5 MICH. J. RACE & L. 363, 383 (1999).

Diversity in higher education not only helps “cultivate a set of leaders with legitimacy in the eyes of the citizenry,” by ensuring that “the path to leadership [is] visibly open to talented and qualified individuals of every race and ethnicity.” *Grutter*, 539 U.S. at 331; cf. *Plyler v. Doe*, 457 U.S. 202, 221-223 (1982).³ It also provides all students with the tools

³ Social-science research confirms that leaders function best when they reflect the concerns and aspirations of the citizenry as a whole. Sue Thomas, *Introduction*, WOMEN AND ELECTIVE OFFICE: PAST, PRESENT, AND FUTURE 1 (Sue Thomas & Clyde Wilcox eds., 1998) (“[A] government that is democratically

that they will need to participate in the work of representative political institutions.

Students who hear different viewpoints effectively expressed and considered in the classroom learn to relate to each other, work together, understand others' needs and interests, reach compromises, and solve problems together. Hurtado, *The Next Generation of Diversity*, 61 J. SOC. ISSUES at 603 (“[S]tudents who reported frequent contact with diverse peers * * * were less likely to perceive value differences with other racial/ethnic groups * * * [and] learn[ed] how to resolve conflict and practice democratic skills.”); Patricia Gurin et al., *Intergroup Dialogue: Education for a Broad Conception of Civic Engagement*, available at <http://tinyurl.com/8jdfdzr> (dialogue among students of different races and genders increases “cognitive openness (indicated by consideration of multiple perspectives, * * * active thinking about society, and cognitive involvement in their social identities), and positivity in intergroup interaction”). Those skills are essential building blocks of leadership, political participation, and representative government.

The presence and participation of women of color in the classroom are critical to building these skills among students. The experiences of individuals who belong to historically underrepresented groups can

organized cannot be truly legitimate if all its citizens from all races and classes and both sexes do not have a potential interest in and an opportunity for serving their community and nation.”); Susan A. Banducci et al., *Minority Representation, Empowerment, and Participation*, 66 J. POL. 534, 534 (May 2004) (finding that “minority representation strengthens representational links, fosters more positive attitudes toward government, and encourages political participation”).

significantly expand classroom dialogue. Including these perspectives in the learning process helps all students and future leaders better understand the needs and interests of significant portions of the citizenry, while also making clear that individuals from underrepresented groups do not hold any single set of opinions or viewpoints. This classroom experience also helps all students learn to interact with people from different backgrounds. Having representatives who genuinely understand and are able to give voice to the interests of all elements of the populace helps ensure that decision-making takes all those views into account.

Simply put, experiencing diversity in college increases and improves political participation and civic engagement. Nicholas A. Bowman, *Promoting Participation in a Diverse Democracy: A Meta-Analysis of College Diversity Experiences and Civic Engagement*, 81 REV. EDUC. RES. 29 (March 2011); Hurtado, *The Next Generation of Diversity*, 61 J. SOC. ISSUES at 603. Students educated in diverse environments are thus better prepared to be both citizens and leaders. Cf. *Grutter*, 539 U.S. at 324; *Bakke*, 448 U.S. at 313. And that is good for everyone—those who come from historically underrepresented communities, and those who do not.

3. *Diversity in education enhances the nation's economic well-being.*

Businesses, too, recognize that workers and managers are most effective when they can interact effectively with individuals of varied backgrounds. “The ability to adapt to different perspectives and cultures has gone from being a luxury among cosmopolitan sophisticates to an absolute necessity for success in an increasingly diverse and global

workplace.” Uma M. Jayakumar, *Can Higher Education Meet the Needs of an Increasingly Diverse and Global Society? Campus Diversity and Cross-Cultural Workforce Competencies*, 78 HARV. EDUC. REV. 615, 636 (2008), available at <http://tinyurl.com/cqm6x25>.

Because many students come from communities and high schools where they had little if any contact with people from different cultural or racial backgrounds, a university education is often their first experience interacting with diverse peers. It is at college that they can begin to develop the skills needed to understand the different perspectives of individuals of different backgrounds—an understanding that is essential to economic competitiveness. Indeed, businesses report that “college graduates lack ‘cross-functional skills,’ which include leadership, teamwork, problem solving, analytical thinking, and global consciousness”—skills that “can only be acquired through greater access to diverse peers.” *Id.* at 617. Diversity in higher education teaches all students to communicate and work more effectively with customers, clients, and colleagues from a broad range of backgrounds.

In addition, the nation’s largest businesses seek leaders “with backgrounds that represent and reflect the variety of markets in which they compete.” Brief Amicus Curiae of Equal Employment Advisory Council in Support of Neither Party at 3, *Fisher v. Univ. of Tex. at Austin*, No. 11-345 (U.S. May 29, 2012). That is because innovation comes “from encouraging true diversity of styles and ideas while leveraging multiple talents.” Brief of BP America Inc. as Amicus Curiae in Support of Neither Party at 2, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (No. 02-

241), 2003 WL 1339512; see also Toyah Miller & Maria del Carmen Triana, *Demographic Diversity in the Boardroom: Mediators of the Board Diversity–Firm Performance Relationship*, J. MGMT. STUD. 755, 755 (2009), available at <http://tinyurl.com/d9nzh6j> (“In a sample of *Fortune 500* firms, we find a positive relationship between board racial diversity and both firm reputation and innovation. * * * In addition, we find a positive relationship between board gender diversity and innovation.”). At the end of the day, workforce diversity produces concrete financial benefits: The Federal Glass Ceiling Commission reported in 1995 that businesses committed to diversity in their hiring and promotion practices post higher average annual returns. Federal Glass Ceiling Commission, GOOD FOR BUSINESS: MAKING FULL USE OF THE NATION’S HUMAN CAPITAL 14-15 (1995).⁴

A diverse educational environment creates significant professional opportunities for minorities, including women of color, while at the same time helping all students negotiate more effectively the complexities of the modern workplace and the modern marketplace—skills that are essential to the prosperity of all Americans, regardless of race. Jayakumar, 78 HARV. EDUC. REV. at 632.

⁴ See also National Women’s Law Center, *Affirmative Action and What it Means for Women* (July 1, 2000), available at <http://tinyurl.com/cv9u27m> (describing businesses’ favorable views toward affirmative action).

**B. The Persistent Effects Of Stereotypes
Impoverish Our Educational, Political,
And Social Institutions.**

The history of race discrimination in this country is also the history of sex discrimination—stereotypes based on race have been intertwined with stereotypes based on gender. And the deeply rooted limitations on educational and career opportunities imposed by these discredited assumptions about individuals' talents, capacities, and preferences continue to affect students' life choices today. See, *e.g.*, *Roberts v. U.S. Jaycees*, 468 U.S. 609, 625 (1984) (“[A]rchaic and overbroad assumptions about the relative needs and capacities of the sexes force[] individuals to labor under stereotypical notions that often bear no relationship to their actual abilities,” thus “depriv[ing] persons of their individual dignity and den[ying] society the benefits of wide participation in political, economic, and cultural life.”).

These burdens fall especially heavily on women of color, who have been doubly excluded from access to education and from opportunities to pursue careers in business and government. But the harms resulting from this exclusion have not been theirs alone: By depriving society of the benefits of the widest diversity of views, perspectives, cultures, and values, the stereotyping that has led to the exclusion of women of color has impoverished our educational, political, and civic institutions as well as our workplaces.

1. *The histories of race- and sex-stereotyping in higher education are closely intertwined.*

Traditionally, women and racial minorities were educated, if at all, only in segregated colleges and universities that reinforced stereotypical generalizations about their talents, capacities, and preferences. As a result, women of color were excluded from a wide range of educational and career opportunities.

For much of our history, the formal exclusion of minorities and women from the nation's colleges and universities was commonplace. See, *e.g.*, *Virginia*, 518 U.S. at 537-538; *Sweatt v. Painter*, 339 U.S. 629 (1950); *McLaurin v. Okla. State Regents*, 339 U.S. 637 (1950); see also, *e.g.*, Note, *The Constitutionality of Sex Separation in School Desegregation Plans*, 37 U. CHI. L. REV. 296, 312-313 (1970) (exclusion of women from educational opportunities was based on assumptions about their "inferior intelligence, scarcity of geniuses, * * * and emotionalism"); Jill E. Hasday, *The Principle and Practice of Women's 'Full Citizenship': A Case Study of Sex-Segregated Public Education*, 101 MICH. L. REV. 755, 785 (2002) (combined effects of race- and sex-based segregation have denied "full citizenship stature" to women of color) (quoting *Virginia*, 518 U.S. at 532).

Historically, schools for white males trained students for the learned professions—the clergy, the law, and the like. Schools for white females emphasized chastity, fertility, homemaking, and being "ladylike." And the rare schools for black females emphasized hard work and domestic service. Verna L. Williams, *Reform or Retrenchment? Single-Sex Education and*

the Construction of Race and Gender, 2004 WIS. L. REV. 15, 47, 56.

For example, the Mississippi Industrial Institute and College for the Education of White Girls was founded to serve “white ladies” exclusively, and trained its students to be teachers and secretaries. *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 719-720 (1982); Hasday, 101 MICH. L. REV. at 785. The lone postsecondary institution in Mississippi that was open to blacks, Alcorn Agricultural and Mechanical College, was a coeducational school that trained students to be farmers. Hasday, 101 MICH. L. REV. at 787 & n.135. Virginia also provided separate universities for white men and for white women, while the only school for black men and women was the coeducational Virginia State College for Negroes. *Id.* at 785 n.128. And many other states, including Alabama, Delaware, Florida, Georgia, New Jersey, North Carolina, Oklahoma, South Carolina, and Texas established Industrial Institutes for white women, much like the one in Mississippi. *Id.* at 782-783.

Although this Court invalidated formal segregation on the basis of race in public colleges and universities more than half a century ago (see *Sweatt, supra*; *McLaurin, supra*), official sex segregation was preserved in some flagship state universities until at least the 1970s. For instance, the University of Virginia excluded women entirely until 1970, in the belief that if they were permitted to attend, “there would be new problems of government, perhaps scandals; the old honor system would have to be changed; standards would be lowered to those of other coeducational schools; and the glorious reputation of the university, as a school for men,

would be trailed in the dust.” *Virginia*, 518 U.S. at 537-538 (internal quotation marks omitted); see also Cynthia F. Epstein, *The Myths and Justifications of Sex Segregation in Higher Education: VMI and The Citadel*, 4 DUKE J. GENDER L. & POL’Y 101, 102 n.11 (1997).

And the different treatment of white women and black women, though injurious to both, inflicted particularly harsh dignitary harms on the latter. Segregating white women into institutions that sheltered them and prepared them for marriage was undeniably limiting, but it was understood as reflecting a judgment that they deserved a degree of respect, at least in arenas considered domestic, such as courtship, home-life, child-rearing, and morality—thus preserving their dignity as “ladies.” *Hasday*, 101 MICH. L. REV. at 786 & n.130; see *Williams v. McNair*, 316 F. Supp. 134, 136 n.3 (D.S.C. 1970) (observing that women’s education focused on “designing, engraving, sewing, dressmaking, millinery, art, needlework, cooking, housekeeping and other such industrial arts as may be suitable to their sex”) (quoting S.C. Code § 408, tit. 22 (1962)), *aff’d*, 401 U.S. 951 (1971); see also *Hogan*, 458 U.S. at 729 (university’s “policy of excluding males from admission to the School of Nursing tends to perpetuate the stereotyped view of nursing as an exclusively woman’s job”); *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973) (plurality opinion) (“[D]iscrimination was rationalized by an attitude of ‘romantic paternalism’ which, in practical effect, put women, not on a pedestal, but in a cage.”).

Women of color were not afforded even that limited regard, thus conveying the message that they “did not need or deserve to be treated like

ladies, * * * they were not entitled to even the modicum of respect otherwise associated with their sex.” Hasday, 101 MICH. L. REV. at 787. Women of color were excluded from any educational institutions through which “the social capital most associated with social and political success was distributed.” *Ibid.*

2. *These stereotypes still bear heavily on the perceptions and self-perceptions of women of color.*

Although this Court has made significant strides toward abolishing the laws that divided Americans on the basis of race and sex (*e.g.*, *Virginia*, 518 U.S. 515; *Hogan*, 458 U.S. at 730; *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954)), stereotypes continue to influence our society—not the least in the expectations communicated to individuals, and therefore in the educational and career choices that they, themselves make. *E.g.*, *Nevada Dep’t of Human Res. v. Hibbs*, 538 U.S. 721, 730 (2003) (“stereotype-based beliefs about the allocation of family duties remain[] firmly rooted”); *Associated Gen. Contractors of Cal., Inc. v. City & Cnty. of S.F.*, 813 F.2d 922, 939-940 (9th Cir. 1987) (“[M]any of the disadvantages women have suffered result from stereotypes concerning their proper roles and abilities. Only recently have women begun to assume their rightful place in business and the professions.”).

Empirical studies show that although women are generally perceived favorably on college campuses today, these favorable attitudes often remain rooted not in individual abilities but in assumptions about women’s nurturing and communal qualities—assumptions that continue to support expectations that women are best suited only for “domestic role[s]

as well as for low-status, low-paying female-dominated jobs.” Alice H. Eagly & Antonio Mladinic, *Are People Prejudiced Against Women? Some Answers From Research on Attitudes, Gender Stereotypes, and Judgments of Competence*, 5 EUR. REV. SOC. PSYCHOL. 1, 1-2 (1994) (studying attitudes among U.S. and Canadian university students).⁵

Women are still perceived as inferior to men in terms of leadership qualities, such as assertiveness, competitiveness, independence, and courageousness, that are traditionally regarded as necessary for managing subordinates effectively. As a result, women continue to be viewed as less fit for paid employment generally, and for management and high-status positions in particular.⁶

⁵ See also, *e.g.*, Nilanjana Dasgupta, *Implicit Ingroup Favoritism, Outgroup Favoritism, and Their Behavioral Manifestations*, 17 SOC. J. RES. 143, 149 (2004) (both men and women “implicitly favor male leaders over female leaders” and “spontaneously associate women with communal traits like ‘sensitive’”).

⁶ Eagly & Mladinic, 5 EUR. REV. SOC. PSYCHOL. at 25-26; see also, *e.g.*, Dasgupta, 17 SOC. J. RES. at 156 (describing study finding that people who held strong implicit gender stereotypes associating women with “communal” traits (*e.g.*, helpful) and men with “agentive” traits (*e.g.*, ambitious) were more likely to evaluate female candidates for leadership jobs as having poor social skills while evaluating similar male candidates positively). These differences in perception extend to other areas as well. See, *e.g.*, Catherine Hill et al., *WHY SO FEW? WOMEN IN SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS* 74, 76 (2010) (“[E]ven individuals who consciously refute gender and science stereotypes can still hold th[e] belief at an unconscious level” that women are not as good at math and science as men are. “[M]ore than 70 percent of [respondents] more readily associate ‘male’ with science and ‘female’ with arts.”).

This unconscious stereotyping not only informs the perceptions of women’s aptitudes held by others, but—just as important—it affects how individuals themselves behave and how they perform. Those who have been treated as inferior or unsuited to particular fields of study or to positions of status and responsibility often internalize the beliefs, and as a result may severely limit their own ability to succeed, even in the absence of external constraints.⁷ Stereo-

⁷ See, e.g., Hill, WHY SO FEW?, at 77 (“Stereotypes linking science with male may create gender differences in performance among students, and those gender differences in performance may reinforce the stereotypes linking science with male.”); Brian A. Nosek et al., *National Differences in Gender–Science Stereotypes Predict National Sex Differences in Science and Math Achievement*, 106 PROC. NAT’L ACAD. SCI. 10,593, 10,596–10,597 (2009) (multinational study finding direct correlation between strength of stereotypical association of science with men and degree to which eighth-grade boys outperformed eighth-grade girls in science); Dasgupta, 17 SOC. J. RES. at 161 (describing study finding that black students’ “implicit racial attitudes” were associated with “self-handicapping” in academic-testing situations); Patricia M. Gonzales et al., *The Effects of Stereotype Threat and Double-Minority Status on the Test Performance of Latino Women*, 28 PERSONALITY & SOC. PSYCHOL. BULL. 659, 660, 666–669 (2002) (stereotypes about subservience impair academic performance); Brian A. Nosek et al., *Harvesting Implicit Group Attitudes and Beliefs from a Demonstration Web Site*, 6 GROUP DYNAMICS: THEORY, RES. & PRAC. 101, 108 (2002) (survey of more than 60,000 respondents yielded “robust associations,” both implicit and explicit, “of male with science and female with liberal arts”); Brian A. Nosek et al., *Math = Male, Me = Female, Therefore Math ≠ Me*, 83 J. PERSONALITY & SOC. PSYCHOL. 44, 52, 57 (2002) (finding that the more strongly that women believe in stereotype associating math with men, “the weaker was their liking for math, the lower was their identification with math, and the worse was their performance on math SATs”); Steven J. Spencer et al.,

types about the “reproductive and domestic” roles of Latinas, for example, continue to include pervasive beliefs “that they are inferior to men.” Berta Esperanza Hernandez-Truyol, *Las Olvidadas—Gendered in Justice/Gendered Injustice: Latinas, Fronteras and the Law*, 1 J. GENDER RACE & JUST. 353, 376 (1998).

What is more, implicit and often unconscious bias particularly disadvantages women of color. Studies show that individuals who intend to be evenhanded and believe themselves to be unbiased nonetheless will often unconsciously assign unfavorable traits to members of these groups, and will find superficially neutral reasons to treat them as objectively less qualified than their competitors.⁸

And even when stereotypes on the basis of race and sex begin to break down, women of color often do not benefit from these positive social changes. “[T]he narratives of gender are based on the experience of white, middle-class women, and the narratives of race are based on the experience of Black men.”

Stereotype Threat and Women’s Math Performance, 35 J. EXPERIMENTAL SOC. PSYCHOL. 4, 6-8, 21-26 (1999).

⁸ Eva Patterson et al., *The Id, the Ego, and Equal Protection in the 21st Century: Building Upon Charles Lawrence’s Vision to Mount a Contemporary Challenge to the Intent Doctrine*, 40 CONN. L. REV. 1175, 1186-1187 (2008); see, e.g., Dasgupta, 17 SOC. J. RES. at 156 (“implicit stereotypic beliefs * * * influence important judgments such as people’s impressions of others [and] decisions about who should be hired for a job”) (emphasis and citation omitted); Denise Sekaquaptewa et al., *Stereotypic Explanatory Bias: Implicit Stereotyping as a Predictor of Discrimination*, 39 J. EXP. SOC. PSYCHOL. 75 (2003) (finding that white men who exhibited implicit racial bias were more likely to ask racially stereotypic interview questions to black women than to white job candidates during simulated job interviews).

Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1298 (1991).

Thus, women of color have the unique experience of falling into two stereotyped groups but not fitting the paradigm for empowerment of either. Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 140 (“Black women are sometimes excluded from feminist theory and antiracist policy discourse because both are predicated on a discrete set of experiences that often does not reflect the interaction of race and gender.”).

3. *These stereotypical views continue to affect the fields of study selected by women of color.*

Despite real progress in opening the doors of our nation’s great universities to women and minorities, statistical diversity in the aggregate often does not translate into real diversity in classrooms, majors, and degree programs. That is because the persistent effects of stereotyping—on minorities and women themselves, as well as on society at large—result in members of these groups being clustered in “traditional” fields.

According to the U.S. Department of Education’s National Center for Education Statistics, women make up more than half of all students earning bachelor’s degrees. See NCES, Table 301: Bachelor’s degrees conferred by degree-granting institutions, by sex, race/ethnicity, and field of study: 2009-10, available at <http://tinyurl.com/9uhhl4>.

While white women thus attend college in large numbers, they are disproportionately concentrated in fields that correspond to the social roles once formally assigned to them. For example, women receive 77% of the bachelor's degrees in psychology, 79.5% in education, 82% in public administration and social-services fields, and 85% in health professions and related programs. *Ibid.* By contrast, they receive only 18.2% of the bachelor's degrees in engineering, 18.1% in computer science, and 10.1% in other engineering-related fields. *Ibid.*

The effect is more pronounced for minority women, in part because they make up such a small proportion of college students overall. Black women earned only 6.5% of bachelor's degrees in 2010, and Hispanic women only 5.1%. Black women accounted for just 3.7% of computer-science majors and 0.4% of engineering majors. *Ibid.* And Hispanic women were only 1.5% of the computer-science majors and 1.4% of the engineering majors.

The result of these skewed selections of programs of study is that the real, day-to-day experience for many students, as they attend classes, form study groups, and participate in special projects, can be a largely homogeneous cohort—even if there is statistical diversity on campus when the student body is considered as a whole. Thus, for example, in a field—such as engineering or computer science—that has traditionally been made up of white men, a student may receive few, if any, of the educational benefits of diversity. And the university's goal to afford those benefits to all students may go unrealized.

Homogeneity in undergraduate classes and majors also leads to homogeneity in graduate and professional programs, thus denying to students the

benefits of a diverse group of colleagues just at the point when that educational environment might do the most to prepare them for their future careers.⁹ Because, for example, engineering and computer-science courses and majors are overwhelmingly populated by white men, the pools of qualified candidates for graduate degrees in those fields are similarly narrow: In 2010, black women earned just 3% of the master's degrees in computer science; Hispanic women, 0.8%. And each group received only 0.9% of the master's degrees in engineering. NCES, Table 304: Master's degrees conferred by degree granting institutions, by sex, race/ethnicity, and fields of study: 2009-10, available at <http://tinyurl.com/bmhbj7>. The effect is even more extreme for doctoral degrees: In 2010, just 55 black women and 70 Hispanic women earned doctoral degrees in engineering, and 17 black women and 8 Hispanic women earned doctoral degrees in computer science, nationwide. *Ibid.*

The story in professional schools is similar: Black women received only 4.6% of the medical degrees; Hispanic women, 2.5%. Black women received 4.4% of the law degrees; Hispanic women, 3.6%. Black women receive 3.2% of the dentistry degrees; Hispanic women 3.1%. NCES, Table 309: Degrees conferred by degree-granting institutions in selected professional fields, by sex, race/ethnicity, and field of

⁹ See, e.g., Lisa Dickson, *Major Choices: Race and Gender Differences in College Major Choice*, 627 ANNALS AM. ACAD. POL. & SOC. SCI. 108, 108 (2010) (“Studies have documented the relatively low representation of women, blacks, and Hispanics with degrees in the sciences and engineering * * * [which] affects occupational choice, earnings, and the probability of pursuing advanced degrees.”).

study: 2009-10, available at <http://tinyurl.com/c82wksb>.

What is true in higher education inevitably affects the composition of the skilled workforce. Men still make up a majority of doctors, architects, engineers, and politicians—professions that were long formally closed to women of color, who were unable to get the education or training needed to pursue a career in those fields. Even today, less than 5.3% of the physicians and surgeons in this country are black women; less than 6.6% are Hispanic women. Among lawyers, less than 5.3% are black women; less than 3.2% are Hispanic women. And among architects, less than 1.6% are black women and less than 3.2% are Hispanic women. Bureau of Labor Statistics, Table 11: Employed persons by detailed occupation, sex, race, and Hispanic or Latino ethnicity [2011], available at <http://www.bls.gov/cps/tables.htm>.

In addition to obstructing universities' efforts to promote a diverse educational environment, the persistent effects of these discredited stereotypes have a continuing effect on the effectiveness of the nation's workforce. Even though the nation's largest businesses and the federal government have long sought to hire individuals with actual experience in dealing with individuals of diverse backgrounds, as well as to increase the diversity of their own workforce, their recruitment of skilled workers and managers is often limited by the continuing homogeneity of the majors and degree programs from which they recruit. See, *e.g.*, Brief of BP America Inc. as Amicus Curiae in Support of Neither Party, *supra*, at 4 ("it is difficult to ignore that historically fewer women and persons of color have pursued careers in the technical sciences"); Brief of ExxonMobil Corp. as

Amicus Curiae in Support of Neither Party at 6, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (No. 02-241), 2003 WL 554411 (“ExxonMobil and other companies * * * draw their human resources largely from scientific, engineering, and technical fields. Minorities and women have historically been underrepresented in those areas, and invalidating all efforts directed toward increasing enrollment by minorities would exacerbate that concern.”).

As for leadership positions in business and industry, black and Hispanic women each hold only 1.9% of the director positions on the boards of U.S. Fortune 500 companies. See Alliance for Board Diversity, *MISSING PIECES: WOMEN AND MINORITIES ON FORTUNE 500 BOARDS* 5 (2010). Black women hold less than 2.7% of the chief-executive positions; Hispanic women less than 4.1% Bureau of Labor Statistics, Table 11, *supra*.

Women of color remain concentrated for the most part in lower-status occupations and sectors of the economy. For example, over half of all black women in the workforce fall into one of three fields: health services, such as nursing or home care; education; and wholesale and retail trade. Bureau of Labor Statistics, Table 15: Employed women by industry, race, and Hispanic or Latino ethnicity, 2009 annual averages, available at <http://www.bls.gov/cps/wlf-databook-2010.pdf>.

C. Assessing Diversity On The Program Level—And Not Simply By University-Wide “Raw Numbers”—Is Essential To Achieving The Benefits of Diversity.

Recognizing the significant benefits that a diverse educational environment provides to all

students, and to society at large, this Court held in *Grutter* that a university might appropriately determine that in order to secure those benefits, it should consider race as part of an individualized assessment of all facets of an applicant's background, achievements, and interests. 539 U.S. at 334.

Even when a university admits a significant number of minority students without undertaking this sort of individualized assessment—such as through the Top Ten Percent Plan—it cannot rely on school-wide statistics regarding minority enrollment alone to determine whether it will be able to provide the benefits that come from a diverse educational environment. University-wide numbers will inevitably obscure the fact that, because of the dramatic effect of stereotypes, minority applicants are often clustered in particular areas of study and specific career paths.

To create a diverse environment in fact and not simply in theory, therefore, a university must assess its student body from the perspective of students' interactions in the course of pursuing particular fields of study and other activities.

If the university reasonably concludes, based on such a program-level analysis, that it is not in fact supplying some of its students with a diverse educational environment, it may employ the individual assessments authorized in *Grutter* to remedy that deficiency.

This sort of analysis is entirely in keeping with *Grutter's* mandate of individualized, holistic review of each applicant. Individual assessments need not—and for practical purposes cannot—be undertaken with a blind eye to the demographics of the

particular part of the academic environment in which the students will function, because it would not be possible to assess how much any prospective student's experiences, interests, and viewpoints might add to a particular course of study without reference to the contributions that might be made by the others in the same program.

Nor would it be possible to serve a university's goal of breaking down stereotypes without carefully considering how any particular applicant might affect the diversity of the educational environment that students actually experience day to day. To realize the benefits of diversity, students should interact with people of other races in sufficient numbers to see that not all members of a racial group have identical interests: "stereotypes lose their force * * * because nonminority students learn there is no 'minority viewpoint' but rather a variety of viewpoints among minority students." *Grutter*, 539 U.S. at 319-320.

An approach that assesses only university-wide statistics would, by contrast, present a significant risk of reinforcing stereotypes. It is likely to produce a student body in which, for example, women of color remain disproportionately concentrated in "traditional" categories of endeavor—a result that enhances the preexisting stereotypes while denying to everyone the unique perspectives that these students might contribute to classroom discussion and academic discourse throughout the university's academic departments and disciplines.

Rather than assessing across-the-board representation of broad racial categories, therefore, a well-designed admissions program should seek to increase the likelihood that students in any given field will

actually interact in their classes with individuals possessing a wide array of experiences and perspectives that are informed by, among many other factors, the “unique experience of being a racial minority in a society, like our own, in which race unfortunately still matters.” *Grutter*, 539 U.S. at 333. A suitably individualized review, like Michigan Law School’s in *Grutter*, or the University of Texas’s here, does not rest on overbroad generalizations or presuppositions that minorities are fungible or will hold identical views based simply on their race. It considers race as well as other individual characteristics such as sex, geography, family background, and applicants’ particular aptitudes and interests, thus taking into account the full measure of what each individual might offer to the academic community in the near term, and to government, industry, and civic associations down the road.

The approach might therefore permit assigning a “plus factor” to an African-American woman who wishes to study engineering, or to a man who wishes to study nursing, regardless of the overall demographics of the campus, because admissions officers may have good reason to expect that those individuals have the potential to increase the overall diversity in their chosen fields of study and the courses in which they are likely to enroll—thus benefitting all students.

What is more, to further its compelling interest in “producing future educational, cultural, business, and sociopolitical leaders” (*Proposal to Consider Race and Ethnicity*, at 24), a state university may consider the likely composition of the citizenry that these individuals will lead—just as the military academies consider the likely population in the rank-and-file

that the officer corps will command.¹⁰ That is not to say that a university may apply a rule admitting students on the basis of race in the same proportion as the racial composition present in the population; that approach plainly violates the Constitution. *Grutter*, 539 U.S. at 334. But a State’s need for a diverse group of future leaders that bears some reasonable relationship to the composition of the State’s future population permits a state university to take race into account as a factor, among the many others in a holistic assessment of applicants for admission.

Here, the University of Texas has implemented a system of individualized review that properly recognizes the fact that students enjoy the benefits of diversity only when the diversity actually touches them in their particular programs, classes, and day-to-day academic experiences. The University considers students’ academic achievements, interests, “leadership qualities, awards and honors, work experience, and involvement in extracurricular activities and community service,” along with a host of other factors, allowing it to admit highly qualified students who will contribute to the robust exchange of ideas within the school, but who would not have been admitted under the Top Ten Percent Plan. *Fisher v. Univ. of Tex. at Austin*, 631 F.3d 213, 227-

¹⁰ It is for similar reasons that 29 retired leaders of the nation’s military advised this Court in *Grutter* that the military academies sought to enroll minorities at levels proportional to their “representation in the national population and in the national pool of college bound people, and their representation in the Army.” Consolidated Brief of Lt. Gen. Julius W. Becton et al. as Amici Curiae in Support of Respondents at 17-19, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (No. 02-241), 2003 WL 1787554.

228 (5th Cir. 2011), cert. granted, 132 S. Ct. 1536 (2012).¹¹ And by doing so with an eye to the particular course of study that each applicant intends to pursue, the University properly considers every aspect of applicants’ “talents, experiences, and potential to contribute to the learning of those around them.” *Grutter*, 539 U.S. at 315 (internal quotation marks omitted).

Because the educators at the University of Texas have developed an admissions program that serves the State’s compelling interest in diversity and is “focused on each applicant as an individual, and not simply as a member of a particular racial group,” their judgments are entitled to deference. *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist.*, 551 U.S. 701, 722-723 (2007) (citing *Grutter*, 539 U.S. at 337); see also *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 16 (1971) (school officials have “broad discretionary powers” to adopt policies that ensure diversity “in order to prepare students to live in a pluralistic society”). See generally *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 226 (1985) (“the multitude of academic decisions that are made daily by faculty members of public educational institutions * * * require ‘an expert evaluation of cumulative information and [are] not readily adapted to the

¹¹ See also Joseph Berger, *Adjusting a Formula Devised for Diversity*, N.Y. TIMES B7 (Dec. 13, 2006) (quoting University of Texas’s director of admissions as stating that admitting entire class through Top Ten Percent Plan “doesn’t give you the opportunity to recognize other kinds of merit,” and explaining that individualized review allows for admission of “high school class presidents, high SAT scorers, science fair winners, immigrant strivers, artists and the like” who would not have been admitted under Top Ten Percent Plan).

procedural tools of judicial or administrative decisionmaking.”) (quoting *Bd. of Curators of Univ. of Mo. v. Horowitz*, 435 U.S. 78, 90 (1978)). The University’s efforts to obtain the real benefits of diversity for all its students and for the State are entirely consistent with the Constitution, and should be left in place by this Court.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

APPENDIX**Descriptions Of The *Amici Curiae*****American Association of University Women**

In 1881, the American Association of University Women was founded by like-minded women who had defied society's conventions by earning college degrees. Since then, AAUW has worked to increase women's access to higher education through research, advocacy, and philanthropy of over \$90 million supporting thousands of women scholars. Today, AAUW has approximately 150,000 members and supporters, approximately 1000 branches, and more than 600 college and university partners nationwide. AAUW plays a major role in mobilizing advocates nationwide on AAUW's priority issues, and chief among them is increased access to higher education. In adherence to our member-adopted Public Policy Program, AAUW supports affirmative-action programs that establish equal opportunity for women and minorities and improve gender, racial, and ethnic diversity in educational institutions.

Association for Women in Science

In 1971, at the annual Federation of American Societies for Experimental Biology meeting, flyers were posted inviting women scientists to a champagne mixer and meeting to encourage the exchange of ideas and solutions for overcoming job discrimination, lower pay, and professional isolation. Those 27 women who took the initiative to make science a better place for women founded the Association for Women in Science, today's premiere leadership organization advocating the interests of women in science and technology. For nearly 40

years, the Association for Women in Science has fought for equity and career advancement for women—from the bench to the board room. We unite women through our nationwide network of chapters and partnerships with aligned professional organizations.

California Women’s Law Center

The California Women’s Law Center is a non-profit public-interest law center specializing in the civil rights of women and girls. Established in 1989, CWLC works in the following priority areas: Gender Discrimination, Women’s Health, Violence Against Women, and Reproductive Justice. Since its inception, CWLC has placed a strong emphasis on eradicating sex discrimination in education. The *Fisher v. University of Texas at Austin* case raises questions within CWLC’s expertise and concern. Therefore, CWLC has the requisite interest and expertise to join in the *amicus* brief in this case.

Clearinghouse on Women’s Issues

The mission of the Clearinghouse on Women’s Issues is to provide information on issues relating to women, including discrimination on the basis of gender, age, ethnicity, marital status, and sexual orientation, with particular emphasis on public policies that affect the economic, educational, health, and legal status of women, and to take action and positions compatible with our mission.

Connecticut Women’s Education and Legal Fund

The Connecticut Women’s Education and Legal Fund is a nonprofit women’s rights organization

dedicated to empowering women, girls, and their families to achieve equal opportunities in their personal and professional lives. For the past 38 years, CWEALF has provided legal information and conducted public policy and advocacy to ensure that all students have equal access to educational programs. CWEALF supports affirmative-action programs that result in equal opportunities for both women and minorities, and that encourage diversity in educational institutions, workplaces, and communities.

Equal Rights Advocates

Equal Rights Advocates is a national civil-rights advocacy organization dedicated to protecting and securing equal rights and economic opportunities for women and girls. Since its inception in 1974 as a teaching law firm focused on sex-based discrimination, ERA litigates high-impact cases, engages in policy and legislative work, performs education and outreach, and gives advice and counseling to individuals who have experienced discrimination in education, employment, and other spheres. ERA has filed hundreds of suits and appeared as *amicus curiae* in numerous cases to enforce civil rights in state and federal courts, including before the United States Supreme Court. ERA is committed to ensuring equal access for all, including racial minorities, to education, employment, and the political process through enforcement of the Equal Protection Clause of the United States Constitution and other state and federal laws.

Feminist Majority Foundation

The Feminist Majority Foundation, a 501(c)(3) nonprofit organization founded in 1987, is dedicated to the pursuit of women's equality, using research and action to empower women economically, socially, and politically. FMF actively supports diversity in public education, including at the university level, which helps to reduce stereotypes and enriches the educational experience for all students.

Legal Momentum

Legal Momentum, the Women's Legal Defense and Education Fund, is a leading national nonprofit civil-rights organization that has used the power of the law to define and defend women's rights for over forty years. It has participated as counsel and as *amicus curiae* in numerous cases in support of affirmative action. Legal Momentum is interested in these cases because of the positive impact affirmative-action programs have in promoting equality and eliminating barriers for women, particularly for women of color, and for racial minorities.

National Alliance for Partnerships in Equity

The National Alliance for Partnerships in Equity is a consortium of state and local agencies, corporations, and national organizations committed to the advancement of equity and diversity in classrooms and workplaces. Through its four lines of business—professional development, technical assistance, research and evaluation, and advocacy—NAPE strives to achieve its vision and mission by pursuing certain goals and objectives.

National Association of Social Workers

The National Association of Social Workers is the largest professional membership organization of social workers in the world, with nearly 145,000 social workers and 56 chapters. With the purpose of developing and disseminating high standards of practice while strengthening and unifying the social-work profession as a whole, NASW promulgates professional standards and criteria, conducts research, publishes studies of interest to the profession, provides continuing education, and enforces the NASW Code of Ethics. Recognizing that racism is pervasive in American society and that it remains a silent code that systematically closes the door of opportunity for many individuals, NASW supports affirmative action for groups that have historically been or are currently oppressed, underserved, and underrepresented, including people of color; people with disabilities; people who are gay, lesbian, bisexual or transgendered; women; older people; and people who are disadvantaged or oppressed because of life circumstances.

National Association of Women Lawyers

The National Association of Women Lawyers is the oldest women's bar association in the country, founded in 1899. Today, it is a national voluntary organization with members in all 50 states, devoted to the interests of women lawyers, as well as all women. Through its members, committees, and the Women Lawyers Journal, it provides a collective voice in the bar, courts, Congress, and workplace. We stand committed to ensuring equal educational opportunity for all women, including women of color, and support the ability of educational institutions to

use gender- and race-conscious measures to increase diversity and overcome discrimination.

National Center for Lesbian Rights

The National Center for Lesbian Rights is a national nonprofit legal organization dedicated to protecting and advancing the civil rights of lesbian, gay, bisexual, and transgender people and their families through litigation, public-policy advocacy, and public education. Since its founding in 1977, NCLR has played a leading role in securing fair and equal treatment for LGBT people and their families in cases across the country involving constitutional and civil rights. As an organization committed to challenging the complex forms of systemic discrimination that lie at the intersection of race and gender, we are especially interested in this case because race-conscious admissions are critical tools for providing opportunities for women and girls of color. Moreover, we are committed to ensuring that all youth have equal access to quality education, and racial diversity is an important part of providing a fulfilling and enriching educational environment.

National Council of Women's Organizations

The National Council of Women's Organizations is a nonprofit, nonpartisan coalition of more than 240 prominent women's groups that advocates for the 12 million women they represent. While these groups are diverse and their membership varied, all work for equal participation in the economic, social, and political life of their country and the world. The Council addresses critical issues that affect women and their families: from workplace and economic equity to international development; from affirma-

tive action and Social Security to the women's vote; from the portrayal of women in the media to enhancing girls' self-image; and from Title IX and other educational rights to affordable access to health care. A focus since the Council's founding has been working for access for women of color to quality education, employment, and healthcare. The Council strongly supports the rights of educational institutions to use race- and gender-conscious measures to increase diversity and overcome discrimination.

National Organization for Women Foundation

The National Organization for Women Foundation is a 501(c)(3) organization devoted to furthering women's rights through education and litigation. Created in 1986, NOW Foundation is affiliated with the National Organization for Women, the largest feminist organization in the United States, with hundreds of thousands of contributing members in hundreds of chapters in all 50 states and the District of Columbia. Since its inception, NOW Foundation's goals have been to achieve equal rights for all women and to assure that women and girls have equal access to all aspects of education, including equal access for women of color to a postsecondary education.

National Partnership for Women and Families

The National Partnership for Women & Families, a nonprofit, national advocacy organization founded in 1971 as the Women's Legal Defense Fund, promotes equal opportunity for women, access to quality health care, and policies that help women and men meet both work and family responsibilities. The National Partnership has devoted significant resources

to combating sex and race discrimination in education and employment.

National Women's Law Center

The National Women's Law Center is a nonprofit legal organization that is dedicated to the advancement and protection of women's legal rights and the expansion of women's opportunities. Since 1972, the Center has worked to secure equal opportunity in education for girls and women through full enforcement of the Constitution and laws prohibiting discrimination. The Center has participated in numerous cases involving sex discrimination before this Court and the federal courts of appeals.

9to5, National Association of Working Women

9to5, National Association of Working Women is a multi-racial national membership organization of women in low-wage jobs working to achieve economic justice and end discrimination. 9to5's members and constituents are directly affected by sex and other forms of discrimination. Our 39-year-old organization has a long-standing commitment to and history of working to promote equal opportunity in employment, education, and business. The issues in this case are directly related to 9to5's work to end discrimination, promote equal opportunity, and strengthen women's ability to achieve economic security. The outcome of this case will directly affect our members' and constituents' access to equal opportunity, as well as their long-term economic well-being and that of their families.

Sargent Shriver National Center on Poverty Law

The Sargent Shriver National Center on Poverty Law provides national leadership to promote justice and improve the lives and opportunities of people with low income. The Shriver Center is particularly interested in justice for racial and ethnic minorities who disproportionately make up those living in poverty, including minority women. Education is key to economic security and advancement. Policies and practices that encourage diversity and help minorities overcome discrimination are essential for their immediate and long-term educational and employment opportunities. Racial diversity benefits all students and helps break down both racial and gender stereotypes. The Shriver Center has a strong interest in the continuation of policies and practices like those of the University of Texas at Austin that promote race- and gender-conscious admissions, which are important to opening pathways to opportunity for minorities and women.

Society of Women Engineers

Since its inception in 1950, the Society of Women Engineers has been the driving force that establishes engineering as a highly desirable career aspiration for women. SWE strongly believes that the United States has an untapped pool of potential technical workers, and we must leverage the diversity of these individuals to fuel the innovation necessary for our future global competitiveness. SWE's mission is to stimulate women to achieve full potential in careers as engineers and leaders, expand the image of the engineering profession as a positive force in improving the quality of life, and demonstrate the value of diversity.

Southwest Women’s Law Center

The Southwest Women’s Law Center is a legal and policy advocacy nonprofit organization that seeks to create the systemic changes that are needed to improve the lives of girls and women of color in our communities, states, and throughout our country. We harness the power of law, research, and creative collaborations to create greater opportunities for women and girls by helping them to fulfill their personal and economic potential. The Southwest Women’s Law Center supports racial diversity that will benefit and advance the opportunities of women of color in the field of education and beyond. The race-conscious admissions policy employed by the University of Texas at Austin is important to opening pathways to opportunity for women of color in ways that the Top Ten Percent Plan alone does not provide. We believe that the Top Ten Percent Plan, combined with an additional race-conscious policy, work together and are narrowly tailored to achieve the educational benefits of diversity in the classroom and the broader community.

Washington Council of Lawyers

The Washington Council of Lawyers is a non-profit organization of lawyers and legal workers committed to the spirit and practice of law in the public interest. Founded in 1971, the Washington Council of Lawyers is the Washington, DC, area’s only voluntary bar association dedicated exclusively to promoting pro bono and public-interest law. Council members represent every sector of the Washington legal community—lawyers and pro bono coordinators from large and small law firms and law schools; lawyers from public-interest groups,

government agencies, and congressional offices; as well as law students and members of law-related professions. We share a common concern for the well-being of our community and the integrity of our civil and constitutional rights.

Women Employed

Women Employed's mission is to improve the economic status of women and remove barriers to economic equity. Women Employed promotes fair employment practices, helps increase access to training and education, and provides women with information and tools to plan their careers. Since 1973, the organization has assisted thousands of working women with problems of discrimination, monitored the performance of equal-opportunity enforcement agencies, and developed specific, detailed proposals for improving enforcement efforts, particularly on the systemic level. Women Employed strongly supports the ability of educational institutions to use race- and gender-conscious measures to increase diversity and overcome discrimination.

Women's Law Center of Maryland

The Women's Law Center of Maryland, Inc., is a nonprofit membership organization established in 1971 with a mission of improving and protecting the legal rights of women, particularly regarding gender discrimination in the workplace and in family-law issues. The Women's Law Center operates an Employment Law Hotline to provide workers with information about their legal rights regarding issues that particularly affect women, such as pregnancy discrimination and family leave. Through direct services and advocacy, the Women's Law Center seeks to

protect women's legal rights and ensure equal access to resources and remedies under the law.

Women's Law Project

The Women's Law Project is a nonprofit public-interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. Founded in 1974, the WLP works to abolish discrimination and injustice and to advance the legal and economic status of women and their families through litigation, public-policy development, public education, and individual counseling. Throughout its history, the WLP has worked to eliminate sex discrimination, bringing and supporting litigation challenging discriminatory practices prohibited by federal civil-rights laws. The WLP has a strong interest in the proper application of the law to ensure equal treatment in education.