

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 APPALACHIAN STATE
UNIVERSITY AND 35 FELLOW COLLEGES
AND UNIVERSITIES AS AMICUS CURIAE
IN SUPPORT OF RESPONDENTS**

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[INDIVIDUAL AMICI LISTED ON INSIDE COVER]

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BELMONT UNIVERSITY,
BRANDEIS UNIVERSITY,
CENTRAL STATE UNIVERSITY,
DRAKE UNIVERSITY,
DREXEL UNIVERSITY,
GETTYSBURG COLLEGE,
LOS RIOS COMMUNITY COLLEGE DISTRICT,
LOYOLA UNIVERSITY MARYLAND,
LOYOLA UNIVERSITY NEW ORLEANS,
MIAMI DADE COLLEGE,
NEW YORK UNIVERSITY,
NORTHEASTERN UNIVERSITY,
PEPPERDINE UNIVERSITY,
RHODE ISLAND SCHOOL OF DESIGN,
ROCKHURST UNIVERSITY,
SOUTHERN METHODIST UNIVERSITY,
ST. LOUIS UNIVERSITY,
SYRACUSE UNIVERSITY,
TEMPLE UNIVERSITY,
TEXAS SOUTHERN UNIVERSITY,
UNIVERSITY OF CENTRAL FLORIDA,
UNIVERSITY OF COLORADO BOULDER,
UNIVERSITY OF CONNECTICUT,
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UNIVERSITY OF MASSACHUSETTS,
UNIVERSITY OF MIAMI,
UNIVERSITY OF SAN DIEGO,
UNIVERSITY OF SCRANTON,
UNIVERSITY OF TEXAS AT EL PASO,
UNIVERSITY OF WISCONSIN OSHKOSH,
UNIVERSITY OF WISCONSIN SYSTEM,
WASHINGTON & JEFFERSON COLLEGE,
WASHINGTON STATE UNIVERSITY,
WAYNE STATE UNIVERSITY

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STATEMENT OF INTEREST

Amici are a collection of diverse institutions of higher learning—large and small, public and private, sectarian and secular, and some historically black colleges and universities.¹ Amici urge this Court to reaffirm the principles embodied in *Grutter v. Bollinger*, 539 U.S. 306 (2003). *Grutter* holds that student diversity on college and university campuses is a compelling state interest and that consideration of race, as one of many factors in an admissions process that considers applicants in an individualized and holistic way, is a narrowly tailored means to further that compelling interest. The amici who respectfully submit this brief in support of Respondents are: Appalachian State University, Belmont University, Brandeis University, Central State University, Drake University, Drexel University, Gettysburg College, Los Rios Community College District, Loyola University Maryland, Loyola University New Orleans, Miami Dade College, New York University, Northeastern University, Pepperdine University, Rhode Island School of Design, Rockhurst University, Southern Methodist University, St. Louis University, Syracuse University, Temple University, Texas Southern University, University of Central Florida, University of Colorado Boulder, University of Connecticut, University of Detroit Mercy, University of Houston, University of Massachusetts, University of Miami,

¹ This brief is submitted pursuant to the parties' blanket consent. Pursuant to Rule 37.6, Amici state that no party or their counsel authored, or paid for, this brief in whole or in part.

University of San Diego, University of Scranton, University of Texas at El Paso, University of Wisconsin Oshkosh, University of Wisconsin System, Washington & Jefferson College, Washington State University, and Wayne State University.

As the individual statements of interest in the Appendix show, Amici differ in their educational missions, philosophies and constituencies. Despite these differences, Amici uniformly are committed to the pursuit of excellence in education, and uniformly believe that meaningful diversity among their students—including racial diversity—is essential to their unique educational missions.

Accordingly, Amici share Respondents' view that "overruling *Grutter* and *Bakke* (or effectively gutting them by adopting Petitioner's conception of strict scrutiny) would jeopardize the Nation's paramount interest in educating its future leaders in an environment that best prepares them for the society and workforce they will encounter." Resp. Br. at 3.

At the heart of *Grutter* is this Court's acknowledgement that diversity on campuses—as reflected by a critical mass of minority students—is a compelling state interest that justifies consideration of race in admissions decisions, and that colleges and universities should be afforded some measure of deference in determining what constitutes a "critical mass" of diverse students on their campuses. There is no reason to depart from those principles.

Amici do not suggest that every institution of higher education must consider race in its admissions process or consider it in the exact same way. Indeed, Amici themselves represent a broad range of approaches to admissions—including highly

selective application processes and “open door” policies. Amici do suggest, however, that meaningful diversity cannot be achieved unless colleges and universities continue to have the latitude to consider race as one among many factors in an individualized student selection process.

Since its founding, this Nation has respected, protected, and fostered academic freedom. This key First Amendment value, in turn, requires that academic institutions have the leeway to determine, given each one’s particular circumstances, what constitutes a critical mass of diverse students, whether that critical mass has been achieved, and the best way (within constitutional limits) to achieve that critical mass. Reaffirming the principles embodied in *Grutter* will continue to serve the good of students on college and university campuses, the academic institutions themselves, and our Nation.

Accordingly, Amici respectfully urge the Court to reaffirm the principle established in *Grutter* that some consideration of race, as one of many factors in the selection of students for admission to a college or university, comports with the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq.

SUMMARY OF ARGUMENT

This Court's decision in *Grutter* was based on long-standing principles of profound importance. Those principles remain true today. Thus, this Court should reaffirm that:

- diversity among students is vitally important to the educational process, indeed rising to the level of a compelling state interest;
- as part and parcel of the bedrock concept of academic freedom, courts should give due consideration to colleges and universities' experience and judgment regarding the best composition of their own student bodies and how to achieve that composition;
- diversity is not one-size-fits-all and thus institutions of higher learning should have latitude to take diversity into account in admissions in ways that further their particular educational emphases and missions; and
- consideration of race as one factor in a holistic admissions process is a narrowly tailored means to achieve diversity on college and university campuses and thus passes constitutional muster.

ARGUMENT**I. This Court Should Reaffirm *Grutter's* Holding That Diversity In Higher Education, Including Racial Diversity, Serves State Compelling Interests**

This Court acknowledged more than thirty years ago that diversity in higher education serves compelling state interests in educating and equipping future leaders. *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 311-12 (1978). Justice Powell eloquently explained that “[t]he attainment of a diverse student body,” including a racially diverse student body, “is a constitutionally permissible goal for an institution of higher education.” *Id.* A diverse student body is linked to “[t]he atmosphere of speculation, experiment and creation ... so essential to the quality of higher education.” *Id.* at 312 (internal quotation marks omitted). Thus, training and education that take place in a diverse environment prepare students “to render with understanding their vital service to humanity.” *Id.* at 314. Justice Powell concluded that “it is not too much to say that the ‘nation’s future depends upon leaders trained through wide exposure’ to the ideas and mores of students as diverse as this Nation of many peoples.” *Id.* at 312-13 (quoting *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967)).

Twenty-five years later in *Grutter*, this Court reaffirmed the basic holdings of *Bakke*, concluding that “student body diversity is a compelling state interest that can justify the use of race in university admissions.” *Grutter*, 539 U.S. at 325. “[E]ducation [is] pivotal to ‘sustaining our political and cultural

heritage” and plays “a fundamental role in maintaining the fabric of society,” so the goal of “preparing students for work and citizenship” is one of “overriding importance.” *Id.* at 331 (quoting *Plyler v. Doe*, 457 U.S. 202, 221 (1982)). And an admissions policy that considers race (together with other diversity criteria) furthers students’ education because it “promotes cross-racial understanding [and] helps to break down racial stereotypes.” *Id.* at 330. These “substantial” benefits are “important and laudable, because classroom discussion is livelier, more spirited, and simply more enlightening and interesting when the students have the greatest possible variety of backgrounds.” *Id.*

Concomitantly, “the skills needed in today’s increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints.” *Id.* This Court noted in *Grutter* that “numerous studies show that student body diversity promotes learning outcomes, ... ‘better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals.’” *Id.*

In the case now before the Court, there is no credible dispute as to the truths spoken by Justice Powell in *Bakke* and reaffirmed in *Grutter*—that a racially diverse student body serves and enriches the higher education of all students and is essential to the training of leaders for our pluralistic world.

It was true when *Grutter* was decided, and is no less true today, that there is extensive evidence showing that meaningful interaction among students of different backgrounds improves the quality of education for all students. Indeed, *Grutter* has

stimulated continued and increased research, so the body of scholarship supporting the importance of diversity has become broader and deeper. *See e.g.* G.R. Pike & G.D. Kuh, *Relationships Among Structural Diversity, Informal Peer Interactions and Perceptions of the Campus Environment*, 29 *Review of Higher Educ.* 425, 431 (2006) (in light of *Grutter*, schools using race-conscious admissions policies “are expected to empirically demonstrate the benefits of” diversity); M.J. Chang et al., *Educational Benefits of Sustaining Cross-Racial Interaction Among Undergraduates*, 77 *J. Higher Educ.* 430, 430-31 (2005) (because of conflicting viewpoints of *Grutter* majority and dissent, “there continues to be a pressing need to understand empirically how students actually benefit, if at all, from being in more ... diverse environments”).

This ongoing research has borne out the rationale behind *Grutter*—namely, that diversity is a compelling state interest because it supports and enhances important educational goals. Studies demonstrate that “the vitality, stimulation, and educational potential of an institution are directly related to the composition of its student body, faculty, and staff.” *Id.* at 431. And “campus communities that are more racially diverse tend to create more richly varied educational experiences that help students learn and also prepare them better for participation in a democratic society.” *Id.*

Scholarly research considers not simply the composition of the student body, but also more nuanced data, such as the level of cross-racial interactions among students. *Id.* at 449. Studies have shown, for instance, that greater diversity in a student population leads to greater interaction

among students of different backgrounds and views. G. Pike et al., *Evaluating the Rationale for Affirmative Action in College Admissions*, J. of Coll. Student Dev. 1, 13 (Mar.-Apr. 2007). And greater interaction, in turn, is “associated with greater gains in understanding people from different races and cultures.” *Id.* These benefits are realized without some of the detriments posited by those who question the value of affirmative action, such as negative perceptions of peers or the campus environment resulting from a perception of unfairness in race-conscious admissions policies. *Id.*

Higher levels of cross-racial interactions on a campus have the positive result that one intuitively expects: students’ increased “knowledge of and ability to accept different races [and] cultures.” *Id.* This is an important goal and serves, in the words of *Grutter*, to “better prepare[] students for an increasingly diverse workforce and society.” 539 U.S. at 330 (internal quotation marks and citation omitted). Less intuitive but at least equally desirable outcomes include enhanced “growth in general knowledge, critical thinking ability, and problem-solving skills.” Pike et al. at 13. Students also showed higher levels of self-confidence in both the social and intellectual spheres. *Id.* In other words, increased diversity supports not only openness to others who are different, but also increased gains in the core intellectual and cognitive skills for which students attend college in the first place.

The positive effects of a diverse student body are felt by students who, themselves, do not have particularly high levels of cross-racial interactions. *Id.* at 18. “In other words, even those students who have very little cross-racial interaction, yet are part

of a student body that has high average levels of interaction, tend to report greater individual gains in openness to diversity” than students who attend an institution with lower levels of cross-racial interaction. *Id.* The benefits of an atmosphere of cross-racial interaction, therefore, are not only multifaceted (acceptance of others’ viewpoints and experiences, increased cognitive development, and increased confidence), but also broad-ranging (benefiting even those students who personally have lower levels of cross-racial interaction). “Whatever the specific conditions might be, students who attend campuses with higher [levels of cross-racial interaction] are not only benefiting from simply observing more students interacting across racial differences, but are in all likelihood also benefiting from the overall institutional quality that sustains positive race relations” *Id.*

Amici value the educational outcomes that studies have shown are connected to a diverse student body—but Amici do not argue that diversity is a compelling interest because it brings a mythical unitary “minority” voice to the table. To the contrary, each individual—of any race or background—has his or her own unique point of view. Amici merely recognize that race is one of the myriad factors that inevitably shape an individual’s perspective. Justice O’Connor made this point eloquently in honoring Justice Thurgood Marshall, observing that he brought “a special perspective” to the Court because he was intimately familiar with the plight of those who experienced racial discrimination. Sandra Day O’Connor, *Thurgood Marshall: The Influence of a Raconteur*, 44 *Stan. L. Rev.* 1217, 1217 (1992). Justice Marshall could not

have brought a predetermined “African-American” perspective to the Court because there is no such thing. He brought his own perspective—which was in turn shaped to some degree by his race.

Racial diversity is not meant to, and cannot, bring a particular perspective to a college or university. But it does ensure a student body from a wide array of backgrounds, a condition that is needed to fulfill higher education’s promise of “speculation, experiment and creation.” *Bakke*, 438 U.S. at 312. The research demonstrating the benefits of cross-racial interaction, both for individual students and for the campus community, supports this proposition. Indeed, “[t]he experience of arriving on a campus ... with classmates from a diverse range of backgrounds is essential to students’ training for this new world, nurturing in them an instinct to reach out instead of clinging to the comforts of what seems natural or familiar.” Lee C. Bollinger, *Why Diversity Matters*, *Chron. of Higher Educ.* (June 1, 2007).

Collaboration among nations has increasingly become the norm in numerous fields such as business, science, and medicine. *See e.g.* James Fallows, *Dirty Coal, Clean Future*, *The Atlantic Monthly*, Dec. 2010 (describing joint Chinese and American efforts to improve energy extraction from coal), available at <http://tinyurl.com/c92unx5>; Robert Aymar, CERN (European Org. for Nuclear Research), *The Large Hadron Collider: A Paradigm for International Collaboration in Physics?* (Feb. 15, 2008) (describing framework for numerous countries’ contributions to groundbreaking experiments in physics), available at <http://tinyurl.com/9w53vna>. This is why it is crucial for students to have the opportunity to gain direct, personal experience with

others unlike themselves. Students cannot gain interpersonal experiences through lectures or books, but they will need these experiences if they are to thrive and lead. See Arthur H. Compton, Foreword to Huston Smith, *The Purposes of Higher Education* xiv (1955). “[T]he wealth of backgrounds, skills and opinions” of a diverse workforce is an important input to the economy, just as surely as are “raw materials, technology and processes.” William G. Bowen & Derek Bok, *The Shape of the River* 12 (1998) (quoting Robert J. Eaton, Chairman and CEO of Chrysler Corporation).

And the compelling interest in diversity is not reducible merely to business metrics or quantitative outcomes. Diversity also helps students to avoid leading the unexamined life by confronting them with new views and ideas, which they can—and must—evaluate, sift, adopt, modify, or discard. This process is integral to higher education, and its presence as an element of a student’s college or university experience is invaluable. The process of meeting and evaluating new viewpoints and ideas prepares students for the work of participating in a democracy. The exchange of ideas with others, and its predicate ability to listen to and learn from other viewpoints, is at the heart of a functioning democracy. As this Court has recognized, “[a]n educated populace is essential to the political and economic health of any community.” *Mueller v. Allen*, 463 U.S. 388, 395 (1983).

For all of these reasons, this Court held in *Grutter*—and should hold again in this case—that diversity in higher education is a compelling state interest that justifies the consideration of race as part of a holistic admissions process.

II. This Court Should Reaffirm *Grutter's* Holding That Race May Be Considered, As One Of Many Factors In An Individualized Admissions Process, As A Narrowly Tailored Means To Achieve Diversity In Higher Education

As this Court recently explained: “The point of the narrow tailoring analysis in which the *Grutter* Court engaged was to ensure that the use of racial classifications was indeed part of a broader assessment of diversity, and not simply an effort to achieve racial balance” *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 723 (2007) (citing *Grutter*, 539 U.S. at 330).

There is no reason to depart from *Grutter*. Moving to an inflexible metric such as an upper limit on minority representation, and looking to that metric as the determining factor in whether an admissions system is narrowly tailored, would be in essence a quota system. And that is precisely what this Court rejected in *Bakke* and *Grutter*.

Instead, what the Constitution requires in this context is an admissions system that considers race as part of a “highly individualized, holistic review of each applicant’s file, giving serious consideration to all the ways an applicant might contribute to a diverse educational environment.” *Grutter*, 539 U.S. at 337. In other words, an admissions process that “ensures that all factors that may contribute to student body diversity are meaningfully considered alongside race,” *id.*, is a narrowly tailored means that withstands strict scrutiny.

This concept of narrow tailoring, which extends back to *Bakke* and is carried forward in *Parents Involved*, rejects reductionist viewpoints that would portray diversity as a matter only of race—or racial diversity as a matter only of statistics. *Parents Involved*, 551 U.S. at 723 (point of *Grutter*’s narrow tailoring analysis “was to ensure that the use of racial classifications was indeed part of a broader assessment of diversity, and not simply an effort to achieve racial balance”) (citation omitted).

In *Parents Involved*, this Court endorsed *Grutter*’s “articulation of diversity,” which, in turn, cited to “Justice Powell’s opinion in [*Bakke*].” 551 U.S. at 722. Under this articulation, consideration of race cannot justify “an interest in simple ethnic diversity, in which a specified percentage of the student body is in effect guaranteed to be members of selected ethnic groups” *Id.* Instead, *Parents Involved* explains, “what was upheld in *Grutter* was consideration of ‘a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important element.’” *Id.* (quoting *Grutter*, 539 U.S. at 324-25); *see also id.* at 793 (noting with approval that, in *Grutter*, “the Court sustained a system that ... was flexible enough to take into account all pertinent elements of diversity and considered race as only one factor among many”) (Kennedy, J., concurring) (internal quotation marks and citations omitted).

In fact, the admissions process at issue in *Grutter*—like the admissions processes in place at many colleges and universities today—sought various types of diversity, including, for example, “admittees who have lived or traveled widely abroad, are fluent in several languages, have overcome

personal adversity and family hardship, have exceptional records of extensive community service, and have had successful careers in other fields.” *Parents Involved*, 551 U.S. at 722 (quoting *Grutter*, 539 U.S. at 338) (brackets and internal quotation marks omitted).

In light of this Court’s consistently articulated view of diversity, colleges and universities should not be required to reduce their admissions processes to a numbers game in order to create a narrowly tailored system that passes constitutional muster. Indeed, there can be no hard and fast formula for what amounts to a narrowly tailored means to achieve the compelling state interest of student body diversity. In *Bakke*, Justice Powell explained that the admissions process must be “flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant, and to place them on the same footing for consideration, although not necessarily according them the same weight.” 438 U.S. at 317. This Court agreed in *Grutter*: “[T]ruly individualized consideration demands that race be used in a flexible, nonmechanical way.” 539 U.S. at 334; *id.* at 392-93 (Kennedy, J., dissenting) (“individual assessment” must be “safeguarded through the entire process”).

Concomitantly, the assessment of whether an admissions process that takes race into account is constitutional must also be flexible and nonmechanical. *Parents Involved*, 551 U.S. at 725 (“[c]ontext matters’ in applying strict scrutiny”) (quoting *Grutter*, 539 U.S. at 327). Reducing consideration of diversity to a numbers game would hamper institutions’ ability to narrowly tailor their admissions processes so that they are directly aimed

at achieving the compelling state interest at stake—meaningful diversity on their campuses and fulfillment of their educational missions. *Grutter*, 539 U.S. at 339 (The Constitution “does not require exhaustion of every conceivable race-neutral alternative. Nor does it require a university to choose between maintaining a reputation for excellence or fulfilling a commitment to provide educational opportunities to members of all racial groups.”).

Nor do constitutional harms flow from the type of admissions process *Grutter* endorsed. This is because in an individualized and multifactorial admissions process, every applicant has the opportunity to demonstrate positive qualities regardless of his or her racial background. An applicant who is not a member of a racial minority, for instance, has the same opportunity as an applicant from a minority background to demonstrate intellectual capacity, desire to learn, tenacity to overcome obstacles, commitment to goals, ability to lead, and skill and sensitivity in relating to others. *See Grutter*, 539 U.S. at 338 (describing the wide range of ways to assess diversity included in University of Michigan’s Law School admissions process). This is precisely the point of a holistic and individualized review process—to assess each individual on the merits of his or her achievements and promise within the unique context of his or her experiences, which include (for some applicants) experiences tied to membership in a racial minority group. *See Parents Involved*, 551 U.S. at 722 (“The entire gist of the analysis in *Grutter* was that the admissions program at issue there focused on each applicant as an

individual, and not simply as a member of a particular racial group.”).

III. This Court Should Preserve Academic Freedom By Reaffirming That Due Consideration Of Colleges and Universities’ Judgments About Whom To Admit—And The Consideration Of Race As One Of Many Factors In This Decision—Withstands Strict Scrutiny

Petitioner suggests that this Court should overrule *Grutter*. In this regard, she argues that the Fifth Circuit’s decision—and by implication *Grutter*—is flawed because it is based on a mode of analysis that does not align with strict scrutiny. There are any number of reasons why Petitioner’s invitation should be rejected. One of those reasons is that the outcome she seeks would amount to a retreat from settled law which, in this context, would undermine the core value of academic freedom—a longstanding value of constitutional dimension. Indeed, to adopt Petitioner’s position and recede from *Bakke* and *Grutter* would be to impose a rigid test on the process of college and university admissions in contravention of academic freedom.

A central underpinning of this Court’s ruling in *Grutter* is the concept of academic freedom—which, although not a specifically enumerated constitutional right, “long has been viewed as a special concern of the First Amendment.” *Grutter*, 539 U.S. at 324. The overarching concept of academic freedom embraces “the four essential freedoms’ of a university—to determine for itself on academic grounds who may teach, what may be taught, how it

shall be taught, and *who may be admitted to study.*” *Id.* at 363 (quoting *Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring)) (emphasis added).

“In ... select[ing] those students who will contribute the most to the robust exchange of ideas,” a university uses its academic freedom “to achieve a goal that is of paramount importance in the fulfillment of its mission.” *Id.* at 324 (internal quotation marks and citations omitted). This academic freedom, “grounded in the First Amendment,” includes the “tradition ... of acknowledging a university’s conception of its educational mission.” *Id.* at 387-88. Thus, courts should give due consideration to “a university’s considered judgment that racial diversity among students can further its educational task” *Id.* at 387-88; *see also Parents Involved*, 551 U.S. at 792 (Kennedy, J., concurring in part) (under the First Amendment, institutions of higher learning enjoy “particular latitude in defining diversity”).

In numerous cases since *Sweezy*, including *Grutter* and others, this Court has emphasized the importance of academic freedom. In *Ewing*, this Court expressed its “reluctance to trench on the prerogatives of ... educational institutions” and affirmed its “responsibility to safeguard their academic freedom, ‘a special concern of the First Amendment.’” *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 226 (1985). Justice Powell stated that courts should defer to “academic decisions made by the appropriate university authorities”—and for this reason, “[j]udicial review of academic decisions, including those with respect to the admission or dismissal of students, is rarely appropriate,

particularly where orderly administrative procedures are followed” *Id.* at 230 (Powell, J., concurring).

In *Parents Involved*, decided after *Grutter*, this Court re-emphasized the academic freedom of colleges and universities. This Court explained that “[i]n upholding the admissions plan in *Grutter*,” the Court “relied upon considerations unique to institutions of higher education”—namely, “the expansive freedoms of speech and thought associated with the university environment” and universities’ resulting “special niche in our constitutional tradition.” 551 U.S. at 724 (quoting *Grutter*, 539 U.S. at 329). This Court held, in other words, that “[c]ontext matters” in applying strict scrutiny—and partly because the higher education context of *Grutter* was distinguishable from the secondary school context of *Parents Involved*, *Grutter* did not govern. *Id.* at 725; *see also Johnson v. California*, 543 U.S. 499, 515 (2005) (strict scrutiny “is designed to take relevant differences into account.”).

Academic freedom is not an abstract concept. Students, faculty, and our society at large enjoy on a daily basis the real-world benefits of the special constitutional niche occupied by American institutions of higher learning. No central government agency orchestrates American higher education, directs what will be taught, or decides who may learn or teach. As a result, the American post-secondary system is a rich and varied landscape. Amici themselves demonstrate as much, comprising a diverse group of public and private, small and large, secular and sectarian institutions, and historically black colleges and universities. *See Appendix*. If this Court steps in and decides what kind of diversity is needed and how much, that will not only substitute

the courts' judgment for that of the institutions themselves, it will also substitute a singular construct for the current variety of approaches to diversity taken by institutions that differ widely from one another.

Such an outcome is highly undesirable because diversity is not a one-size-fits-all concept. Each college and university must define for itself what student body diversity means. Experience and expertise underlie the judgments made by these academic institutions. This also is a hallmark of the long-revered concept of academic freedom. *See Sweezy*, 354 U.S. at 263. Thus, the deference afforded in *Grutter* is rooted in long-standing First Amendment principles and should be upheld.

American colleges and universities, like our Nation as a whole, continue to struggle with the legacy of racism and bigotry. These institutions must be able to exercise their academic freedom in order to contribute to the understanding and eradication of that legacy. Just as there is no single path to excellence in education itself, the pursuit of diversity should be left to colleges and universities that “perform their role as laboratories for experimentation to devise various solutions where the best solution is far from clear.” *United States v. Lopez*, 514 U.S. 549, 581 (1995) (Kennedy, J., concurring). To abridge colleges and universities' freedom to approach diversity differently, and set unique and varied goals with regard to diversity, would undermine revered First Amendment principles of academic freedom. And beyond the diminishment of the valued concept of academic freedom, the Court would take away one of the most powerful tools at the disposal of colleges and

universities in their fight against bigotry and prejudice: their ability to shape their student bodies according to their many and varied visions of diversity.

CONCLUSION

Amici urge this Court to reaffirm that student diversity on college and university campuses is a compelling state interest and that consideration of race as one of many factors in an admissions process that evaluates applicants in an individualized and holistic way is a narrowly tailored means to further that compelling interest. *Grutter's* holding comports with what strict scrutiny requires and also is faithful to the bedrock value of academic freedom.

Respectfully submitted,

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APPENDIX

**INDIVIDUAL STATEMENTS OF INTEREST OF
*AMICUS CURIAE***

APPALACHIAN STATE UNIVERSITY

Established in 1899 as Watauga Academy, and state-supported since 1903, Appalachian State University is located in a unique, rural mountain environment. For much of its early history, the university was isolated in the Blue Ridge Mountains of northwestern North Carolina. More recently, Appalachian has educated students from all 100 counties in North Carolina and numerous other states and foreign countries. Appalachian has alumni in all 50 states and across the globe.

As a constituent institution of The University of North Carolina, Appalachian's fundamental mission is to discover, create, transmit, and apply knowledge to address the needs of individuals and society. Graduates should possess the knowledge, skills, and attitude that enable them to understand world cultures and events; analyze global systems; appreciate cultural differences; and apply this knowledge and appreciation to their lives as citizens and productive workers. Of all transforming and galvanizing forces, education has the greatest power to enlighten, empower, edify and equalize the members of a society. Human beings reveal and make themselves known to one another by infinite varieties of intelligence, language, race, values, politics, religion, national service, gender identity and expression, philosophies, life experiences, economic and educational backgrounds (including

first-generation students), geographical location (including, e.g., Appalachia) and a host of other characteristics. Composition of a student body that reflects differences in such characteristics is a critical element in Appalachian's approach to liberal arts education and extracurricular activities that inform students about their own cultures, values, thoughts and actions, and those of others. At Appalachian, diversity is recognized as an essential binding agent of its interdisciplinary approach to education, as well as to the greater life experience.

Appalachian considers selection of students who are diverse, and its ability to consider race as one factor among many in the admissions process, as integral to its exercise of academic freedom under the United States Constitution.

BELMONT UNIVERSITY

Belmont University, located in Nashville, Tennessee, is a comprehensive university bringing together the best of liberal arts and professional education in a Christian community of learning and service. Enrolling over 6700 students, Belmont offers 75 undergraduate and graduate academic programs in seven colleges and schools. The university's mission is to be a student-centered Christian community providing an academically challenging education that empowers men and women of diverse backgrounds to engage and transform the world with disciplined intelligence, compassion, courage and faith. As an ecumenical Christian institution in the South, Belmont feels a special responsibility to carry out this mission by pursuing programs of recruitment and enrollment that insure the student body is as

ethnically and racially diverse as possible. The University believes it cannot effectively fulfill its commitment to be a Christian community of learning and service without affirmative efforts to reflect the diversity of humanity on its campus.

BRANDEIS UNIVERSITY

Brandeis University was founded in 1948 by the American Jewish community as a private, coeducational and nonsectarian institution of higher learning and research. While Brandeis maintains a strong relationship with the Jewish community, it is not affiliated with any religious organization. From the first, the University has welcomed students and faculty of all backgrounds and beliefs in fulfillment of a mission that emphasizes academic excellence, the creation and transmission of new knowledge, open and vigorous intellectual inquiry, a commitment to social justice and diversity broadly defined. Brandeis strives to reflect the heterogeneity of the United States and of the world community in which its graduates will spend the remainder of their lives.

Named for one of America's most distinguished jurists, Brandeis University is passionate about the importance of a broad and critical liberal arts education in enriching the lives of students and preparing them for the fullest possible participation in a changing society. In identifying students for admission, the University seeks to build a select community of men and women who, in its judgment, can best contribute to and benefit from the educational environment and opportunities Brandeis offers. Factors considered in a flexible, holistic admissions process include quantifiable measures,

such as grades and scores, but the University also carefully evaluates the breadth, rigor and success of an applicant's high school program and his or her extra-curricular and co-curricular interests and activities; special talents; evidence of leadership; geography, including country of origin in the case of international students; and other personal characteristics.

At Brandeis, diversity in the student body reflects the University's deep commitment to a campus community in which vigorous intellectual debate and the free exchange of ideas are paramount values. Brandeis believes that each student's unique variety of life experiences provides a valuable lens through which he or she views the world and shares it with others. Applicants are admitted to Brandeis based on the consideration of many factors and personal characteristics that directly contribute to academic excellence. To limit the admission procedures of America's public and private institutions of higher education to fixed numerical quotas or rigid guidelines would severely lessen our ability to identify the best students and to provide the rich educational environment that allows us to compete globally and attracts students from all over the world.

CENTRAL STATE UNIVERSITY

As Ohio's only public Historically Black University, Central State University, founded in 1887, academically prepares students with diverse backgrounds and educational needs for leadership and service in an increasingly complex and rapidly changing world. As an open access institution, the

University fosters academic excellence through a strong liberal arts foundation and majors in selected professional fields.

Central State University is dedicated to providing a nurturing and culturally enriched learning environment, stimulating in students an intellectual curiosity and a continuous search for knowledge, and teaching students to think critically and communicate effectively. Central State seeks to instill in students an aspiration for excellence through teaching, service, and scholarly research. Central State's core commitment to diversity is shown by the fact that it offers programs with multicultural and global perspectives, reaches out to underserved populations, and collaborates with other educational institutions, business organizations and governmental agencies to enrich learning experiences and educational opportunities for students.

DRAKE UNIVERSITY

When Drake University was established in 1881, the founders dreamed of an institution that was broad-based and liberally nonsectarian. The University's articles of incorporation provided that "all departments shall be open to all without distinction of sex, religion, or race." Today, Drake is a private, fully accredited, coeducational university on a 120-acre campus in the heart of Iowa's capital city. The Drake experience is distinguished by collaborative learning and the integration of the liberal arts with professional preparation. Students choose from more than 70 undergraduate programs of study and 20 graduate-level degrees offered by Drake's six colleges and schools. This exceptional

learning environment prepares students for meaningful personal lives, professional accomplishments, and responsible global citizenship.

One of the key goals within Drake's vision is to ensure that our students, faculty, and staff are able to function effectively as members of diverse local, national, and global communities. Diversity is essential to the learning environment: a diverse campus population brings with it a mixture of ideas and perspectives, of new knowledge sets and new ways of looking at the world. Diversity feeds into the most fundamental purpose of a university—the discovery, exchange, and application of new ideas. When our students graduate and embark on careers throughout the country and world, their success will be dependent on their ability to work with all kinds of people, and to understand that difference is an opportunity—not a barrier. The ability to function effectively in a global arena is also essential to our national security, economic competitiveness, and ability to participate in collaborative solutions to the world's challenges.

Higher education is also our most powerful engine of socio-economic mobility. Allowing colleges and universities the freedom of inclusion enables these institutions to be on the front lines of helping break the cycle of poverty. Drake joins this brief because commitment to diversity is at the very heart of our mission as a university.

DREXEL UNIVERSITY

Drexel University was founded upon the principle of diversity as an educational goal, and it remains

committed to that principle today. In 1892, noted financier, philanthropist, and advisor to U.S. Presidents, Anthony J. Drexel, created the Drexel Institute of Art, Science and Industry to provide higher education to men and women of the working class—people who were not welcome in the colleges and universities of that day. A.J. Drexel envisioned a learning environment in which young men and women, on an equal basis, would learn skills and acquire knowledge in subjects that would prepare them for rewarding careers. Woman's Medical College of Pennsylvania, now Drexel University College of Medicine, was created in 1848 by prominent leaders of the medical profession to allow women to learn the healing arts at a time when it was unacceptable for women to have lives outside the home. The graduates of "Woman's Med" have practiced medicine in poor and underserved communities for more than 150 years; those women doctors were pioneers in bringing preventive medicine, and medical research, to the benefit of others around the globe.

Today, Drexel University educates its students through experiential learning, combining service with technology, and helps prepare them for leadership roles not only in their chosen professions, but also in their communities. It is very much a part of our educational mission to expose our students to differences in race, gender and class, to help them learn to appreciate what difference offers, and to teach them to recognize and overcome bias, prejudice and discrimination, so that they may understand that our diversity creates our richness and strength as a nation and as a people. Drexel's cooperative

education program encourages students to learn how to work together by placing them in real business settings—communities that are increasingly diverse. Drexel’s undergraduate curriculum requires that each student participate in a civic engagement course that combines classroom study with community service in venues throughout the city of Philadelphia. Increasing cultural awareness in the urban environment as well as opportunities in co-op and study abroad to acquire global experience allow our students to learn from, appreciate, and respect people of different races and cultures.

We recognize that the best, most durable education comes from student-to-student interactions. These critically important lessons demand that our students reflect the diversity of the communities in which they live and work. Creating a more diverse student body is part of Drexel’s strategic plan and an increasing number of students from across the nation and around the world are attending the University. By increasing the diversity of our student body, we have not compromised academic quality—indeed, average SAT scores have climbed steadily over the past several years as we have focused on encouraging minority students to attend and succeed. We have embraced diversity because we know that there is no other way to ensure that our students are properly prepared for a diverse world. We continue to honor our Founders’ visions and create a purposefully diverse student community as an essential part of our educational mission.

GETTYSBURG COLLEGE

Gettysburg College is a highly selective, national college of liberal arts and sciences with 2,700 students, located in the historic town of Gettysburg, Pennsylvania. We augment academic excellence with community responsibility and global experiences, provide leadership opportunities, and engage with public-policy issues. Gettysburg College is a place of variety and diversity—a community where every student has the chance to stand out, take responsibility, and lead.

Gettysburg's commitment to diversity is deeply rooted in the history of the College, which was founded in 1832 by anti-slavery theologian Samuel S. Schmucker. Thaddeus Stevens, a well-known abolitionist, College Trustee, and the primary author of the 14th Amendment, provided the College's original six acres. During the Civil War, elements of two great armies swept through Campus on July 1, 1863, the first day of the Battle of Gettysburg. Pennsylvania Hall, now the College's administration building, became a hospital for hundreds of soldiers from both North and South. On November 19, 1863, students and faculty marched to hear Abraham Lincoln deliver his immortal Gettysburg Address.

Gettysburg College's commitment to diversity continues. It seeks students who are not only academically prepared for the College's rigorous programming, but who also provide diverse ideas, interests and backgrounds. We believe that the opportunity to engage on a daily basis with community members with diverse backgrounds and perspectives enriches the learning environment for

all students. Thus, while the College's admissions process seriously reviews a student's academic background, other considerations in the admissions process include diversity in race, gender, geography, socio-economic background, disabilities, extra-curricular and academic interests, etc. While none of these categories is determinative, all of these factors, including race, work together in an individualized review of each application.

Without the ability to consider race as one of many factors that qualify our students for admission, Gettysburg College's commitment to diversity, like that of many other institutions, cannot realistically be realized.

LOS RIOS COMMUNITY COLLEGE DISTRICT

The Los Rios Community College District is a two year public institution with four separately accredited Colleges: American River College, Cosumnes River College; Folsom Lake College and Sacramento City College. Our colleges offer transfer education—students complete freshman and sophomore years and transfer to a four-year college or university—and AA/AS degrees and certificates in over 70 career fields. The first college in the District, Sacramento City College, was founded in 1916 and our most recently accredited college, Folsom Lake College, received its accreditation in 2004. The District currently serves more than 82,000 students which translates into a projected enrollment of 53,564 Full Time Equivalent Students for the 2011-2012 academic year.

The District has an “Open Door” admissions policy because it is the policy and primary purpose of the District to provide educational opportunity experiences to the residents of the community it serves. The District’s students mirror the diverse population of the Sacramento Region: 42% White; 12% African-American; 17% Asian/Pacific Islander; 22% Hispanic/Latino; 6% Multi-Race and 1% Native American. The District recognizes and values the strengths of our diverse backgrounds and perspectives, and seeks to build a community in which all constituencies are highly qualified. Further, because diverse perspectives support the District’s commitment to equality, equity and justice, the District believes our communities are best served by ensuring that all populations are represented equitably throughout the Los Rios community colleges.

LOYOLA UNIVERSITY MARYLAND

Founded in 1852, Loyola University Maryland is a Jesuit, Catholic university committed to the educational and spiritual traditions of the Society of Jesus and the development of the whole person. Accordingly, the University inspires students to learn, lead, and serve in a diverse and changing world. Loyola aims to lead students, faculty, staff, alumni, and friends forward to pursue an examined life of intellectual, social, and spiritual discernment. In pursuing these goals, Loyola asserts a bold vision: that Loyola University Maryland will be the nation’s leading Catholic, comprehensive university. The standards by which we measure that achievement include the enrollment of outstanding students; the creation of a diverse and supportive community; the

cultivation of a rigorous intellectual climate; the scholarly achievements of the faculty; the recognition of academic peers; the intellectual and professional attainments and generosity of spirit of the alumni.

The values most typically associated with Jesuit education are its commitment to academic excellence and its focus on educating the whole person. Seeking to increase its own diverse nature, Loyola encourages openness to new discoveries, ideas, methods, and perspectives, and it actively encourages and celebrates diversity in all forms. Loyola also seeks to encourage all of its constituents to respect, value, and welcome “the inherent value and dignity of each person” as a gifted contributor to the community as a whole. The University is committed to challenging and repudiating prejudice in all its forms, and to encouraging global and international awareness, both within and outside its curricula. In considering students for admission to the University, Loyola practices an holistic evaluation process, one which considers the full breadth of materials submitted and the multifaceted characteristics and qualities of each applicant. At Loyola, enhancing the geographic, ethnic, and socio-economic diversity of the students who apply and enroll remains a key priority, one which is inherent in our Jesuit heritage.

LOYOLA UNIVERSITY NEW ORLEANS

Loyola University New Orleans, a Jesuit and Catholic institution of higher education, welcomes students of diverse backgrounds and prepares them to lead meaningful lives with and for others; to pursue truth, wisdom, and virtue; and to work for a more just world. Inspired by Ignatius of Loyola’s

vision of finding God in all things, the university is grounded in the liberal arts and sciences, while also offering opportunities for professional studies in undergraduate and selected graduate programs. Through teaching, research, creative activities, and service, the faculty, in cooperation with the staff, strives to educate the whole student and to benefit the larger community.

MIAMI DADE COLLEGE

Miami Dade College is the largest institution of higher education in the United States, serving over 174,000 students. The College graduates more minorities than any other college or university in the nation, offering a model of community-responsive education.

Since opening its doors in the fall of 1960, MDC has served more than 1.5 million residents of the greater Miami area. Its students hail from around the world, and its alumni have become local, national and international leaders. The College's faculty and staff are guided by a central belief in the potential of each person. "Opportunity Changes Everything" is no mere slogan; limitations are transcended and lives change when new learning is made available. We believe that education is the true equalizer in a society, and the success achieved by our graduates is a testament to this.

MDC provides a full range of academic programs, offering associate degrees and bachelor's degrees in more than 200 program areas, as well as offering short-term workforce certifications. The College's future is intertwined with the future of South Florida

and with the lives of the people who make this one of America's most diverse and exciting locales.

MDC believes that colleges have a profound interest in the benefits of assembling a diverse student body and we support the application of admissions criteria that support this goal. The benefits of participating in a diverse learning environment extend to the individual, his or her classmates, and the community, and they impact the educational, economic and civic life of the country. Exposure to the rich academic environment created by interaction with extensive diverse people, cultures, ideas and viewpoints promotes intermingling of different perspectives and experiences, which elevates academic and social exchange both inside and outside of the classroom; sharpens critical thinking and analytical skills; and encourages development of abilities required for success in our increasingly global marketplace.

Postsecondary institutions must provide an open door for all segments of America's communities including all races and ethnicities. At the core of a college's mission should be the achievement of a diverse student body.

NEW YORK UNIVERSITY

Founded in 1831, NYU is one of the world's foremost research universities and is a member of the selective Association of American Universities. The first Global Network University, it has degree-granting university campuses in New York and Abu Dhabi, and has announced a third in Shanghai; has a dozen other global academic sites; and sends more

students to study abroad than any other U.S. college or university. Through its numerous schools and colleges, NYU conducts research and provides education in the arts and sciences, law, medicine, business, dentistry, education, nursing, the cinematic and performing arts, music and studio arts, public administration, social work, and continuing and professional studies, among other areas.

NORTHEASTERN UNIVERSITY

Founded in 1898, Northeastern is a private global research university located in the heart of Boston, Massachusetts. We are driven by the fundamental belief that learning is about engaging with the world to solve problems and lead change. This tradition of partnership and engagement creates an innovative, distinctive approach to education and research. Our mission is to educate students for a life of fulfillment and accomplishment, and to create and translate knowledge to meet global and societal needs.

Northeastern is the recognized leader in experiential learning, anchored in the world's farthest-reaching cooperative education program. We offer students opportunities for professional work, research, service, and global learning in the U.S. and 89 other countries. The university's use-inspired research enterprise focuses on solving global challenges, with particular emphasis on three imperatives: health, security, and sustainability. Northeastern offers a comprehensive range of undergraduate and graduate programs leading to degrees through the doctorate in eight colleges and the School of Law.

Our vision is to be a university that expands the meaning and impact of our engagement in the world, using our knowledge and resources as positive forces for change in both our local communities and our global society. We assist our students in becoming engaged citizens of the world who realize that their knowledge and actions can have positive consequences for their own lives and those of others.

This vision will be realized through interdisciplinary scholarship and translational research by which we will dynamically participate in addressing problems in our urban environment, in our region, and across the globe. Northeastern translates fundamental research into applications that will contribute to economic development and enhance societal well being. Our collaborative approach encompasses partners in government and industry, and artists, innovators, and scholars both inside and outside our community.

Diversity is one of our core values and we celebrate diversity in all its forms and foster a culture of respect that affirms inter-group relations and builds community. Indeed, we strive to create a vibrant and diverse community, characterized by collaboration, creativity, an unwavering commitment to excellence, and an equally unwavering commitment to exhibiting respect for one another. We aspire to be a model for what our society can be.

PEPPERDINE UNIVERSITY

Pepperdine University is an independent private university committed to the highest standards of academic excellence and Christian values, where

students are strengthened for lives of purpose, service, and leadership. Pepperdine was established as Pepperdine College in 1937 by Mr. George Pepperdine and achieved university status in 1970 with the addition of its graduate and professional schools. Mr. Pepperdine envisioned a college with the highest academic standards guided by the spiritual and ethical ideals of Christian faith. Pepperdine is affiliated with the Churches of Christ, of which Mr. Pepperdine was a lifelong member. The University enrolls approximately 7,500 students in its five colleges and schools. The University's home campus is in Malibu, California and also offers educational programs in its facilities in Heidelberg, Germany, London, England, Florence, Italy, Buenos Aires, Argentina, Lausanne, Switzerland, Shanghai, China, and Washington, D.C.

As a Christian university committed to the highest standards of academic excellence, diversity is a profound interest for Pepperdine for two distinct, yet inextricably related reasons—because its religious beliefs call it to embrace and actively promote diversity and because of the educational benefits derived from providing an educational experience in the context of a diverse student body.

From a faith perspective, the loving welcome of those unlike us is not a mere nicety; it is a core, essential teaching of biblical Christianity. Indeed, from its beginnings the early church defined itself as a universal community, in which all people from all walks of life, all races, ethnicities, and backgrounds were welcome. Pepperdine draws on this ancient biblical tradition to build and retain a community

that is welcoming to diverse people, which cultivates one-on-one interaction between those who may be considered somehow different from the majority.

Intertwined with its faith basis, Pepperdine believes that critical educational benefits flow from a diverse student body. A diverse student body provides a multiplicity of experiences, viewpoints, and perspectives from which all can learn. A diverse student body promotes more spirited, lively, enlightening, and interesting classroom discussion. It nurtures understanding among individuals that are seemingly “different.” It prevents “minorities” from feeling isolated or being the sole spokesperson for their group. It provides an energized experience that challenges and stretches students while breaking down stereotypes, which can only come from one-on-one interaction with those that are different from you. Again, particularly for Pepperdine as a Christian university, this one-on-one interaction not only provides an educational benefit, but also follows the ancient church model of ministry to those that have been marginalized in some manner by society.

RHODE ISLAND SCHOOL OF DESIGN

Founded in 1877, Rhode Island School of Design is one of the oldest and best-known colleges of art and design in the U.S. Each year approximately 2,400 students from around the world pursue a creative, studio-based education at RISD, which offers rigorous bachelor’s and master’s degree programs in 19 architecture, design, fine arts and art education majors.

Philosophically, one of RISD's most fundamental tenets is that artists and designers must think globally and help to shape the world in which we live. The arts are the only truly universal language, and it often has been artists who, through that language, have built the first bridges of understanding between different nations, different cultures, different beliefs. RISD therefore seeks to teach its students not only the technical skills, but also the perspectives, that will enable them to fulfill that important responsibility, by combining both critical thinking and critical making. To accomplish that goal, RISD must have flexibility to bring together a broadly diverse group of students whose backgrounds, interests, and experiences can inform, inspire, and even provoke each other's work. In RISD's view, a deep understanding of culture—both one's own and that of others—is the basis for the creation of culture.

Simply put, higher education is not a "reward" or "entitlement" for those students who performed the "best" in their prior academic work, and colleges and universities should not be viewed as merely passive recipients of those students, with no further interest in who they are once they arrive or after they graduate. The strength of the American system of higher education is that each institution has the freedom—and the responsibility—to adopt and actively pursue its own unique mission, to seek to change the world in some way by seeking to educate and change a few of its inhabitants. An institution cannot effectively create its desired "outputs," however, if it cannot control its "inputs." RISD joins in this brief because an admissions program of the kind advocated by the Petitioner in this case, relying

largely on traditional academic measures and limiting its discretion to shape its classes, would seriously compromise RISD's, and every institution's, ability to pursue its core mission.

ROCKHURST UNIVERSITY

Rockhurst University, founded in 1910, is a Catholic, Jesuit university serving 3,000 students in the business and cultural heart of Kansas City, Missouri. As one of 28 Jesuit universities and colleges in the United States, Rockhurst is part of the largest network of independent higher education institutions in the nation. Academic excellence, a value-oriented education, interdisciplinary studies, a global perspective and justice remain hallmarks of Jesuit education today.

Rockhurst promotes an understanding of the benefits and complexities of inclusivity for its students, faculty, staff, and the community. This effort is an important part of educating "men and women for and with others." Rockhurst's Jesuit mission emphasizes social justice and equality for all people, including the goal of freedom from exclusion or marginalization. All members of the Rockhurst community are called to embrace a set of values that promote the personal care for every community member and a sensitivity toward the dignity, sacredness, and uniqueness of every person.

SOUTHERN METHODIST UNIVERSITY

Southern Methodist University in Dallas was founded in 1911 and opened in 1915, the result of a partnership between the Methodist Church and city leaders. The former sought to establish a new

institution west of the Mississippi to continue its mission in higher education; the latter foresaw that Dallas would need a distinguished, comprehensive university to become a great American city.

SMU is known for developing leaders through campus and community activities, preparing students as active citizens as well as successful professionals. Students have taken the lead on innovative programs such as a service and research component of the new Human Rights major and the Maguire Center for the Study of Ethics and Public Responsibility; helping to transform low-income and refugee housing through the Hunt Institute for Engineering and Humanity; and developing research projects with a direct impact on the community through SMU's Big iDeas program. Other students pursue research projects abroad with University support. Students have access to 150 study abroad programs in 50 countries.

SMU offers 103 bachelor's degrees, 104 master's degrees, two graduate professional degrees, and 27 doctorates. They are offered through Dedman College of Humanities and Sciences, Meadows School of the Arts, Cox School of Business, Bobby B. Lyle School of Engineering, Dedman School of Law, Perkins School of Theology and Annette Caldwell Simmons School of Education and Human Development. SMU is nonsectarian in its teaching and committed to freedom of inquiry.

SMU enrolls nearly 11,000 students, approximately 6,200 undergraduates and 4,800 graduate students from all 50 states and the District of Columbia. More than 1,100 students come from

approximately 90 foreign countries. Students represent diverse economic, ethnic and religious backgrounds, with a minority enrollment of 25 percent.

ST. LOUIS UNIVERSITY

Saint Louis University is a Jesuit, Catholic university ranked among the top research institutions in the nation. The University's mission is the pursuit of truth for the greater glory of God and for the service of humanity. Founded in 1818, it is the oldest university west of the Mississippi River and the second oldest Jesuit university in the United States. The University fosters the intellectual and character development of more than 14,000 students on campuses in St. Louis and Madrid, Spain. In 1944, Saint Louis University was the first university in Missouri, and the first institution of higher learning in one of the 15 former slave states, to admit African-American students. Among the University's many points of pride is its ranking as one of the country's top universities in the awarding of doctoral degrees to African-American students.

As a Jesuit, Catholic university, Saint Louis University is committed to social justice and has a special commitment to ensuring that it provides educational opportunities for students of all backgrounds and experiences. The University works diligently to recruit and retain a diverse student body, which includes diversity in race and ethnicity. The University believes that the achievement of such a diverse student body in institutions of higher learning and the ability of higher education institutions to establish focused programs and

policies that attract, admit and retain that diverse student body serves a special interest in fostering an inclusive living and learning environment for its students. This, in turn, serves the ultimate goal of educating men and women of all races and ethnic backgrounds who can make a difference in their communities and their world.

SYRACUSE UNIVERSITY

Syracuse University is a private university that was first incorporated in 1870 by a special act of the New York State Legislature. It is a non-sectarian, equal-opportunity, affirmative action university that prohibits discrimination and harassment.

TEMPLE UNIVERSITY

Founded in 1884, Temple University is a comprehensive urban research and academic institution with more than 39,000 students. Today, Temple University is a state-related university in Pennsylvania's Commonwealth System of Higher Education whose mission is to provide excellent educational opportunities primarily to middle and working class students, without regard to their status or station in life. Diversity is central to Temple's mission and historically one of its greatest strengths. Temple's richly diverse student body enhances the educational and extra-curricular community.

Temple University's Policy 04.81.02 (adopted in 1977) affirms the University's commitment to diversity by providing "students of any race, color, national and ethnic origin ... all the rights, privileges, programs and activities ... made available

to students at the University.” The number of self-identified minority students at Temple has increased substantially in the last 25 years. The expansion of Temple’s student body diversity has been achieved while simultaneously raising academic standards and dramatically increasing graduation rates among students of color.

Temple University is proud of its diverse student population and University community. Temple joins this brief because of its strong interest in fostering and maintaining student diversity, which in turn provides the best possible educational environment. Fostering diversity requires consideration of all facets of Temple’s applicants including race, gender, socio-economic status, and life experience as some of the many factors in the admissions process.

TEXAS SOUTHERN UNIVERSITY

Texas Southern University, which traces its beginnings to 1927, is one of the nation’s largest Historically Black Colleges and Universities (HBCU). The mission of the University is to provide academic and research programs that address critical urban issues and prepare an ethnically diverse student population to become a force for positive change in a global society. The public University is located in Houston, Texas, the fourth largest city in the United States, and one of the fastest-growing and most forward-moving cities in the world. More than 9,500 students, along with 1,500 faculty and staff, comprise the University community. Like its curricula, the student body is characterized by diversity. While many of the undergraduate and graduate students enrolled are native Texans, almost every state in the

country is represented among the student and faculty population. The University's international student population hails from such places as Africa, Canada, the Canal Zone, the Caribbean, Central America, China, Europe, Mexico, South Asia, and the West Indies. The University has served as a cornerstone for developing the greatest potential in leaders from various socio-economic, cultural, and racial backgrounds.

Of the nine University schools and colleges, many have programs unique to the area and several have received national recognition for their outstanding performance. The Thurgood Marshall School of Law, originally established by the Texas Legislature in 1947 as a Negro law school, was named the most diverse law school in the nation three consecutive years by *U.S. News & World Report*. A majority of the African-American lawyers in Houston are TSU graduates. The College of Pharmacy and Health Sciences has historically produced over 27 percent of all African-American pharmacists in the nation.

The University believes that *Grutter* is a sound decision that allows institutions of higher education the freedom to institute programs and policies that attract and admit a diverse student body at the undergraduate and graduate levels. The University feels strongly that a diverse student body enriches the learning environment for all students.

UNIVERSITY OF CENTRAL FLORIDA

The University of Central Florida is one of the most dynamic public universities in the country. UCF began offering classes in 1968 and has grown to

almost 59,000 students, making it the second largest university in the country. While large, the university continues its focus on excellence, with the incoming freshman class having an average SAT score of 1250 (three score combination 1840) and a high school grade-point average of 3.87. Upon becoming university president more than 20 years ago, John Hitt established five over-arching goals for the university. One of those goals was to become more inclusive and diverse.

Currently forty percent of UCF's student body is non-white and students come from all 50 states and 141 countries. *Hispanic Outlook in Higher Education Magazine* ranked UCF eighth in the country in providing bachelor's degrees for Hispanic students, awarding 1,604 degrees in the 2010-2011 academic year. Demographic trends in the United States—suggesting that the minority populations of the country will be a combined majority by 2025—make it essential that diversity remain an imperative in UCF admissions, recruitment, and marketing endeavors and processes. UCF's recruitment and admissions support the critical goal of creating and maintaining an atmosphere of inclusiveness, mutual respect and support, and acknowledgement, because each new class of students contributes to the ongoing campus dialogue by adding to the pool of diverse experiences and backgrounds. UCF believes that this campus atmosphere is diminished by restrictions on admissions criteria and assessment of the type proposed by Petitioner. The goal is to develop and maintain our atmosphere of diversity, inclusion, and mutual respect and support—and that goal is best supported by a holistic review of our candidates for

admissions, including race, ethnicity, socio-economic background, and many other factors (such as rigor of high school courses, choice of most rigorous courses available at high school, upward trend of GPA while increasing rigor of courses, leadership roles in extracurricular activities, leadership roles in community involvement, prominent roles in high school activities, and clarity of goals as expressed in personal statement).

UNIVERSITY OF CONNECTICUT

The University of Connecticut was founded in 1881. As a public institution of higher education, we have an obligation to educate a student population that reflects the breadth of backgrounds in our society. Representation among our community should reflect the rich diversity of ethnicity, race, gender, culture, religion, sexual orientation, and ability of not just the State of Connecticut, but our country and beyond. We acknowledge the value of diversity in background and creed in its contribution to a creative and challenging educational environment. Our setting must be one that can consider, in a critical manner, intellectual contributions from the broadest range of perspectives possible. The presence of diversity is essential to the intellectual enterprise of the University.

Further, we are aware of the disparities in educational attainment between cohorts of different racial and ethnic backgrounds. Beyond the noble cause of improving the human condition and offering all individuals the opportunity to pursue their gifts of the mind, we have an obligation to avert a possible

economic crisis driven by disparities in educational attainment.

While the University of Connecticut has no formal policy with respect to race or ethnicity in admissions, the University employs recruiting strategies and undertakes a holistic review of each applicant in order to admit classes that meet the University's goals, one of which is ensuring a diverse student body, in recognition of the increasingly diverse society we live in. We join this brief as it intersects with our mission to provide a world-class education, ultimately preparing our students to serve as citizens of a diverse world. It is a mission to which we are dedicated and secure in knowing that it ultimately serves the greater good of our state, our country and beyond.

UNIVERSITY OF DETROIT MERCY

The University of Detroit Mercy is the largest and most comprehensive Catholic university in Michigan. UDM was formed in 1990 by the consolidation of the University of Detroit, founded in 1877 by the Society of Jesus, with Mercy College of Detroit, founded in 1941 by the Religious Sisters of Mercy. UDM's mission is to provide excellent, student-centered education in an urban context. A UDM education seeks to integrate the intellectual, spiritual, ethical and social development of students. Our goal is to help students realize their dreams and ambitions. To achieve that goal, UDM offers challenging academic programs taught by talented, committed professors and supplemented by hands-on research, co-op and internship opportunities.

Composed of approximately 5,500 students, our student body is a dynamic mix of people with all ranges of talents and interests. Most of our students come from throughout Michigan, but 33 states and 24 countries are also represented. About 23 percent are students of color, making UDM one of the most diverse of the 28 Jesuit colleges and universities. The heterogeneous quality of UDM's student body reflects that of the real world and employers comment that UDM students are well prepared to succeed in the diverse workforce of the 21st century. That's why for the 11th consecutive year, U.S. News & World Report has ranked UDM in the top tier of Midwest regional universities.

In the Jesuit and Mercy traditions, UDM is committed to providing opportunities for all students. In 1967, the University initiated a special program to meet the needs of high-ability, low-achieving students in accessing a college degree. This initiative continues today as our admissions staff reviews not only student applicants' test scores and GPA but also their potential, thereby admitting students who can meet the challenges of a college education with additional support services and developmental counseling. At an urban university, these students are predominantly students of color. It is important that UDM and other universities continue to use a variety of factors in the admissions process to achieve a diverse student population—students who will graduate to lead and serve in their communities and professions.

UNIVERSITY OF HOUSTON

The University of Houston was founded in 1927 with a specific commitment to effectively educate the community's working men and women and their sons and daughters. That commitment to access, excellence and affordability has remained and today the University of Houston enjoys one of the most diverse student populations in the country while achieving Tier One status as a public research institution. Our mission is to offer nationally competitive and internationally recognized opportunities for learning, discovery and engagement to a diverse student body that now numbers 40,000—and one in which there is no racial or ethnic majority. This year, the U.S. Department of Education classified the University of Houston as both a Hispanic-Serving Institution and an Asian-American-Serving Institution, further confirming its dedication to recruiting, encouraging and supporting all components of the cosmopolitan city it serves. The University of Houston believes institutions of higher education should be permitted to continue considering factors that allow them to meet the challenges of educating a dynamic mix of nontraditional and traditional students.

UNIVERSITY OF MASSACHUSETTS

Founded in 1863, The University of Massachusetts is a land-grant research university whose mission is to provide a high quality affordable and accessible education and to conduct programs of research and public service that advance knowledge and improve the lives of the people of the Commonwealth, the nation and the world. This mission speaks to the

interconnectedness of dimensions of difference, all of which are essential to our definition of an excellent University.

One of the University's trustee-approved priorities is that it will "continue a focus on diversity and positive climate." The University continues to value difference and diversity as a way to ensure excellence. Indeed, the University has long believed that diversity is a prerequisite for excellence.

Perspectives of difference can refine solutions. Recognizing that the benefits of diversity accrue to all, the University regularly renews its commitment and resolve to strive until we get it right or at least significantly better. We also believe that environments of truly valued diversity manifest more than a focus on the numbers of people of color. When we at UMass manage to encourage different angles of perception on ways of knowing, creating, and learning, we find that we pose better questions, resulting in fuller and richer responses. It is a hallmark of our excellence and integral to the intellectual, social and moral vitality of this community of learners.

UNIVERSITY OF MIAMI

The University of Miami was founded in 1925 with classes starting in 1926. It is a private, not-for-profit University with 12 schools and 5 campuses. As of September 30, 2011, it had over 14,000 full-time students and 1000 part-time students.

UNIVERSITY OF SAN DIEGO

The University of San Diego is a Roman Catholic institution committed to advancing academic excellence, expanding liberal and professional knowledge, creating a diverse and inclusive community, and preparing leaders dedicated to ethical conduct and compassionate service. Known for its commitment to teaching, liberal arts, ethical values, and community service, USD received international recognition in Fall 2011 when it was recognized as an Ashoka Change Maker campus for its innovative, socially minded curriculum and programs.

Central to USD's mission is its commitment to creating a diverse and inclusive community. The University works diligently to recruit and retain a diverse student body which enhances and enriches the learning experience for the entire campus community. Educating students in a diverse environment provides them with broad perspectives and experiences that will prepare them to be effective leaders and contributors to our global, national and local communities. The ability to consider all factors, including race and other diversity criteria, as part of an admissions process that involves an individualized and holistic review of each applicant enables institutions of higher education, like USD, to fulfill their educational missions and to have the greatest impact on our students and society as a whole.

UNIVERSITY OF SCRANTON

Founded in 1888, Scranton is a private, nationally recognized Catholic and Jesuit university in

Pennsylvania's Pocono Mountains region. The University offers 61 undergraduate and 25 graduate programs to approximately 6,000 students.

Spirituality is at the core of Scranton's mission as a Catholic, Jesuit institution of higher learning. The chief characteristics embedded in the Ignatian vision include: the concept of the *Magis*, or a restless pursuit of excellence grounded in gratitude; *Cura Personalis*, individual attention to students and respect for the uniqueness of each member of the University community; seeking God in all things; liberal education; service of faith and the promotion of justice; and contemplation in action. Scranton's institutional commitment to diversity is grounded in these core Jesuit principles. Scranton strives to develop "men and women for and with others," and in doing so is committed to increased recruitment and retention of students, faculty and staff from diverse backgrounds and to policies and measures that make our campus a nurturing environment that fosters innovation, confidence and a healthy sense of competition.

Scranton's commitment is evidenced by—to name a few indicators—its complex community of scholars, its goal to significantly increase the cultural diversity of the faculty, its annual commitment to increasing student body diversity with double-digit increases in multiple years, its launching of a Women's Studies program and a Women's Entrepreneurship Center, its campus-wide, year-long programs focusing first on Latin America and then on Africa, and its Latin American Studies and Asian Studies programs.

UNIVERSITY OF TEXAS AT EL PASO

The University of Texas at El Paso was founded in 1914 as the Texas State School of Mines and Metallurgy. In 1919, it joined The University of Texas System as the College of Mines and Metallurgy and is the second oldest academic institution in the UT System. In 1949, the Texas Legislature changed the institution's name to Texas Western College, reflecting the increased number of liberal arts programs offered. It was as Texas Western College that UTEP achieved national fame by winning the 1966 NCAA basketball championship for the first time with a starting lineup that was 100% African-American, reflecting the institution's long-standing commitment to diversity. In 1967, Texas Western College became The University of Texas at El Paso.

UTEP primarily serves the population of the Paso del Norte region, which includes western Texas, southern New Mexico, and the northern portion of the state of Chihuahua, Mexico. This geographically isolated region along the U.S.-Mexico border has been characterized by low educational attainment and the lowest median income in Texas. UTEP's mission, as a public university, is to place the human and economic development and quality of life of the region at the center of its teaching, research, and service functions. With a student population that is more than 75% Hispanic, and ranked 72nd among all U.S. universities in annual research expenditures, UTEP envisions itself as the only national research university that serves the 21st century demographic, a demographic that is largely urban, minority, and first-generation college student. UTEP's vision includes being recognized nationally as "the

preeminent institution in fostering student participation and success, especially [among] young people, working adults, returning students and lifelong learners from socioeconomic groups that have traditionally been under-represented in U.S. higher education” (UTEP Strategic Plan, 2008-2015).

UTEP is committed to both access and excellence—to both Closing the Gaps and achieving Tier One status. As UTEP’s president wrote in the Texas Tribune in 2010, “Demographics have shifted dramatically, driven largely by the rapid growth of the Hispanic population, and it’s time to recognize that low-income and minority students have every right to expect the same level of educational excellence experienced by their peers in more affluent settings. Texas’ future prosperity resides in these undereducated segments of our population. We literally cannot succeed without setting high expectations for them and fully developing their talents.”

UNIVERSITY OF WISCONSIN OSHKOSH

The University of Wisconsin Oshkosh has been providing the residents of northeastern Wisconsin with high-quality affordable education since 1871. Among the largest public universities in the state (enrollment 13,500) and with nearly 80,000 alumni, UW Oshkosh is committed to providing students with a broad knowledge base and transferable skills as well as a strong sense of values and ethics that prepares them for civic leadership in society.

UW Oshkosh offers 60 undergraduate majors, 17 master’s degree programs and one doctoral degree

(Doctorate of Nursing Practice). As the nation's first Fair Trade University, UW Oshkosh has been nationally recognized for its role in embracing sustainable practices, such as building "green," examining its carbon footprints and promoting social justice. An integrated Campus Sustainability Plan, established in 2006, guides the University's effort to be a leader in responsible environmental stewardship, education, outreach and research.

UNIVERSITY OF WISCONSIN SYSTEM

The University of Wisconsin System is one of the largest systems of public higher education in the country, serving more than 182,000 students each year and employing more than 32,000 faculty and staff statewide. The UW System is made up of 13 four-year universities, 13 freshman-sophomore UW College campuses, and statewide UW-Extension. Together, these institutions are a tremendous academic, cultural, and economic resource for Wisconsin, the nation, and the world.

WASHINGTON & JEFFERSON COLLEGE

Washington & Jefferson College is located in the rolling hills 30 miles south of Pittsburgh. The 11th oldest college in the country, W&J is a highly selective, private, residential, liberal arts college with a long history and continuing commitment to educating the sons and daughters of local coal miners and steel workers. W&J was formed by the joining of two schools. Because of the many young men volunteering to fight in the Civil War—Washington College students primarily for the North, Jefferson College students primarily for the South—there were not enough young men to sustain both colleges, and

the rival institutions merged. After the war, veterans from both sides returned to resume their studies at the newly united college. The former soldiers found themselves sharing rooms and classrooms with those they had literally tried to kill across the battle lines. Had these young men not learned to appreciate one another's differences and live together productively, Washington & Jefferson College would not exist today.

The W&J campus is still influenced by that commitment to uniting individuals with different views in pursuit of common educational goals. W&J continues to be a place where liberals and conservatives, rich and poor, black and white, all debate issues, listen to one another, and respect one another in the classroom, on the athletic field and in residence halls. A major plank in W&J's strategic plan calls for the College to "increase the diversity of the learning environment." To that end, W&J has formed a partnership with the YES Prep program based in Houston, Texas, to encourage Hispanic and African-American students to matriculate at W&J. In 2010, W&J admitted the most racially diverse class in the history of the College.

W&J also has a long history of supporting African-Americans in their quest to succeed not only at the College, but in the broader world. In a famous incident in 1923, W&J forfeited a major football contest against another school rather than acquiesce to its demand that W&J bench its one African-American player. Many Southern schools at that time routinely refused to play if there was an African-American on the field. However, unlike

many northern colleges and universities, W&J acted on principle and refused to comply. This “uncommon integrity,” identified in our mission statement, has always been an integral part of the fabric of the College.

Additionally, W&J has a national reputation for producing future physicians from all races and ethnicities. This reputation is largely due to the work of biology professor Clarence Dewey Dieter, who assured all students that, despite medical school quotas for African-Americans and Jews that were common in the United States in the mid-twentieth century, he would guide all his qualified students to the best medical schools. His success in overcoming quotas and gaining access for his students was legendary.

The long-standing dedication of W&J to diversity is exemplified in our motto, *Juncta Juvant*, “Together We Thrive.”

WASHINGTON STATE UNIVERSITY

Washington state’s land-grant research university, Washington State University was founded in Pullman in 1890. Today, it is co-located in Pullman and Spokane with additional campuses in the Tri-Cities (Richland, Pasco, and Kennewick) and in Vancouver, across the Columbia River from Portland, Oregon. Considered one of the leading public research universities in America, WSU has 11 colleges and a graduate school which offer strong and varied academic programs. The liberal arts and physical and social sciences have an important place in the curriculum, along with business,

communication, education, architecture, pharmacy, nursing, and the traditional land-grant disciplines of agriculture, engineering, and veterinary medicine. More than 2,100 instructional faculty members provide learning opportunities to a student body of approximately 27,000.

WSU students are of diverse social, economic, and ethnic backgrounds from throughout the nation and about 98 foreign countries. Washington State University affirms that diversity is crucial to its mission as a public land grant institution. Diversity is manifested, among other indicators, in a faculty, staff and student body that represent all of the populations that the University serves including, but not limited to, diversity in race, ethnicity and gender. The chance for students to know and work closely with their teachers is a WSU tradition and the richness of this experience is enhanced considerably by having a diverse student body and faculty. The University embraces a worldview that values the benefits derived from diversity and cultural differences, and recognizes the importance of global interdependence in the creation of a sustainable world.

WAYNE STATE UNIVERSITY

Founded in 1868, Wayne State University is a nationally recognized metropolitan research institution offering more than 400 academic programs through 13 schools and colleges to approximately 31,000 students. Wayne State's main campus in midtown Detroit, and its five extension centers offer higher education to people throughout Michigan. It boasts the largest single campus

medical school in the country, the only public law school in Detroit and one of just two public law schools in Michigan and whose graduates serve at the highest levels of law and government, and graduate and PhD programs.

Wayne State is a nationally recognized urban center of excellence in research and one of only two public urban universities holding the Carnegie Foundation for the Advancement of Teaching's designation as an institution with "very high research activity" as well as the foundation's most comprehensive classification for community engagement. WSU is among the nation's top public universities for total research expenditures according to the National Science Foundation.

Wayne State is dedicated to preparing students to excel by combining the academic excellence of a major research university with the practical experience of an institution that by its history, location and diversity represents a microcosm of the world in which we live. Reflecting its location and the excellent international reputation of its graduate schools, particularly in the sciences, Wayne State boasts the most diverse student body among Michigan's public universities. Its students represent 49 U.S. states and more than 60 countries.

In 2006, the Michigan Constitution was amended to bar the use of 'preferences' in public education. Wayne therefore is unlikely to be directly impacted by the outcome of this litigation. We believe that the resulting constraints on admissions practices have not been beneficial to the education of students at public universities in Michigan.