No. 21-707

IN THE

Supreme Court of the United States

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STUDENTS FOR FAIR ADMISSIONS, INC.,

Petitioner,

v.

UNIVERSITY OF NORTH CAROLINA, *et al.*,

Respondents.

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**On Writ of Certiorari Before Judgment to the
United States Court of Appeals
for the Fourth Circuit**

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**BRIEF OF 1,246 AMERICAN SOCIAL SCIENCE
RESEARCHERS AND SCHOLARS AS *AMICI
CURIAE* IN SUPPORT OF RESPONDENTS**

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INTEREST OF *AMICI CURIAE*

Amici curiae are 1,246 researchers and scholars from 381 educational institutions and research centers throughout the United States, including 32 members of the National Academy of Education, 26 members of the American Academy of Arts and Sciences, and 40 fellows of the American Educational Research Association.[1] The *amici* have extensively studied diversity, race-conscious policies in education, desegregation, equity, and race relations in higher education institutions and in society. Their work extends across numerous social science disciplines, including education, psychology, sociology, demography, economics, political science, history, and ethnic studies.[2]

As scholars, *amici curiae* have a particular interest in providing the Court with comprehensive social science research relevant to the educational judgments of The University of North Carolina at Chapel Hill ("UNC") and to the implications of the Court's decision for other institutions and programs.

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[1] All parties have given blanket consent for the filing of *amicus curiae* briefs in this case. This brief was not written in whole or in part by counsel for any party, and no person or entity other than the undersigned *amici* or their counsel has made a monetary contribution to the preparation or submission of this brief.

[2] A complete list of *amici* is included in Appendix A. Institutional affiliation is provided for identification purposes only and is not intended to imply endorsement of this brief by those institutions.

SUMMARY OF THE ARGUMENT

The district court's factual findings that UNC's holistic admissions system is designed, implemented, and assessed to reap the benefits of student body diversity are supported by decades of social science research, including work using current UNC data by social scientists called as experts at trial. That body of research also affirms that it would be premature today to forbid race-conscious university admissions, six years shy of the benchmark this Court set in *Grutter*. As the district court found, "while UNC has not set forth a proposed time period in which it believes it can end all race-conscious admissions practices, the evidence unmistakably demonstrates that such a time has not yet been achieved." Pet. App. 62. The benefits of consciously promoting racial and ethnic diversity continue to be substantial, contrary to the "mismatch" theory Petitioner embraces, as notably shown by a comparison of UNC's graduation rates with those of schools that are forbidden to consider race in admissions.

Social science also bears out the district court's finding that race-neutral alternatives will not "allow [UNC] to achieve the educational benefits of diversity about as well as its current race-conscious policies." Pet. App. 144. Although, as the district court found, factoring socio-economic diversity into admissions is itself educationally beneficial, considering an applicant's socio-economic status is not a substitute for promoting racial diversity. Pet. App. 132. Both UNC and the district court seriously considered race-neutral alternatives and found them insufficient to serve UNC's interest in enrolling a sufficiently diverse student body.

ARGUMENT

In *Grutter v. Bollinger*, this Court upheld the "narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body." 539 U.S. 306, 343 (2003). One important aspect of that narrow tailoring was that "race-conscious admissions policies must be limited in time." *Id.* at 342. "The requirement that all race-conscious admissions programs have a termination point assures all citizens that the deviation from the norm of equal treatment of all racial and ethnic groups is a temporary matter, a measure taken in the service of the goal of equality itself." *Id.* at 342 (cleaned up). The Court stated its expectation that "25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today." *Id.* at 343.

Petitioners seek to end race-conscious admissions short of the mark forecast in *Grutter*. Hard-won but incomplete progress can be mistaken for the eradication of the effects of racial discrimination.[3] But the evidence from social science shows that it would be premature for the Court to forbid the kind of race-conscious holistic admissions policy UNC applies.

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[3] For example, the Court deemed Voting Rights Act preclearance no longer necessary based on its assessment of current conditions nearly 50 years after enactment. *Shelby County v. Holder*, 570 U.S. 529, 535 (2013) ("the conditions that originally justified these measures no longer characterize voting in the covered jurisdictions"). But restrictive measures enacted in North Carolina and elsewhere immediately afterwards showed the continuing need for protection. *See, e.g.*, *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 227 (4th Cir. 2016).

I. UNC'S RACE-CONSCIOUS ADMISSIONS PROCESS HAS BETTER SERVED THE COMPELLING INTERESTS IDENTIFIED IN *GRUTTER* THAN THE POLICIES OF FLAGSHIP UNIVERSITIES THAT ARE FORBIDDEN TO CONSIDER RACE.

A. College Student-Body Diversity Promotes Citizenship, Leadership, and Productivity in Diverse Workplaces.

The compelling interest this Court identified in *Grutter* is about more than classroom dynamics or life on campus—it is about building communities that will not continue to fracture along racial lines, cultivating leaders with wide exposure to varied ideas, and preparing students to succeed in workplaces with supervisors, subordinates, and colleagues of different backgrounds. 539 U.S. at 330–32 (Because "universities . . . represent the training ground for a large number of our Nation's leaders, . . . [i]n order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity.") (citation omitted). The district court found that UNC's admissions policies are tailored to advance those goals. *See, e.g.*, Pet. App. 14, 16, 17, 19–20, 22, 57–58.[4]

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[4] The district court listed the educational benefits UNC aims to achieve by admitting a critical mass of "underrepresented minority ('URM')" students:

- cross-racial understanding through living and learning alongside one another;
- breaking down stereotypes;

Substantial social science research confirms that student body diversity in higher education serves compelling interests. For example, a 2010 longitudinal study using survey data collected at nine public universities demonstrates that racially diverse college settings can mitigate the lingering effects of precollege segregation by promoting positive cross-racial interactions in the early college years.[5] A 2015, ten-year longitudinal study of 8,618 White students across 229 public and private postsecondary institutions, nationwide, similarly showed that a racially-diverse college experience interrupts persistent cycles of residential segregation and racial division.[6] The latter study demonstrates that White students who grow up in segregated neighborhoods tend to choose segregated neighborhoods as adults; but students who attend a racially diverse college—and engage in cross-racial interactions—are more likely to choose a racially integrated neighborhood

- improved classroom discussion through different perspectives;
- academic excellence;
- promotion of innovation, new ideas, and problem-solving;
- teaching students how to navigate the world;
- the cultivation of leaders;
- enhancing appreciation, respect, and empathy for others;
- improving the experience of underrepresented groups so that they were not isolated or having to act as spokespeople for their race.

Pet. App. 57-58 (citations to trial record omitted).

[5] Victor B. Saenz, *Breaking the Segregation Cycle: Examining Students' Precollege Racial Environments and College Diversity Experiences*, 34 Rev. Higher Educ. 1 (2010).

[6] Uma M. Jayakumar, *The Shaping of Postcollege Colorblind Orientation Among Whites: Residential Segregation and Campus Diversity Experiences*, 85 Harvard Educ. Rev. 609 (2015).

and lifestyle as adults.[7] Because continued residential and high school segregation remains an obstacle to successful diversification of colleges, *see infra* at 18–19, interrupting this cycle is important to achieving the goal of moving beyond race to which *Grutter* aspired.

Another study, focused on former Division I athletes, found that "White former student-athletes from both segregated and racially diverse precollege neighborhoods reported that their levels of interaction with individuals of different races during college had lasting benefits on leadership skills in the years after college."[8] These findings are consistent with research showing that racial diversity in college promotes enhanced civic engagement among college graduates.[9]

Other studies demonstrate that exposure to diverse racial and ethnic backgrounds in college fosters the development of knowledge, attitudes, and skills that make

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[7] *Id.* at 629, 637.

[8] Eddie Comeaux, *The Long-Term Benefits of Cross-Racial Engagement on Workforce Competencies for Division I White Student-Athletes*, 50 J. Student Affairs Research & Prac. 37 (2013). *See also* Willis A. Jones, et al., *The Benefits of Cross-Racial Engagement on the College Satisfaction of Student-Athletes*, 54 J. Student Affairs Research & Prac. 371 (2017).

[9] Nicholas A. Bowman, *Promoting Participation in a Diverse Democracy: A Meta-Analysis of College Diversity Experiences and Civic Engagement*, 81 Rev. Educ. Research 29 (2011); *See also* Sylvia Hurtado & Linda DeAngelo, *Linking Diversity and Civic-Minded Practices with Student Outcomes*, 98 Liberal Educ. 14 (2012).

students into more accomplished workers and better leaders after college.[10]

B.   The Educational Benefits of Diversity Depend on UNC Admitting Meaningful Numbers of Under-Represented Minority Students Each Year

The majority in *Grutter* agreed that the school needed to enroll more than token numbers of minority students to avoid the harms of racial isolation and create the necessary conditions for educational benefits to flow from diversity. 539 U.S. at 329–30.[11]

Social science research strongly supports the conclusion that merely token diversity would not advance UNC's compelling interest. While many of the educational benefits of diversity derive from cross-racial interactions among students, the opportunities for those interactions are reduced when there are insufficient numbers of under-

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[10] Nicholas A. Bowman, *College Diversity Experiences and Cognitive Development: A Meta-Analysis*, 80 Rev. Educ. Research 4 (2010). Mark E. Engberg & Sylvia Hurtado, *Developing Pluralistic Skills and Dispositions in College: Examining Racial/Ethnic Group Differences*, 82 J. Higher Educ. 416 (2011); Patricia Gurin, et al., *Dialogue Across Difference: Practice, Theory, and Research on Intergroup Dialogue* (2013); Uma M. Jayakumar, *Can Higher Education Meet the Needs of an Increasingly Diverse and Global Society? Campus Diversity and Cross-Cultural Workforce Competencies*, 78 Harvard Educ. Rev. 615 (2008).

[11] The *Grutter* majority approved a holistic application process to pursue a "critical mass" of groups of minority students "who without this commitment might not be represented in [the] student body in meaningful numbers." 539 U.S. at 316 (cleaned up).

represented minority ("URM") students.[12] Low numbers, likewise, diminish opportunities for institutionally-facilitated cross-racial interactions and dialogue,[13] both in the classroom and through informal interactions on campus. A dearth of meaningful cross-racial interactions can solidify rather than challenge pre-existing biases and stereotypes.[14]

Smaller numbers, moreover, increase URM isolation, making those students more vulnerable to social stigma[15] and more likely to experience racial tension[16] and

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[12] Vinay Harpalani, *"Safe Spaces" and the Educational Benefits of Diversity*, 13 Duke J. Const. Law & Pub. Pol'y 117 (2017); *see also* Meera E. Deo, *Two Sides of a Coin: Safe Space & Segregation in Race/Ethnic-Specific Law Student Organizations,* 42 Wash. Univ. J. Law & Pol'y 42, 83 (2013); Kimberly Sanders, *Black Culture Centers: A Review of Pertinent Literature,* 4 Urban Educ. Research & Pol'y Annuals, 30 (2016).

[13] *See generally* Gurin et al. (2013), *supra*, n.10, at 329.

[14] Scott Page, *The Diversity Bonus* 142-61 (2017).

[15] *See* Claude M. Steele, *Whistling Vivaldi: How Stereotypes Affect Us and What We Can Do About It* 135 (2010). For URM students, academic stigma and stereotype threats are "part of a larger set of minority status stressors that can undermine minority students' psychological and academic outcomes." Jim Sidanius et al., *The Diversity Challenge: Social Identity and Intergroup Relations on the College Campus* 291 (2008).

[16] *See* Shaun R. Harper & Sylvia Hurtado, *Nine Themes in Campus Racial Climates and Implications for Institutional Transformation*, 120 New Directions for Student Services 7-24 (2007); Susan R. Rankin & Robert Dean Reason, *Differing Perceptions: How Students of Color and White Students Perceive Campus Climate for Underrepresented Groups*, 46 J. College Student Dev. 43 (2005).

tokenism.[17] In environments where individuals feel scrutinized and excluded, intergroup relations suffer.[18] Students—of all races—in such environments are not likely to experience the "confrontation with diversity and complexity" that enhances cognitive and active thinking processes, stimulates developmental growth, and prepares students for life in a diverse society.[19] Greater URM representation, on the other hand, is shown to decrease stigma and vulnerability to stereotypes.[20]

What constitutes a "critical mass" depends heavily on context. Social science research supports the *Grutter*

[17] *See, e.g.*, Rosabeth Moss Kanter, *Men and Women of the Corporation* 206-42 (1977). Kanter's research demonstrated that individual members of an extremely underrepresented minority group are under greater scrutiny and feel pressure to represent their group, while majority group members are more likely to place them into existing stereotypes. This documented phenomenon, sometimes called tokenism, prevents the equal-status inter-group contacts necessary to reduce racial prejudice. *See also* Daryl G. Smith, *Diversity's Promise for Higher Education: Making it Work* 296-97 (2020); Mischa Thompson & Denise Sekaquaptewa, *When Being Different is Detrimental: Solo Status and the Performance of Women and Racial Minorities*, 2 Analyses Soc. Issues & Pub. Pol'y 183, 199 (2002).

[18] Sylvia Hurtado, et al., *Enacting Diverse Learning Environments: Improving the Climate for Racial/Ethnic Diversity in Higher Education*, 26 ASHE-ERIC Higher Educ. Rep. 19-22 (1999); Jeffrey F. Milem, et al., *Making Diversity Work on Campus: A Research-Based Perspective* 6 (2005).

[19] Patricia Gurin et al., *Diversity and Higher Education: Theory and Impact on Educational Outcomes*, 72 Harv. Educ. Rev. 330, 334, 337-38 (2002).

[20] Uma M. Jayakumar, *Why Are All the Black Students* Still *Sitting Together in the Proverbial College Cafeteria? A Look at Research Informing the Figurative Question Being Taken by the Supreme Court in Fisher*, Higher Educ. Research Inst. (2015); *see also* Harpalani (2017), *supra* n.12, at 4-5, 128-35.

majority's contextual description of critical mass as "defined by reference to the educational benefits that diversity is designed to produce." 539 U.S. at 329-30.[21] Thus, it is only by assessing student experiences as they relate to racial isolation, participation, and other educational benefits that an institution can be satisfied that it has admitted a critical mass of a particular ethnic group conducive to promoting educational benefits.[22]

C. Under-Represented Minority Students at UNC Graduate at Higher Rates than Those at Public Universities with Race-Blind Admissions Policies.

Not surprisingly, graduation rates among URM students have been shown to be higher at schools with "meaningful numbers" of URM students.[23] *See Grutter*, 539 U.S. at 318–19 ("a number that encourages underrepresented minority students to participate in the classroom and not feel isolated," or "numbers such that underrepresented minority students do not feel isolated or like spokespersons for their race.").

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[21] *See, e.g.,* Liliana M. Garces & Uma M. Jayakumar. *Dynamic Diversity: Toward a Contextual Understanding of Critical Mass*, 43 Educ. Researcher 115 (2014) (summarizing research).

[22] *See supra* at 17–19 (§ I.E) for a discussion of UNC's incomplete progress in these areas.

[23] Nicholas A. Bowman & Nida Denson, *Institutional Racial Representation and Equity Gaps in College Graduation,* 93 J. Higher Educ. 399, 416 (2022) (in a national sample of 2,807 colleges, "the findings suggest that same-race representation is associated with reduced racial disparities in graduation rates, and different-race representation of racially minoritized students and instructors also frequently corresponds with smaller equity gaps.").

UNC's graduation data show at least partial success in achieving the benefits of enrolling a "critical mass" of URM students as compared to its peer institutions.[24] As shown in Table 1, below, Black students who entered UNC between 2011 and 2014 graduated at a rate of 85% for the four years combined—higher than *all eight* of the top public universities with race-blind admissions policies (which averaged a Black student graduation rate of 79%).[25] Moreover, the Black versus White gap in graduation rates is seven points at UNC (85% v. 92%), which is a smaller gap than at seven of the eight top public universities without affirmative action.

UNC has a 90% Latinx graduation rate—again, higher than *all eight* of its peers with race-blind admissions policies (which average 84%). And UNC's Latinx-White graduation rate gap of two points is, again, smaller than at seven of the eight top public universities without affirmative action.[26]

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[24] Universities reasonably similar to UNC in overall profile and admissions selectivity were identified by focusing on the "top ten" public universities as ranked by U.S. News & World Report in 2022. *Top Public Schools*, USNews.com, https://tinyurl.com/yttaenh2. At eight of the universities in the "top ten," race-conscious affirmative action is not permitted or is not used. The University of Virginia, like UNC, allows for careful consideration of race in admissions and has high URM graduation rates.

[25] Table 1 presents graduation rate data drawn from the latest federal graduation reports from the National Collegiate Athletic Association as of July 2022. *See Graduation Success Rate*, NCAA.org, http://web3.ncaa.org/aprsearch/gsrsearch. Averages reported for the eight universities are unweighted.

[26] Graduation rates for Asian American students at all of these institutions (92% for UNC; average of 91% at the other eight schools)

<u>Table 1</u>
Graduation Rates at Public Flagship Universities
(Freshmen entering from 2011-12 to 2014-15)

	Black	Latinx	White
UNC	**85%**	**90%**	**92%**
UCLA	79%	87%	93%
UC Berkeley	79%	86%	91%
U Michigan	84%	89%	93%
UC Santa Barbara	75%	79%	85%
U Florida	80%	89%	90%
UC San Diego	79%	79%	85%
UC Irvine	76%	78%	85%
Georgia Tech	76%	88%	89%
Avg. for the 8 schools w/o affirm. Action	79%	84%	89%

The data in Table 1 are consistent with earlier published research conducting the same comparison among "top ten" public universities in other years.[27]

Moreover, Table 1 is also consistent with a large and reliable body of recent, high-quality, peer-reviewed research showing a net positive association between affirmative action and graduation rates,[28] or (conversely) showing a net

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were similar to the rates for White students. *See Graduation Success Rate*, NCAA.org, *supra*, n.25.

[27] William C. Kidder & Richard O. Lempert, *The Mismatch Myth in U.S. Higher Education, in Affirmative Action and Racial Equity: Considering the Fisher Case to Forge the Path Ahead* 105, 121 (Uma M. Jayakumar & Liliana M. Garces, eds., 2015).

[28] *See, e.g.*, Bowman & Denson, *supra* n.23, at 412-13; Christina Ciocca Eller & Thomas A. DiPrete, *The Paradox of Persistence: Explaining the Black-White Gap in Bachelor's Degree Completion*, 83 Am. Soc. Rev. 1171, 1195 (2018) ("Institutional structures such as affirmative action

negative effect of affirmative action bans on URM degree attainment.[29]

These studies, and UNC's actual experience as reflected in Table 1, refute the speculation of several *amici* supporting Petitioner that ending race-conscious admissions will improve graduation rates for URM students or otherwise reduce so-called academic "mismatch." *See* Brief for Richard Sander as *Amicus Curiae* in Supp. of Pet'r at 24-30, 32; 32; Brief *Amicus Curiae* of Pacific Legal Found.

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also play a role in raising black students' BA attainment at the population level. . . . Our own results confirm that higher-quality colleges facilitate higher levels of BA completion among black students, especially among students with higher pre-college dropout risk . . .").

[29] *See, e.g.*, Zachary Bleemer, *Affirmative Action, Mismatch, and Economic Mobility After California's Proposition 209*, 137 Q. J. Econ. 115 (2022) (1994-2002 data for Black and Latinx UC applicants indicates the affirmative action ban lowered degree attainment); Ben Backes, *Do Affirmative Action Bans Lower Minority College Enrollment and Attainment? Evidence from Statewide Bans*, 47 J. Hum. Res. 435, 437 (2012) ("All in all, although the effect sizes were modest, estimates show that there were fewer black and Hispanic students graduating from four-year, public universities following the bans, and those who did graduate tended to do so from less prestigious universities."); Peter Hinrichs, *Affirmative Action Bans and College Graduation Rates*, 42 Econ. Educ. Rev. 43, 50 (2014) ("The results are clear: since fewer underrepresented minorities are admitted to selective colleges when affirmative action is banned, fewer underrepresented minorities become graduates of selective colleges."); Kalena E. Cortes, *Do Bans on Affirmative Action Hurt Minority Students? Evidence from the Texas Top 10% Plan*, 29 Econ. Educ. Rev. 1110, 1111 (2010); Tongshan Chang & Heather Rose, *A Portrait of Underrepresented Minorities at the University of California, 1994-2008, in Equal Opportunity in Higher Education: The Past and Future of California's Proposition* 83, 99 (Eric Grodsky & Michal Kurlaender eds., 2010).

et al., at 22; Brief of *Amicus Curiae* Nat'l Ass'n of Scholars, at 8-9.

D. Claims of Harm from Academic "Mismatch" Are Unfounded.

A robust body of research, moreover, refutes the notion that academic "mismatch" makes affirmative action harmful to minority students.[30] Of particular relevance to UNC, one study analyzed 21 public flagship universities—including UNC—and public university systems in four states (including North Carolina), finding there is "no support whatsoever" for the mismatch hypothesis.[31] Another study, after controlling for selection bias, found

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[30] *See, e.g.*, Joanne W. Golann et al., *Does the "Mismatch Hypothesis" Apply to Hispanic Students at Selective Colleges?, in The Education of the Hispanic Population: Selected Essays* 209, 222-23 (Billie Gastic & Richard R. Verdugo eds. 2013); Thomas J. Espenshade & Alexandria Walton Radford, No Longer Separate, Not Yet Equal: Race and Class in Elite College Admission and Campus Life 235-37, 245, 258 (2009); Tatiana Melguizo, *Quality Matters: Assessing the Impact of Attending More Selective Institutions on College Completion Rates of Minorities*, 49 Res. Higher Educ. 214, 216-17, 223, 232 (2008); Douglas S. Massey & Margarita Mooney, *The Effects of America's Three Affirmative Action Programs on Academic Performance*, 54 Soc. Probs. 99, 114 (2007); Mario L. Small & Christopher Winship, *Black Students' Graduation from Elite Colleges: Institutional Characteristics and Between-Institution Differences*, 36 Soc. Sci. Res. 1257, 1272 (2007); Mary J. Fischer & Douglas S. Massey, *The Effects of Affirmative Action in Higher Education*, 36 Soc. Sci. Res. 531, 544 (2007); Sigal Alon & Marta Tienda, *Assessing the "Mismatch" Hypothesis: Differences in College Graduation Rates by Institutional Selectivity*, 78 Socio. Educ. 294, 296 (2005); William G. Bowen & Derek Bok, *The Shape of the River* (1998).

[31] William G. Bowen et al., *Crossing the Finish Line: Completing College at America's Public Universities* 228 (2009); *see also id.* at 12-16 (describing study parameters); *id.* at 12, 101-05 (addressing UNC and North Carolina).

that mismatch "has no reliable or substantively notable bearing on grades, rates of credit accumulation, or persistence."[32]

In research employing the particular matching methodology that Richard Sander has called "the most reliable way of measuring mismatch effects,"[33] Stacy Dale and Alan Krueger used data from 27 mostly selective colleges in the *College & Beyond* dataset, which included UNC.[34] They identified students with similar credentials who applied and were admitted to the same institutions and then compared outcomes for those who declined to enroll at the most selective institution that admitted them versus those who enrolled at the most selective college.[35] Dale and

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[32] Michal Kurlaender & Eric Grodsky, *Mismatch and the Paternalistic Justification for Selective College Admissions*, 86 Socio. Educ. 294, 307 (2013).

[33] Richard H. Sander, *A Reply to Critics*, 57 Stan. L. Rev. 1963, 2016 (2005); *see also* Richard Sander & Stuart Taylor, Jr., *Mismatch: How Affirmative Action Hurts Students It's Intended to Help, and Why Universities Won't Admit It* 108-09 (2012).

[34] UNC participated in the *College and Beyond* data set, as decribed in the landmark work, *The Shape of the River*. Bowen & Bok, *supra* n.30, at xvii, 40, 60-61. Consequently, UNC is included in a number of important studies using updated versions of this same dataset.

[35] Stacy Dale & Alan Krueger, *Estimating the Effects of College Characteristics over the Career Using Administrative Earnings Data*, 49 J. Hum. Res. 323 (2014). This study replicates the methodology Dale and Krueger used in an earlier study on a cohort of 1976 graduates. *See* Stacy Berg Dale & Alan B. Krueger, *Estimating the Payoff to Attending a More Selective College: An Application of Selection on Observables and Unobservables*, 117 Q.J. Econ. 1491 (2002). Sander & Taylor, *supra* n.33 at 108-09, cite the 2002 study as supporting the mismatch hypothesis. To the contrary, according to Dale and Krueger, the 1976 data "suggest that black students benefit from attending more selective colleges just as much as other students." Stacy Berg Dale & Alan B. Krueger,

Krueger found "for the 1989 cohort, the estimates indicate the effect of attending a school with a higher average SAT score is positive for black and Hispanic students, even in the selection-adjusted model."[36] A substantial body of scholarship from economists, sociologists, and educational researchers, using a blend of methodological approaches, confirms the benefit for URM students of attending selective universities (with affirmative action contributing to those enrollment choices) and later achieving higher long-term earnings in the U.S. labor market, contrary to the mismatch hypothesis.[37] That scholarship contradicts the

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Estimating the Payoff to Attending a More Selective College: An Application of Selection on Observables and Unobservables, Nat'l Bureau Econ. Research, Working Paper No. 7322, 28 (1999). Because the 1976 sample contained such a small number of Black graduates, however, Dale & Krueger declined to draw a "strong inference" as to those benefits.

[36] Dale & Krueger (2014), *supra* n.35, at 350.

[37] *See* Sandra E. Black et al., *Winners and Losers? The Effect of Gaining and Losing Access to Selective Colleges on Education and Labor Market Outcomes*, Nat'l Bureau Econ. Research, Working Paper No. 26821 (2020); Jack Mountjoy & Brent R. Hickman, *The Returns to College(s): Estimating Value-Added and Match Effects in Higher Education*, Nat'l Bureau Econ. Research, Working Paper No. 29276 (2021); Eric R., Eide et al., *Is It Where You Go Or What You Study? The Relative Influence of College Selectivity and College Major on Earnings*, 34 Contemp. Econ. Pol'y 37 (2016); Dirk Witteveen & Paul Attewell, *The Earnings Payoff from Attending a Selective College*, 66 Soc. Sci. Research 154 (2017); Amy Lutz et al., *How Affirmative Action Context Shapes Collegiate Outcomes at America's Selective Colleges and Universities*, 31 J. L. & Soc. Pol'y 71 (2019); Mark C. Long, *Changes in the Returns to Education and College Quality*, 29 Econ. Educ. Rev. 338, 346 (2010); Kermit Daniel et al., *Racial Differences in the Effects of College Quality and Student Body Diversity on Wages*, *in Diversity Challenged: Evidence on the Impact of Affirmative Action* 221, 229 (Gary Orfield & Michal Kurlaender eds., 2001); James Monks, *The Returns to Individual and*

crude descriptive statistics presented by Petitioner's state *amici* to argue that diversity and race-conscious admissions do not subsequently benefit URM students in the labor market.[38] Perhaps it is not surprising, then, that even Petitioner's expert Peter Arcidiacono (representing his own views) concedes in his review of the scholarly literature: "Our conclusion from this literature is that, on the whole, the evidence supports the claim that there are significant returns to college quality."[39]

E. Assessment of UNC's Progress Must Take Into Account the Continuing Effects of Segregation in North Carolina.

The district court found that, while UNC's "efforts in pursuing the educational benefits of diversity are substantial and ongoing," it is not yet "where it needs to be." Pet. App. 22 (cleaned up). UNC's periodic reviews have found evidence of persisting and pervasive impediments on its campus to meaningful interactions across race.[40] These studies, in addition to original data analysis of student experiences, were detailed in the expert reports of Dr. Uma

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College Characteristics: Evidence from the National Longitudinal Survey of Youth, 19 Econ. Educ. Rev. 279, 286 (2000).

[38] Brief of *Amici Curiae* Oklahoma and 18 Other States in Support of Petitioner at 15-17 (citing Census data and university-level data with scant discussion of sources and methodological caveats such as whether their University of Michigan chart at page 17 controls for inflation and other cohort effects when comparing post-graduation earnings across a twelve-year span).

[39] Peter Arcidiacono and Michael Lovenheim, *Affirmative Action and the Quality-Fit Tradeoff*, 54 J. Econ. Lit. 3, 41 (2016).

[40] *See, e.g.*, J.A. 1601 (Jan. 2018 Expert Report of Uma Jayakumar) at 1639, 1660-70. *See also* Appendix B at B-1–B-5 (presenting charts summarizing UNC survey data on these issues).

Jayakumar and Dr. Mitchell Chang, both of whom the district court credited.[41]

The fact that UNC has achieved only partial success in furthering the educational benefits of diversity cannot be understood without examining UNC's context within North Carolina—a "state of stunning contrasts and contradictions," which includes UNC's own complicated history with a federal consent decree throughout the 1980s[42] and high levels of segregation that persist at the K-12 school level.[43] As a recent study found, North Carolina has a high level of school segregation, even in places where (court-ordered) neighborhood desegregation efforts had been implemented for many years.[44] This re-segregation is shaped by recent state policies expanding charter schools and providing state subsidies for private schools, which

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[41] *See generally* Jayakumar Report, *supra,* n.40; J.A. 1479-1544 (Jan. 2018 Expert Report of Mitchell J. Chang); Pet. App. 19, 21. This brief does not rely on any material that was placed under seal in the district court.

[42] Robert A. Dentler et al., *University on Trial: The Case of the University of North Carolina* 17 (1983); James T. Minor, *Segregation Residual in Higher Education: A Tale of Two States*, 45 Am. Educ. Research J. 861, 872 (2008).

[43] Roslyn Arlin Mickelson et al., *Yesterday, Today, and Tomorrow: School Desegregation and Resegregation in Charlotte* (2015).

[44] Charles T. Clotfelter, et al., *School Segregation in the Era of Color-Blind Jurisprudence and School Choice*, Urban Affairs Rev. (2021) (study using data on K-12 enrollments in public and private schools to measure racial segregation in North Carolina in 1998, 2006, and 2016); *See also* Helen F. Ladd, et al., *The Growing Segmentation of the Charter School Sector in North Carolina*, 12 Educ. Finance & Pol'y 536 (2017).

have been shown to cause increased segregation in North Carolina K-12 schools.[45]

As a result, substantial numbers of White students are matriculating to the University from racially segregated neighborhood and school environments that foster unconscious racial biases, stereotypes, and resentments.[46] Indeed, survey data shows that in 2016, more than 87% of White UNC first years came to the University from segregated neighborhoods.[47]

Such segregation at the high-school level directly interferes with the educational benefits of diversity in college, because those benefits derive from meaningful cross-racial interactions. As the Jayakumar study of residential segregation cited above shows, students who were primarily socialized in and accustomed to segregated environments prior to college are less likely to choose to engage in cross-racial interactions (compared to their counterparts from racially integrated precollege environments).[48] As long as pervasive residential and school-based segregation persists, UNC is likely to need to use race-conscious admissions policies.

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[45] Clotfelter et al. (2021), *supra* n.44, at 16; *see also id.* at 7, 8.

[46] Jayakumar Report, *supra* n.40, at 59-65.

[47] Cooperative Institutional Research Program (CIRP), *2017 Freshman Survey*, Institutional Profile Reports, University of North Carolina at Chapel Hill, https://tinyurl.com/bdh9kxsw.

[48] Jayakumar (2015), *supra* n.6 at 635, 637; *see also* Appendix B at B-1–B-5 (charts showing White versus URM students' perceptions of racial climate).

II. RACE-NEUTRAL ALTERNATIVES ARE NOT YET AS EFFECTIVE IN CREATING DIVERSITY AS UNC'S HOLISTIC APPROACH.

Grutter's hope that effective alternatives to race-conscious admissions policies would quickly develop, 539 U.S. at 342, has not been realized. The district court found that "UNC has engaged in ongoing, serious, good faith consideration of workable [race-neutral alternatives ('RNAs')]," but that "none of the models proffered by Plaintiff nor Defendant would be viable RNAs that would allow UNC to reproduce the educational benefits of diversity about as well as its current approach." Pet. App. 118, 126. The bottom line: "the University has demonstrated that there are not workable or viable RNAs, singly or in conjunction, that would allow it to achieve the educational benefits of diversity about as well as its current race-conscious policies." Pet. App. 144.

A strong preponderance of relevant peer-reviewed research shows that eliminating race-conscious admissions policies at leading public universities similar to UNC leads to a substantial erosion in URM student enrollment.[49] Numerous studies demonstrate this effect in states that

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[49] *See, e.g.*, Mark C. Long & Nicole A. Bateman, *Long-Run Changes in Underrepresentation After Affirmative Action Bans in Public Universities*, 42 Educ. Evaluation & Pol'y Analysis 188 (2020); Huacong Liu, *How do Affirmative Action Bans Affect the Racial Composition of Postsecondary Students in Public Institutions?*, Educ. Pol'y (2020), https://doi.org/10.1177/0895904820961007.

have enacted affirmative action bans despite decades of experimentation with race-neutral alternatives.[50]

Social science research also shows that affirmative action bans decrease URM enrollment in United States graduate school programs[51] and medical schools.[52] Highly selective law schools and business schools where affirmative action is banned encountered substantial enrollment declines for URM students, providing real world

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[50] *See, e.g.*, William C. Kidder & Patricia Gándara, *Two Decades After the Affirmative Action Ban: Evaluating the University of California's Race-Neutral Efforts*, *in* Gary Orfield et al., *Alternative Paths to Diversity: Exploring and Implementing Effective College Admissions Policies* 25 (2017); Michal Kurlaender et al., *Access and Diversity at the University of California in the Post-Affirmative Action Era*, *in Affirmative Action and Racial Equity* 80 (Uma M. Jayakumar & Liliana M. Garces eds., 2015); Amy Lutz, et al., *State Bans on Affirmative Action and Talent Loss Among Blacks and Latinos in the United States*, 43 Ethnic Studies Rev. 58 (2020); Daniel Hirschman & Ellen Berrey, *The Partial Deinstitutionalization of Affirmative Action in U.S. Higher Education, 1988 to 2014*, 4 Socio. Sci. 449 (2017); Jessica S. Howell, *Assessing the Impact of Eliminating Affirmative Action in Higher Education*, 28 J. Labor Econ. 113, 116 (2010); Espenshade & Radford, *supra*, n.30, at 361-64.

[51] *See, e.g.*, Liliana M. Garces, *Racial Diversity, Legitimacy, and the Citizenry: The Impact of Affirmative Action Bans on Graduate School Enrollment*, 36 Rev. Higher Educ. 93 (2012); Liliana M. Garces, *Understanding the Impact of Affirmative Action Bans in Different Graduate Fields of Study*, 50 Am. Educ. Research J. 251 (2013).

[52] *See, e.g.*, Liliana M., Garces & David Mickey-Pabello, *Racial Diversity in the Medical Profession: The Impact of Affirmative Action Bans on Underrepresented Student of Color Matriculation in Medical Schools*, 86 J. Higher Educ. 264 (2015); Somnath Saha & Scott A. Shipman, *Race-Neutral Versus Race-Conscious Workforce Policy to Improve Access to Care*, 27 Health Affairs 234 (2008).

evidence of the limits of race-neutral alternatives.[53] For example, in the two decades before California's affirmative action ban, University of California medical schools graduated a higher percentage of Black doctors than the nationwide average, but that percentage dropped to more than one-fifth below the national average in the two decades after the ban.[54] These long-term trends have profound implications for society and the health of URM communities.[55]

A.   Percent Plans Are Not an Adequate Substitute for Race-Conscious Admissions.

The district court found that the "top X percent" simulations proposed by Petitioner's expert all presented "significant complications, and/or severely undermined the University's ability to achieve diversity in non-racial ways." Pet. App. 141-42. Social science research has consistently reached the same conclusion.

For example, an important study of the long-term impact of the Texas Ten Percent Plan at both selective and

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[53] William C. Kidder, *Misshaping the River: Proposition 209 and Lessons for the Fisher Case*, 39 J. College & Univ. L. 53, 118-23 (2013); *see generally* Kidder & Lempert, *supra* n.27 (discussing law school outcomes in the context of research on the question of mismatch).

[54] William C. Kidder, *Proposition 16 and a Brighter Future for All Californians: A Synthesis of Research on Affirmative Action, Enrollment, Educational Attainment and Careers at the University of California* (Oct. 2020), https://escholarship.org/uc/item/5t39d0qx.

[55] *See generally*, *e.g.*, Brief *Amicus Curiae* of Association of American Medical Colleges. *See also* Marcella Alsan et al., *Does Diversity Matter for Health? Experimental Evidence from Oakland,* 12 Am. Econ. Rev. 4071 (2019).

nonselective colleges found that increased diversity at Texas colleges under the Ten Percent Plan was attributable in part to "the soaring numbers of the non-White population, particularly Latinos, among college-eligible students" in Texas. [56] At the same time, controlling for these demographic changes revealed that "underrepresented students who are percent-plan-eligible are more likely to enroll in a nonselective . . . institution."[57] These key findings about the Texas Ten Percent Plan are consistent with a substantial body of earlier peer-reviewed papers.[58]

Modeling by UNC, moreover, indicates that a "percentage plan" would strain overall academic quality compared to holistic admissions.[59] And even though the University of Texas at Austin had almost twice as many undergraduates as UNC last year (37,601 versus 18,495 in

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[56] Stella M. Flores & Catherine L. Horn, *Texas Top Ten Percent Plan: How It Works, What Are Its Limits, and Recommendations to Consider*, *in* Gary Orfield et al., *Alternative Paths to Diversity: Exploring and Implementing Effective College Admissions Policies* 14, 25 (2017) (citations omitted). *See also* Catherine Horn & Stella M. Flores, *When Policy Opportunity Is Not Enough: College Access and Enrollment Patterns Among Texas Percent Plan Eligible Students*, 3 J. Applied Res. on Child. 1, 15-16 (2012).

[57] Flores & Horn (2017), *supra* n.56, at 25.

[58] *See, e.g.*, Angel L. Harris & Marta Tienda, *Hispanics in Higher Education and the Texas Top Ten Percent Law*, 4 Race & Soc. Probs. 57, 60-61, 65 (2012); Mark C. Long et al., *Policy Transparency and College Enrollment: Did the Texas Top Ten Percent Law Broaden Access to the Public Flagships?*, 627 Annals Am. Acad. Pol. & Soc. Sci. 82, 101 (2010); Angel Harris & Marta Tienda, *Minority Higher Education Pipeline: Consequences of Changes in College Admissions Policy in Texas*, 627 Annals Am. Acad. Pol. & Soc. Sci. 60 (2010).

[59] Brief of *Amicus Curiae* The University of North Carolina at Chapel Hill Supporting Respondents at 33-36, *Fisher v. University of Texas at Austin*, No. 11-345.

2020-21) and is not quite as selective as UNC, under a Percent Plan (even one augmented by consideration of race) it still has fewer Black students today in its undergraduate student body compared to UNC (1,288 versus 1,546).[60]

B. Increasing Socioeconomic Diversity is Not an Adequate Substitute for Race-Conscious Holistic Admissions Policies.

Petitioners posit that universities can achieve the educational benefits of diversity solely by maximizing socioeconomic diversity. *See, e.g.*, Br. for Pet. at 83. This is contrary to the district court's express finding that "none of the socioeconomic models before it is a workable RNA." Pet. App. 137. Although the district court "accept[ed] that an increase in socioeconomic diversity may be valuable in its own right to a university seeking to attain the benefits of educational diversity," it found that "achievement of this goal does not obviate a school's interest in racial diversity as well." Pet. App. 132. Reliable social science research also refutes the claim that a university can substitute consideration of socioeconomic status for race in the admissions process and still achieve racial diversity.

For example, one robust and empirically sophisticated analysis of socioeconomic alternatives to race-conscious affirmative action used "agent-based" modeling to analyze a nationally representative data set of students applying to colleges.[61] The results of multi-year simulations

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[60] *See Graduation Success Rate*, NCAA.org, *supra*, n.25 (undergraduate enrollment counts).

[61] Sean F. Reardon et al., *What Levels of Racial Diversity Can Be Achieved with Socioeconomic-Based Affirmative Action? Evidence from a Simulation Model*, 37 J. Pol'y Analysis & Mgmt. 630 (2018).

on the top ten percent of colleges (i.e., highly selective schools like UNC) are shown in Table 2, below, and confirm the inadequacy of socioeconomic affirmative action programs in terms of the percentage of URM first years enrolled in the absence of race-conscious efforts.

Table 2
*Modeling Top Colleges:
URM Percentage of Student Population Under
Multiple Affirmative Action Scenarios*[62]

Race-Based?	SES-based?	% Black	% Latinx
None	None	1.9%	3.9%
Moderate	None	5.6%	9.3%
Strong	None	11.0%	15.0%
None	Moderate	2.4%	5.1%
None	Strong	3.4%	6.8%
Moderate	Moderate	6.9%	11.0%
Strong	Strong	16.0%	22.0%

Another well-designed study, using a representative data set of selective colleges that included UNC, allowed for an unusually robust analysis of socioeconomic alternatives to race-conscious admissions policies, including wealth, parental education level and neighborhood or school poverty levels.[63] All of the study's economic simulations showed declines in URM students' enrollment, as compared to current levels, when using socioeconomic alternatives.[64]

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[62] *See id.* at Appendix Figure A4.

[63] Sigal Alon, *Race, Class and Affirmative Action* 182-84, 296-97 (2015).

[64] *Id.* at 195; *id.* at 194 fig. 8.3.

The studies above are consistent with a larger body of research.[65] For example, Thomas Espenshade and Alexandria Radford modeled class-based alternatives at a group of elite private universities and found that taking account of socioeconomic status was not a substitute for the inclusion of race within a holistic admissions policy.[66] Alice Xiang and Donald Rubin made similar findings in a national simulation of U.S. law schools, concluding that substituting class-based affirmative action admissions policies would significantly erode Black enrollment at leading law schools without improving graduation and bar passage rates.[67] In addition, modeling simulations by Mark Long show the upper-bound limits and inefficiencies of using proxies for race, including proxies that most courts would not deem race-neutral.[68] In short, socioeconomic status is not a sufficient race-neutral alternative because "[t]he correlation between race and family income, while

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[65] *See*, *e.g.*, Anthony P. Carnevale & Jeff Strohl, *Separate and Unequal: How Higher Education Reinforces the Intergenerational Reproduction of White Racial Privilege* 37 (2013) (finding class-based affirmative action is not an effective substitute for race-conscious programs); Anthony P. Carnevale & Jeff Strohl, *How Increasing College Access Is Increasing Inequality, and What to Do About It*, in *Rewarding Strivers* 71, 165 (Richard D. Kahlenberg ed., 2010).

[66] Espenshade & Radford, *supra*, n.30, at 361-64 (using the *College and Beyond* data set that included UNC).

[67] Alice Xiang & Donald B. Rubin, *Assessing the Potential Impact of a Nationwide Class-Based Affirmative Action System*, 30 Statistical Sci. 297 (2015).

[68] Mark Long, *The Promise and Peril for Universities Using Correlates of Race in Admissions in Response to the Grutter and Fisher Decisions*, in Gary Orfield et al., *Alternative Paths to Diversity: Exploring and Implementing Effective College Admissions Policies* 49 (2017); *see also* Mark C. Long, *Is There a "Workable" Race-Neutral Alternative to Affirmative Action in College Admissions?*, 34 J. Policy Analysis & Mgmt. 162 (2014).

strong, is not strong enough to permit the latter to function as a useful proxy for race in the pursuit of diversity."[69]

Consideration of race as part of a holistic admissions process does not preclude consideration of socio-economic status. Colleges with race-sensitive admissions are more likely to also consider socioeconomic status than colleges that admit students without attention to race.[70] Considering race and socioeconomic status *together* (as UNC does[71]) will produce "diversity within diversity" which reduces stereotyping and maximizes the prospects for positive interactions across racial lines.

C. Petitioner's Contrary Evidence is Flawed.

The district court found that UNC's expert, Caroline Hoxby, provided a reliable and rigorous analysis of race-neutral alternatives, while Petitioner's expert, Richard Kahlenberg, relied on "both unrealistic assumptions and extreme changes to UNC's admissions process." Pet. App. 136. UNC expert Bridget Long also testified that Petitioner's expert (Kahlenberg) "overstates how effective race-neutral alternatives have been or would be because he's not paying attention to the details" and he "fails to account for the quality or the relevance of the research or the particular data used," or the context of the university at issue. Pet. App. 113 (citation to trial record omitted). Likewise, Petitioner and its *amici* cherry-pick low-quality

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[69] Alan Krueger et al., *Race, Income, and College in 25 Years: Evaluating Justice O'Connor's Conjecture*, 8 Am. L. & Econ. Rev. 282, 309 (2006).

[70] Lorelle L. Espinosa et al., *Race, Class, and College Access: Achieving Diversity in a Shifting Legal Landscape* 28-30 (2015).

[71] Pet. App. 9, 28, 196-97.

or less relevant research to claim support for their favored conclusions.

To start, Petitioner asserts that the University of California "just admitted its 'most diverse class ever,'" Petitioner's Br. at 70, but the cited statistics lose any force as evidence of the success of race-neutral admissions policies when demographic changes in the student population are taken into account. In 1995, before California banned affirmative action, 29% of UCLA's enrolled freshmen were URMs, compared to 38% of California public high school graduates being URMs.[72] A quarter century later, in 2021, fully 58% of California public high school graduates were URMs, yet notwithstanding that massive growth, under the affirmative action ban, only 33% of UCLA's freshmen class were URMs—a smaller proportion of the public high school cohort than before.[73]

The same data source confirms that the statewide University of California system also did not make progress in URM freshmen enrollment in the 2016-21 period.[74]

Long-term demographic trends based on the increasing percentage of URM high school graduates in Texas are roughly comparable to the California example.[75] For this reason, simplistic comparisons between recent

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[72] Univ. of California, *Gap Analysis*, UniversityofCalifornia.edu, https://tinyurl.com/y2rmmmvp.

[73] *Id*. *See also* Appendix B at B-6.

[74] *Id*. This was a period of tumult due to the COVID-19 pandemic, but also included the suspension of the SAT requirement for admissions, which was an important "race-neutral" development. *See* UC Regents, *Discussion Item A1* (May 12, 2021), https://tinyurl.com/28bt89jh, at 7.

[75] *See generally* Flores & Horn (2017), *supra* n.56.

URM enrollment data in California and Texas and the experience in North Carolina can be misleading. The Court should be skeptical of the simplistic nods to California and Texas outcomes that have been presented by Petitioner and its *amici*.

Petitioner also cites Matthew Gaertner's research on socioeconomic diversity at the University of Colorado at Boulder.[76] This book chapter and the 2013 companion article from which it is derived[77] describe a reasonably well-done study, but its results cannot be generalized. In fact, the authors conceded the outlier nature of their findings, given that CU Boulder was not a very selective school (with an acceptance rate of 84%) and employed relatively weak consideration of race before moving to race-neutral alternatives.[78] Nor has CU Boulder ever achieved a high proportion of minorities in its student population. For example, during the period of the study, only 1.6% of CU Boulder students were Black (among the lowest proportions at leading U.S. public flagship universities).[79]

A second and much lower-quality example is Petitioner's reliance on a book chapter by Halley Potter,

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[76] J.A. 438, ¶ 309, *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, No. 20-1199 (citing Matthew N. Gaertner, *Advancing College Access with Class-Based Affirmative Action—The Colorado Case*, in *The Future of Affirmative Action* 175 (Richard D. Kahlenberg ed., 2014)).

[77] Matthew N. Gaertner & Melissa Hart, *Considering Class: College Access & Diversity*, 7 Harv. L. & Pol'y Rev. 367 (2013).

[78] *See id.* at 370, 399-400.

[79] William C. Kidder, *How Workable Are Class-Based and Race-Neutral Alternatives at Leading American Universities?*, 64 UCLA L. Rev. Discourse 100, 120-21 (2016) (critiquing limitations of CU Boulder study).

which repeats findings from a report for the Century Foundation by Ms. Potter and Petitioner's expert, Mr. Kahlenberg.[80] The Potter/Kahlenberg report and chapter claim that after race-conscious programs were replaced at "seven of the ten" leading public universities in the study (including the University of Texas Austin and the University of Florida), "the representation of African Americans and Latinos met or exceeded the levels achieved when the universities had used racial preferences."[81] As one reviewer of the Kahlenberg and Potter report noted, however, these findings "were not peer-reviewed and do not stand up when subjected to careful scrutiny," including consideration of increased URM populations of high school graduates in those states over the period of the study.[82]

CONCLUSION

UNC should be allowed to continue its admission process consistent with *Grutter*. The judgment of the district court should be affirmed.

Respectfully submitted,

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[80] J.A. 438, ¶ 309, *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, No. 20-1199 (citing Richard D. Kahlenberg & Halley Potter, *A Better Affirmative Action: State Universities That Created Alternatives to Racial Preferences* (Oct. 2012) (report for the Century Foundation)).

[81] Kahlenberg & Potter, *supra* n.80 at 12.

[82] Kidder (2016), *supra* n.79, at 126; *see also id*. at 121-25 (for detailed critique). *See also* Brief *Amicus Curiae* for Richard Lempert in Support of Respondents at 32-36, *Fisher v. University of Texas at Austin*, No. 14-981.

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Sean Reardon, Stanford University

Vikash Reddy, Campaign for College Opportunity

Marlo Reeves, University of Wisconsin-Milwaukee

Craig Reinarman, University of California, Santa Cruz

Tania Reis, Gannon University

Kathleen Remington, Stanford University

Laura Rendon, University of Texas at San Antonio

Kristen Renn, Michigan State University

Sonnet Retman, University of Washington

G.T. Reyes, California State University, East Bay

Pedro Reyes, University of Texas at Austin

Victoria Reyes, University of California, Riverside

Rema Reynolds, University of California, Los Angeles

Kathryn Ribay, San José State University

Meredith Richards, Southern Methodist University

Tiffani Riggers-Piehl, University of Missouri, Kansas City

Kathy Rim, Vanguard University

Cecilia Rios Aguilar, University of California, Los Angeles

Elizabeth Rivera Rodas, Montclair State University

Claire Robbins, Virginia Polytechnic Institute and State University

Sean Robinson, Morgan State University

Barbara Robles, University of Maryland, College Park

Alyssa Rockenbach, North Carolina State University

Aireale Rodgers, University of Wisconsin - Madison

Awilda Rodriguez, University of Michigan

Dylan Rodriguez, University of California, Riverside

Evelyn Rodriguez, University of San Francisco

Gabriel Rodriguez, Iowa State University

Noreen Rodríguez, University of Colorado Boulder

Sally Roesch Wagner, Syracuse University

Leoandra Onnie Rogers, Northwestern University

Kirk D. Rogers Jr., University of California, San Diego

Meredith Rolfe, University of Massachusetts Amherst

Lindsay Romasanta, Portland State University

Tom Romero, University of Denver

Curtiss Rooks, Loyola Marymount University

Alexios Rosario-Moore, University of Illinois at Chicago

Vincent Roscigno, Ohio State University

Jerry Rosiek, University of Oregon

Kelly Rosinger, Pennsylvania State University

Colleen Rost-Banik, University of Hawaiʻi, Mānoa

Stella Rouse, University of Maryland, College Park

Heather Rowan-Kenyon, Boston College

Stephanie Rowley, University of Virginia

Martin Ruck, The Graduate Center, CUNY

Dennis Rudnick, Missouri State University

Erendira Rueda, Vassar College

Joseph Rumenapp, St. John's University

John Rury, University of Kansas

Ann Russo, DePaul University

Tatiane Russo-Tait, University of Texas at Austin

Dalitso Ruwe, Queen's University

Mark Ryan, National University

Sheeva Sabati, California State University, Sacramento

Jocyl Sacramento, California State University, East Bay

Victor Saenz, University of Texas at Austin

Raquel Sáenz Ortiz, Southwestern University

Thierry Saintine, Stockton University

Cinthya Salazar, Texas A&M University

Cristobal Salinas Jr, Florida Atlantic University

Margaret Sallee, University at Buffalo

Anna Sampaio, Santa Clara University

Michelle Samura, Santiago Canyon College

Bernadette Sanchez, University of Illinois at Chicago

Raquel Sanchez, Stanford University

Shena Sanchez, University of Alabama

William Sandoval, University of California, Los Angeles

Cindy Sangalang, University of California, Los Angeles

Otto Santa Ana, University of California, Los Angeles

Stephen Santa-Ramirez, University at Buffalo

Ryan Santos, California State University, Long Beach

Pietro Sasso, Stephen F. Austin State University

Anne Saw, DePaul University

Kai Schafft, Pennsylvania State University

Maryellen Schaub, Pennsylvania State University

Jim Scheurich, Indiana University - Purdue University, Indianapolis

Ryan Schey, University of Georgia

Britt SchlaeGuada, California State University, East Bay

Barbara Schneider, Michigan State University

Sanford Schram, Hunter College, City University of New York

Luke Schultheis, Fairleigh Dickinson University

Jonathan Schwarz, Massachusetts Institute of Technology

D'Artagnan Scorza, University of California, Los Angeles

Jamil Scott, Georgetown University

Janelle Scott, University of California, Berkeley

Yolanda Sealey-Ruiz, Columbia University

Eleanor Seaton, Arizona State University

Quentin Sedlacek, Southern Methodist University

Alex Seeskin, University of Chicago

Megan Segoshi, Boston University

Gary Segura, University of California, Los Angeles

Bilal Sekou, University of Hartford

Joel Scott Self, Abilene Christian University

Tesha Sengupta-Irving, University of California, Berkeley

Jaime Settle, College of William and Mary

Tamara Sewell, New York University

Nayan Shah, University of Southern California

Lauren Shallish, Rutgers University-Newark

Nitasha Sharma, Northwestern University

Elizabeth Sharrow, University of Massachusetts Amherst

Vivian Shaw, Vanderbilt University

Yen Ling Shek, Independent Scholar

Jiannbin Shiao, University of Oregon

Elena Shih, Brown University

Kristy Shih, California State University, Long Beach

Joyce Shim, State University of New York - Delhi

Richard Shin, University of Maryland, College Park

Allyson Shortle, University of Oklahoma

Genevieve Siegel-Hawley, Virginia Commonwealth University

Ester Sihite, Stanford University

Janelle Silva, University of Washington

Michelle Silvers, University of Arizona

Andrea Simpson, University of Richmond

Wesley Sims, University of California, Riverside

Kathy Sisneros, Colorado State University

Kristan Skendall, University of Maryland, College Park

Rachel Skrlac Lo, Villanova University

Kelly Slay, Vanderbilt University

Christine Sleeter, California State University, Monterey Bay

Chauncey Smith, University of Virginia

Darrick Smith, University of San Francisco

Rogers Smith, University of Pennsylvania

Spencer Smith, Ohio State University

Laura Smithers, Old Dominion University

Jeanette Snider, University of Maryland, College Park

Daniel Solorzano, University of California, Los Angeles

David Song, University of Oklahoma

Sarah Song, University of California, Berkeley

Joe Soss, University of Minnesota

Jose Soto, Pennsylvania State University

Deborah Southern, University of California, Los Angeles

Kyle Southern, The Institute for College Access & Success

Mariana Souto-Manning, Erikson Institute

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Frances Spielhagen, Fordham University

Laura Sponsler, University of Denver

Dian Squire, Loyola University Chicago

Gregory Squires, George Washington University

Beth Ashley Staples, Ohio State University

Jeanine Staples, Pennsylvania State University

Tehia Starker Glass, University of North Carolina at Charlotte

Tiffany Steele, Oakland University

Abigail Stewart, University of Michigan

D-L Stewart, University of Denver

TJ Stewart, Iowa State University

Joseph Stewart, Jr., Clemson University

Amy Stich, University of Georgia

Dane Stickney, University of Colorado-Denver

Ashley Stone, Southern Methodist University

David Stovall, University of Illinois at Chicago

Rolf Straubhaar, Texas State University

Terrell Strayhorn, Illinois State University

Dara Strolovitch, Yale Univeristy

Kamden Strunk, Virginia Commonwealth University

Lisa Stulberg, New York University

Celina Su, City University of New York Graduate Center

Phi Su, Williams College

Federico Subervi, University of Wisconsin - Madison

Stephen Suh, San Diego State University

Jeffrey Sun, University of Louisville

Sarayu Sundar, University of California, Los Angeles

Kenzo Sung, Rowan University

Stacey Sutton, University of Illinois at Chicago

Teresa Swartz, University of Minnesota

Amanda Tachine, Arizona State University

David Takeuchi, University of Washington

Liza Talusan, University of Massachusetts Boston

Gregory Tanaka, University of California, Los Angeles

Eric Tang, University of Texas at Austin

Amanda Taylor, American University

Kari Taylor, Springfield College

Rebecca Taylor, University of Illinois at Urbana-Champaign

John Kuo Wei Tchen, Rutgers University-Newark

Adai Tefera, University of Arizona

Karen Tejada, University of Hartford

Shannon Telenko, Pennsylvania State University

Ty Tengan, University of Hawaiʻi, Mānoa

Robert Teranishi, University of California, Los Angeles

Sherod Thaxton, University of California, Los Angeles

George Theoharis, Syracuse University

Anita Thomas, St Catherine University

Rhianna Thomas, New Mexico State University

Devin Thornburg, Adelphi University

Margaret Thornton, Old Dominion University

Antar Tichavakunda, University of Cincinnati

Michelle Tichy, Cabrini University

Mara Tieken, Bates College

Marta Tienda, Princeton University

Gavin Tierney, California State University, Fullerton

William Tierney, University of Southern California

Daniel Tillapaugh, California Lutheran University

Gina Tillis, The University of Memphis

Derrick Tillman-Kelly, Ohio State University

Allyson Tintiangco-Cubales, San Francisco State University

Stephanie Toliver, University of Colorado Boulder

Joshua Tom, Seattle Pacific University

Rowena Tomaneng, San José City College

Francisco Torres, Kent State University

Greg Toya, University of California, San Diego

Audrey Trainor, New York University

Linda Tran, University of California, Los Angeles

Nellie Tran, San Diego State University

Uyen Tran-Parsons, University of North Texas

Sophie Trawalter, University of Virginia

William Trent, University of Illinois at Urbana-Champaign

Monica Trieu, Purdue University

Nicholas Triplett, University of North Carolina at Charlotte

Teniell Trolian, University at Albany

Jessica Trounstine, University of California, Merced

Adrea Truckenmiller, Michigan State University

Elise Trumbull, Boston University

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Vivian Tseng, William T. Grant Foundation

Eli Tucker-Raymond, Boston University

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Kofi-Charu Nat Turner, University of Massachusetts Amherst

Karolyn Tyson, Georgetown University

Paul Umbach, North Carolina State University

Karen Umemoto, University of California, Los Angeles

Luis Urrieta, University of Texas at Austin

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Carolina Valdez, California State University, Fullerton

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Richard R. Valencia, University of Texas at Austin

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Jessie Vallejo, California State Polytechnic University, Pomona

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Marissa Vasquez, California State University, San Diego

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Kehaulani Vaughn, University of Utah

Michael Vavrus, Evergreen State College

Tanner Vea, Pennsylvania State University

Blanca E Vega, Montclair State University

Desiree Vega, University of Arizona

Patrick Velasquez, University of California, San Diego

Veronica Velez, Western Washington University

Kara Viesca, University of Nebraska

Anthony Villa, University of California, Riverside

Cynthia Villarreal, Northern Arizona University

Linda Vo, University of California, Irvine

Daniel Volchok, Northeastern University

Rican Vue, University of California, Riverside

Naoko Wake, Michigan State University

Marjorie Wallace, Michigan State University

Sophia Jordán Wallace, University of Washington

Camille Walsh, University of Washington - Bothell

Emily Walton, Dartmouth College

Xueli Wang, University of Wisconsin - Madison

Yuejia Wang, University at Buffalo

LaWanda Ward, Pennsylvania State University

Natasha Warikoo, Tufts Uniersity

Chezare Warren, Vanderbilt University

Mark Warren, University of Massachusetts Boston

Paul Watanabe, University of Massachusetts Boston

Amanda Waters, University of Maryland, Baltimore County

Mary Waters, Harvard University

Tara Watford, California State University, Northridge

Vajra Watson, California State University, Sacramento

Alison Watts, University of Utah

Marcus Weaver-Hightower, Virginia Polytechnic Institute and State University

John Weidman, University of Pittsburgh

Jacqueline Weinstock, University of Vermont

Herbert Weisberg, Ohio State University

S. Gavin Weiser, Illinois State University

Meredith Weiss, University at Albany

Ryan Wells, University of Massachusetts Amherst

Kevin Welner, University of Colorado Boulder

Megan Welsh, University of California, Davis

Valerie Werner, Adler University

Nicole West, Missouri State University

Alisha White, Western Illinois University

Damani White-Lewis, University of Pennsylvania

Kenyon Whitman, University of Nevada, Las Vegas

Amber Williams, California Polytechnic State University

Brittany Williams, University of Vermont

Tyrone Williams Jr, Independent Scholar

David Wilson, University of California, Berkeley

Naomi Wilson, The Spencer Foundation

Camille Wilson, Ph.D., University of Michigan

De'Sha Wolf, Portland State University

Gregory Wolniak, University of Georgia

Alina Wong, Macalester College

Janelle Wong, University of Maryland, College Park

Shelley Wong, George Mason University

Gloria Wong-Padoongpatt, University of Nevada, Las Vegas

Hyeyoung Woo, Portland State University

Emory Woodard, Villanova University

Christine Min Wotipka, Stanford University

Sarah Woulfin, University of Texas at Austin

Dwayne Wright, George Washington University

Erin Kahunawaikaʻala Wright, University of Hawaiʻi, Mānoa

Travis Wright, University of Wisconsin - Madison

Raquel Wright-Mair, Rowan University

Ellen Wu, Indiana University Bloomington

Tommy Wu, McMaster University

Nan Xiao, Ohio State University

Christina Yao, University of South Carolina

Shenghe Ye, University of Chicago

Jennifer Yee, California State University, Fullerton

Joliana Yee, Yale University

Christine Yeh, University of San Francisco

Aggie Yellow Horse, Arizona State University

Fanny Yeung, California State University, East Bay

Varaxy Yi Borromeo, California State University, Fresno

Grace Yoo, San Francisco State University

Monica Yoo, University of Colorado Colorado Springs

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Jennifer Young, Stanford University

Michelle Young, Loyola Marymount University

Ryan Young, University of Illinois at Urbana-Champaign

Jing Yu, University of Wisconsin - Madison

John Yun, Michigan State University

Eboni Zamani-Gallaher, University of Pittsburgh

Rossina Zamora Liu, University of Maryland, College Park

Marjorie Zatz, University of California, Merced

Desiree Zerquera, University of San Francisco

Cynthia Zhang, Evergreen Campus LLC

Jenny Zhang, Spencer Foundation

Min Zhou, University of California, Los Angeles

Hilary Zimmerman, Loyola University Chicago

Mary Ziskin, University of Dayton

Ximena Zúñiga, University of Massachusetts Amherst

Richard Zweigenhaft, Guilford College

B-1

Appendix B

I. Survey Results Reflecting Undergraduate Student Perceptions of Campus Racial Climate at the University of North Carolina-Chapel Hill[1]

Chart 1
Student Satisfaction with Racial/Ethnic Diversity of the Student Body at UNC-Chapel Hill
(% Responding Satisfied + Very Satisfied)[2]

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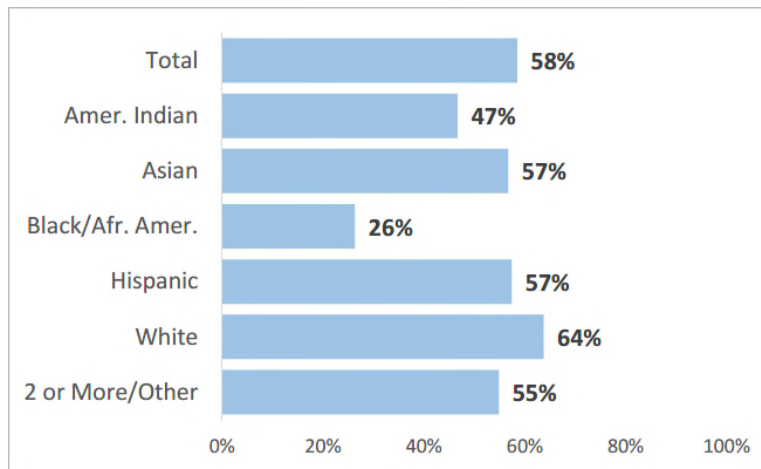
[1] UNC-CH Office of Institutional Research & Assessment, *UNC-Chapel Hill Undergraduate Student Perceptions of the Campus Climate for Diversity and Inclusion: Highlights from Recent Surveys* (2019), https://oira.unc.edu/wp-content/uploads/sites/297/2019/03/Undergrad-Diversity-Survey-Highlights.pdf (report analyzing responses to surveys of undergraduates at University of North Carolina-Chapel Hill conducted in 2015, 2016, and 2017).
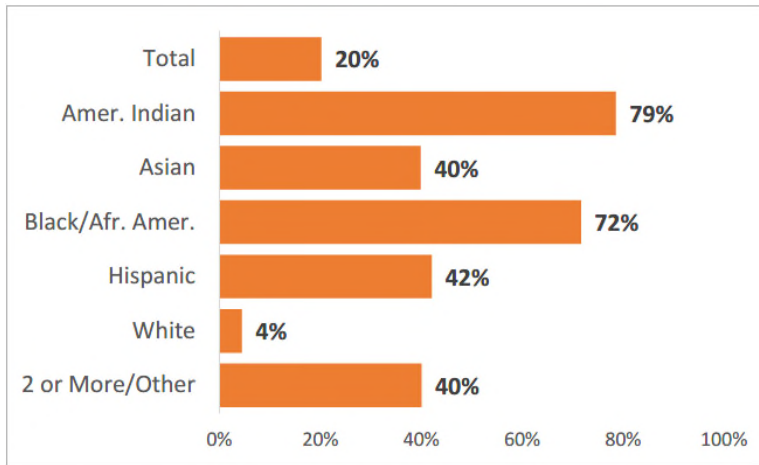
[2] *Id.* at 14.

Chart 2
Impact of Low Representation
"While at UNC-Chapel Hill I have been in situations where I
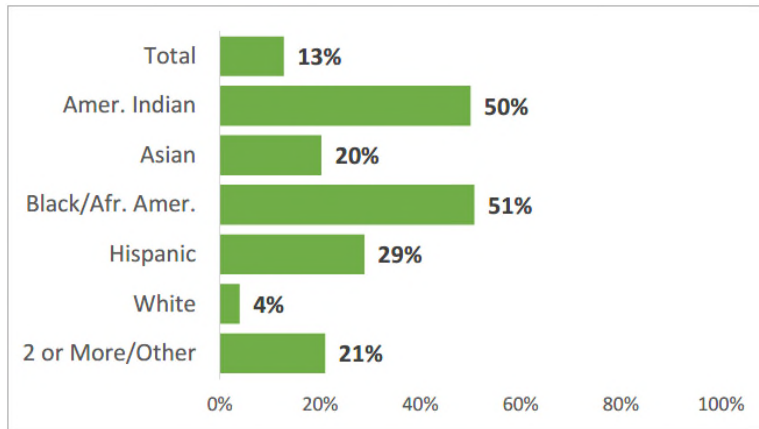was the only person of my race or ethnic group."
(% Responding Often + Very Often)[3]

Chart 3
Impact of Low Representation
"I feel pressured at UNC to represent the views
of all people from my racial or ethnic background."
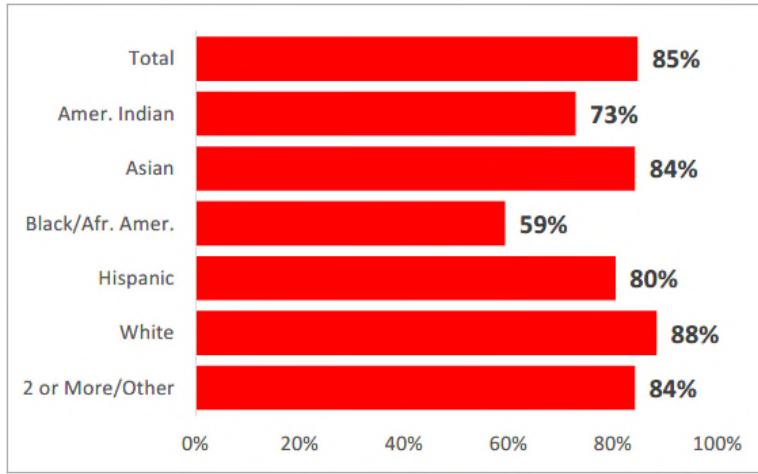*(% Responding Agree + Strongly Agree)*[4]

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[4] *Id.* at 18.

Chart 4:
Campus Climate
"Overall, I feel comfortable with the climate
for diversity and inclusion at UNC-Chapel Hill."
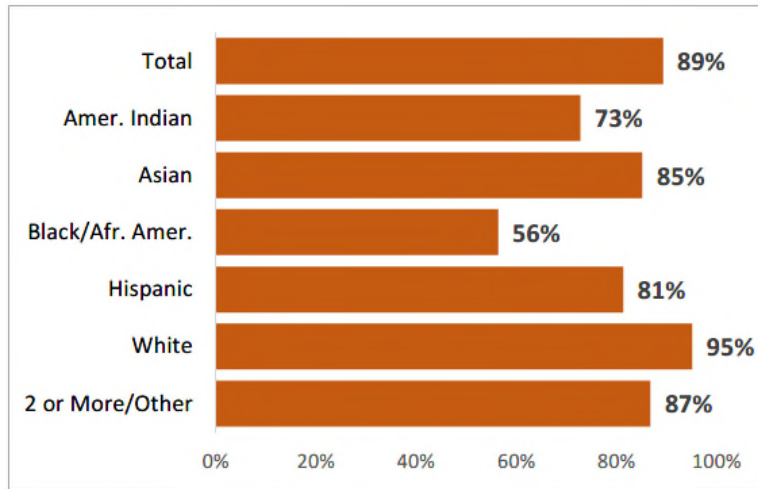*(% Responding Somewhat Agree + Agree + Strongly Agree)*[5]

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[5] *Id.* at 26.

Chart 5: Respect for Diversity
"Students of my race/ethnicity are respected on this campus."
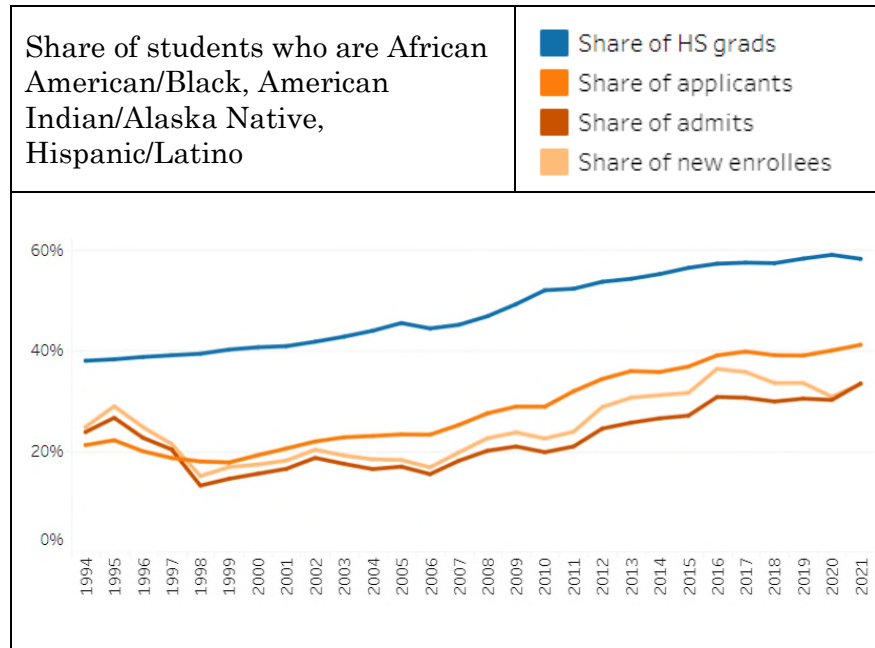*(% Responding Somewhat Agree + Agree + Strongly Agree)*[6]

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[6] *Id.* at 29.

II. University of California Gap Analysis[7]

Graph 1:
UCLA Freshmen versus California
Public High School Graduates, 1994-2021

Share of students who are African American/Black, American Indian/Alaska Native, Hispanic/Latino

- Share of HS grads
- Share of applicants
- Share of admits
- Share of new enrollees

[7] Univ. of California, *Gap Analysis*, UNIVERSITYOFCALIFORNIA.EDU, https://universityofcalifornia.edu/about-us/information-center/gap-analysis (University of California system's publicly-available analysis of "[r]acial/ethnic groups as a share of California public high school graduates vs. share of UC freshman applicants, admits, and new enrollees").