

Nos. 20-1199 and 21-707

---

---

IN THE

**Supreme Court of the United States**

---

STUDENTS FOR FAIR ADMISSIONS, INC.,  
*Petitioner,*

v.

PRESIDENT & FELLOWS OF HARVARD COLLEGE,  
*Respondent.*

---

STUDENTS FOR FAIR ADMISSIONS, INC.,  
*Petitioner,*

v.

UNIVERSITY OF NORTH CAROLINA, et al.,  
*Respondents.*

---

**On Writs of Certiorari to the  
United States Courts of Appeals  
for the First and Fourth Circuits**

---

**BRIEF OF THE NATIONAL ACADEMY OF  
EDUCATION AS *AMICUS CURIAE*  
IN SUPPORT OF RESPONDENTS**

---

AMY I. BERMAN  
NATIONAL ACADEMY OF  
EDUCATION  
500 Fifth Street NW  
Washington, DC 20001  
(202) 271-5554

YELENA KONANOVA  
*Counsel of Record*  
CAITLIN J. HALLIGAN  
MATHEW ELDER  
SELENDY GAY ELSBERG PLLC  
1290 Avenue of the Americas  
New York, New York 10104  
(212) 390-9000  
lkonanova@selendygay.com

*Counsel for Amicus Curiae*

---

---

## TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES .....	iii
INTEREST OF <i>AMICUS CURIAE</i> .....	1
SUMMARY OF THE ARGUMENT .....	2
ARGUMENT .....	4
I. STUDENT BODY DIVERSITY AT SELECTIVE HIGHER EDUCATION INSTITUTIONS BENEFITS STUDENTS, INSTITUTIONS, AND SOCIETY .....	6
II. THE CONDITIONS THAT AFFECT STUDENT BODY DIVERSITY IN HIGHER EDUCATION HAVE WORSENEDED.....	7
A. School segregation has deepened .....	9
B. Income and wealth inequality remains severe .....	14
C. Gaps in parents' educational attainment persist .....	17
D. COVID-19 reflected and deepened existing educational racial inequality.....	20
III. RACE-CONSCIOUS ADMISSIONS POLICIES ARE THE ONLY EFFECTIVE MECHANISM TO PRODUCE MEANINGFUL STUDENT BODY DIVERSITY .....	22

A. Abandoning race-conscious policies greatly increases racial gaps .....	22
B. Income-based policies cannot produce meaningful diversity.....	27
C. Reliance on standardized testing and grades cannot produce meaningful diversity .....	29
CONCLUSION .....	31

## TABLE OF AUTHORITIES

<b>Cases</b>	<b>Page(s)</b>
<i>Brown v. Board of Education</i> , 347 U.S. 483 (1954) .....	4
<i>Fisher v. Univ. of Texas at Austin</i> , 579 U.S. 365 (2016) .....	2, 5
<i>Grutter v. Bollinger</i> , 539 U.S. 306 (2003) .....	<i>passim</i>
<i>Plyler v. Doe</i> , 457 U.S. 202 (1981) .....	5
<i>Regents of Univ. of California v. Bakke</i> , 438 U.S. 265 (1978) .....	2, 4, 5, 7, 23
<i>Sweatt v. Painter</i> , 339 U.S. 629 (1950) .....	5
<b>Statutes</b>	
Ariz. Const. art. II, § 36.....	23
Cal. Const. art. I, § 31.....	23
Idaho Code § 67-5909A .....	22
Mich. Const. art. 1, § 26.....	23
Neb. Const. art. I, § 30.....	23
N.H. Rev. Stat. Ann. § 187-A:16-a .....	23

Okla. Const. art. II, § 36A .....22

Wash. Rev. Code § 49.60.400.....23

### **Other Authorities**

Alon, Sigal & Marta Tienda, *Assessing the “Mismatch” Hypothesis: Differences in College Graduation Rates by Institutional Selectivity*, 78 Socio. Educ. 294 (2005)..... 13

Anderson, Nick, *Harvard Won’t Require SAT Or ACT Through 2026 As Test-Optional Push Grows*, Wash. Post (Dec. 16, 2021)..... 29

Bailey, Stephen K., Nat’l Acad. of Educ., *Prejudice and Pride: The Brown Decision After 25 Years* (1979) ..... 1

Bleemer, Zachary, *Affirmative Action, Mismatch, and Economic Mobility After California’s Proposition 209*, 137 Q. J. Econ. 115 (2022) ..... 13, 18, 23, 26

Borman, Geoffrey D. & Maritza Dowling, *Schools and Inequality: A Multilevel Analysis of Coleman’s Equality of Educational Opportunity Data*, 112 Tchrs. Coll. Rec. 1201 (2010) ..... 11

Bowen, William G. & Derek Bok, *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions* (2000)..... 18

Cataldi, Emily F., et al., <i>First-Generation Students: College Access, Persistence and Postbachelor's Outcomes</i> (2018) .....	18
Cortes, Kalene E. & Daniel Klasik, <i>Uniform Admissions, Unequal Access: Did the Top 10% Plan Increase Access to Selective Flagship Institutions</i> , 87 <i>Econ. Educ. Rev.</i> 1 (2022) .....	25
Curriculum Assocs., <i>Understanding Student Learning: Insights from Fall 2021</i> (2021), <a href="https://tinyurl.com/2wnb45yp">https://tinyurl.com/2wnb45yp</a> .....	21
d'Addio, Anna Cristina, <i>Intergenerational Transmission of Disadvantage: Mobility or Immobility Across Generations? A Review of the Evidence for OECD Countries</i> , Social, Employment and Migration Working Papers No. 52, Org. for Econ. Coop. & Dev. (2007).....	19
Dale, Stacey B. & Alan B. Krueger, <i>Estimating the Effects of College Characteristics over the Career Using Administrative Earnings Data</i> , 49 <i>J. Hum. Res.</i> 323 (2014) .....	7
Duncan, Greg J. & Katherine Magnuson, <i>Investing in Preschool Programs</i> , 27 <i>J. Econ. Pers.</i> 109 (2013).....	16

Espinosa, Lorelle L. et al., <i>Race, Class, and College Access: Achieving Diversity in a Shifting Legal Landscape</i> (2015) .....	4
Flores, Stella M. & Catherine L. Horne, <i>Texas Top Ten Percent Plan: How It Works, What Are Its Limits, and Recommendations to Consider</i> (2015), <a href="https://tinyurl.com/mrxx92fx">https://tinyurl.com/mrxx92fx</a> .....	25
Frankenberg, Erica et al., <i>Harming our Common Future: America's Segregated Schools 65 Years After Brown</i> (2019), <a href="https://tinyurl.com/3ccavj6m">https://tinyurl.com/3ccavj6m</a> .....	9
Geiser, Saul, <i>The Growing Correlation Between Race and SAT Scores: New Findings from California</i> (Ctr. for Higher Studies in Educ., Res. & Occasional Paper Series: CSHE. 10.15, 2015) .....	30
Handwerk, Philip et al., <i>Access to Success: Patterns of Advanced Placement Participation in U.S. High Schools</i> (2008), <a href="https://tinyurl.com/583kdm2c">https://tinyurl.com/583kdm2c</a> .....	11
Hinrichs, Peter, <i>The Effects of Affirmative Action Bans on College Enrollment, Educational Attainment, and the Demographic Composition of Universities</i> , 94 Rev. Econ. & Stats. 712 (2012) .....	24

- Hoekstra, Mark, *The Effect of Attending the Flagship State University on Earnings: A Discontinuity Based Approach*, 91 Rev. Econ. & Stat. 717 (2009) ..... 13
- Holzer, Harry J. & David Neumark, *Affirmative Action: What Do We Know?*, 25 J. Pol’y Analysis & Mgmt. 463 (2006)..... 27
- Hough, Heather J. et al., *The Impact of the COVID-19 Pandemic on Students and Educational Systems, Critical Actions for Recovery, and the Role of Research in the Years Ahead* (2022)..... 20, 21
- Johnson, Rucker C., *Children of the Dream: Why School Integration Works* (2019) ..... 10
- Kidder, William C. & Patricia Gándara, *Two Decades After the Affirmative Action Ban: Evaluating the University of California’s Race-Neutral Efforts* (2015), <https://tinyurl.com/2p8c55ca> ..... 25
- Kids Help Data Ctr., *Children Living in High Poverty Areas by Race and Ethnicity in the United States* (2022), <https://tinyurl.com/2p85pfbb> ..... 15
- Koretz, Daniel, *The Testing Charade: Pretending to Make Schools Better* (2017) ..... 30



- Krueger, Alan et al., *Race, Income and College in 25 Years: Evaluating Justice O'Connor's Conjecture*,  
8 Am. L. & Econ. Rev. 282 (2006) .....29
- Kuhfeld, Megan et al., *Test Score Patterns Across Three COVID-19-impacted School Years* (Annenberg Brown Univ.,  
EdWorkingPaper No. 22-521, 2022) .....21
- Kurlaender, Michal & Kramer Cohen,  
*Predicting College Success: How Do Different High School Assessments Measure Up?* (2019),  
<https://tinyurl.com/yc3efjh5> ..... 12, 30
- Kurlaender, Michal & Eric Grodsky,  
*Mismatch and the Paternalistic Justification for Selective College Admissions*, 86 Socio. Educ. 294 (2013)..... 13, 18
- Lankford, Hamilton et al., *Teacher Sorting and the Plight of Urban Schools: A Descriptive Analysis*, 24 Educ. Eval. & Pol'y Analysis 37 (2002) ..... 11
- Letter from Thomas Jefferson to George Wythe (Aug. 13, 1786) in *The Papers of Thomas Jefferson*,  
(Julian P. Boyd ed., 1954) ..... 4

- Linn, Robert L. & Kevin G. Welner, Nat'l Acad. of Educ., *Race-Conscious Policies for Assigning Students to Schools: Social Science Research and the Supreme Court Cases* (2007) ..... 1
- Long, Mark C. & Nicole A. Bateman, *Long-Run Changes in Underrepresentation After Affirmative Action Bans in Public Universities*, 42 *Educ. Evaluation & Pol. Analysis* 188 (2020) ..... 24
- Long, Mark C., *Affirmative Action and Its Alternatives in Public Universities: What Do We Know?* 67 *Pub. Admin. Rev.* 315 (2007) ..... 24, 26
- Massey, Douglas S. & Mary J. Fischer, *The Effect of Childhood Segregation on Minority Academic Performance at Selective Colleges*, 29 *Ethnic & Racial Stud.* 1 (2006) ..... 10
- Monarrez, Tomas & Kelia Washington, *Racial and Ethnic Representation in Postsecondary Education*, Urban Institute (2020), <https://tinyurl.com/yc5a3xey> ..... 8
- Mullen, Ann et al., *Who Goes to Graduate School? Social and Academic Correlates of Educational Continuation After College*, 76 *Socio. Educ.* 143 (2003)..... 6

- Nat'l Ctr. for Educ. Stat., U.S. Dep't of  
Educ., *Digest of Education Statistics*, tbl.  
104.92 (2016), [https://ti-  
nyurl.com/2f32kxn9](https://tinyurl.com/2f32kxn9)..... 16
- Nat'l Ctr. for Educ. Stat., U.S. Dep't of  
Educ., *National Assessment of Educa-  
tional Progress (NAEP) High School  
Transcript Study 1990–2019* (2019),  
<https://tinyurl.com/4rnynpes>..... 11
- Nat'l Ctr. for Educ. Stat., U.S. Dep't of  
Educ., *Young Adult Educational and  
Employment Outcomes by Family  
Socioeconomic Status* (2019),  
<https://tinyurl.com/34d4keh2>..... 17
- Nat'l Ctr. for Educ. Stat., U.S. Dep't of  
Educ., *Digest of Education Statistics*, tbl.  
104.70 (2020),  
<https://tinyurl.com/4hyn7uvm> ..... 18
- Nat'l Ctr. for Educ. Stat., U.S. Dep't of Educ.  
*Digest of Education Statistics*, tbl. 104.10  
(2021), <https://tinyurl.com/2p8mm8xz>..... 8
- Nat'l Student Clearinghouse, *Current Term  
Enrollment Estimates* (2022),  
<https://tinyurl.com/yfca355e>..... 22
- Orfield, Gary, *The Walls Around Education:  
The Failure of Colorblind Policy for  
Higher Education* (2022)..... 14, 15, 19, 31

- Orfield, Gary & Danielle Jarvie, The Civil Rights Project, *Black Segregation Matters: School Resegregation and Black Educational Opportunities* (2020), <https://tinyurl.com/mr2cjf5z>.....9
- Perkins, Kristen L. & Sampson, Robert J., *Compounded Deprivation in the Transition to Adulthood: The Intersection of Racial and Economic Inequality Among Chicagoans, 1995-2003*, 1 Russel Sage Found. J. Soc. Sci. 35 (2015) ..... 19
- Pier, Libby et al., *COVID-19 Impacts on Student Learning*, Pol’y Analysis Cal. Educ. 1 (2021) .....21
- Price, Heather E., *The Fractured College Prep Pipeline: Hoarding Opportunities to Learn* (2021)..... 16
- Reardon, Sean F. 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) .....28
- Reeves, Richard V. & Dimitrios Halikias, *Race Gaps in SAT Scores Highlight Inequality and Hinder Upward Mobility* (2017), <https://tinyurl.com/2p9cv5hv> ..... 30

Smith, Jonathan, <i>Ova and Out: Using Twins to Estimate the Educational Returns to Attending a Selective College</i> , 36 Econ. Ed. Rev. 166 (2013) .....	13
U.S. Census Bureau, <i>Asset Ownership of Households: 1993</i> (1993), <a href="https://tinyurl.com/47uy9nym">https://tinyurl.com/47uy9nym</a> .....	15
U.S. Census Bureau, <i>Median Value of Assets for Households, by Type of Asset Owned and Selected Characteristics: 2004</i> (2004), <a href="https://tinyurl.com/mra6yf7m">https://tinyurl.com/mra6yf7m</a> .....	15
U.S. Census Bureau, <i>Median Value of Assets for Households, by Type of Asset Owned and Selected Characteristics: 2019</i> (2019), <a href="https://tinyurl.com/2wuce7w6">https://tinyurl.com/2wuce7w6</a> .....	15
U.S. Census Bureau, <i>Real Median Household Income by Race and Hispanic Origin: 1967 to 2019</i> (2020), <a href="https://tinyurl.com/ms4m96cu">https://tinyurl.com/ms4m96cu</a> .....	14
Youth Truth, <i>Students Weigh In, Part II: Learning &amp; Well-Being During COVID-19</i> (2021), <a href="https://tinyurl.com/3kmst4zb">https://tinyurl.com/3kmst4zb</a> .....	20

## INTEREST OF *AMICUS CURIAE*<sup>1</sup>

The National Academy of Education (“NAEd”) submits this brief as *amicus curiae* in support of Respondents. The NAEd is a nonpartisan, nonprofit organization that advances high-quality research to improve education policy and practice. The NAEd consists of U.S. members and international associates who are elected on the basis of their scholarship related to education. The NAEd undertakes research studies to address pressing educational issues and administers professional development programs to enhance the preparation of the next generation of education scholars. The NAEd has a long history of examining social science research related to race-conscious education policies. See Stephen K. Bailey, Nat’l Acad. Of Educ., *Prejudice and Pride: The Brown Decision After 25 Years* (1979); Robert L. Linn & Kevin G. Welner, Nat’l Acad. Of Educ., *Race-Conscious Policies for Assigning Students to Schools: Social Science Research and the Supreme Court Cases* (2007).

The NAEd’s extensive knowledge and experience in research on education policy makes it well-positioned to explain the benefits of race-conscious admissions policies and the harms that flow from disparities in access to education for underrepresented minority

---

<sup>1</sup> Pursuant to Supreme Court Rule 37.6, counsel for *amicus curiae* states that no counsel for a party authored this brief in whole or in part, and no person or entity other than *amicus curiae* or its counsel made a monetary contribution to this brief’s preparation or submission. All parties have consented to the filing of this brief.

students.<sup>2</sup> The NAEd and its members have produced a substantial body of evidence-based research on the role of race in educational processes and outcomes, and several leading experts have been involved in the production of this brief. As an organization devoted to the improvement of education policy and practice, the NAEd can demonstrate through the growing body of evidence that the educational benefits of a diverse student body are compelling and that there are no effective alternatives to race-conscious admissions to achieve those benefits.

### SUMMARY OF THE ARGUMENT

This Court has long recognized that colleges and universities have a compelling interest in the educational benefits that flow from a racially diverse student body. *See Regents of Univ. of California v. Bakke*, 438 U.S. 265 (1978); *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Fisher v. Univ. of Texas at Austin*, 579 U.S. 365 (2016). Research confirms that this interest remains as important as ever and that there are no feasible alternatives to race-conscious admissions policies.

First, research shows that the benefits of student body diversity in higher education are considerable and varied, and that student body diversity benefits this Nation's students, universities and colleges, and broader society. Research also shows that student body diversity at selective and prestigious colleges and universities is especially important.

---

<sup>2</sup> "Underrepresented minority students" refers to students who identify as Black, Latino, or American Indian.

Second, research shows that universities and colleges still struggle to create student body diversity because the conditions impacting students' educational attainment remain highly unequal in this Nation. Underrepresented minority students are more likely to experience school segregation today than four decades ago, more likely to experience poverty and live in households with significantly lower incomes and wealth than White and Asian students, and less likely to have parents with high levels of educational attainment. These inequities, which have only been deepened by the SARS-CoV-2 ("COVID-19") pandemic, negatively impact student success and reduce racial diversity in higher education. Race-conscious admissions are not intended to remedy these inequities in American society; instead, they enable higher education institutions to achieve student body diversity in spite of these deeply entrenched inequities.

Third, research shows that right now, race-conscious admissions are the only effective means to produce the "critical mass" of racial diversity that the Nation's top universities and colleges need to prepare future generations of leaders. *Grutter*, 539 U.S. at 330–31. Researchers studying the outcomes in states that have banned race-conscious admissions policies have concluded that those bans have decreased student body diversity. Studies show universities and colleges that have adopted race-neutral alternatives have been unable to replicate the desired diversity achieved through race-conscious admissions.



## ARGUMENT

A diverse student body is necessary to foster the “atmosphere of ‘speculation, experiment and creation’” that is “so essential to the quality of higher education.” *Bakke*, 438 U.S. at 312. It “promotes learning outcomes.” *Grutter*, 539 U.S. at 330. It produces “livelier, more spirited, and simply more enlightening and interesting” classroom discussion, and “better prepares [students] as professionals.” *Id.* (citations omitted). Racial diversity is especially critical as it “promotes ‘cross-racial understanding,’ helps to break down racial stereotypes, and ‘enables [students] to better understand persons of different races.’” *Id.* (citations omitted). And most of the Nation’s selective universities believe race-conscious policies are necessary to meet their educational goals. Lorelle L. Espinosa et al., *Race, Class, and College Access: Achieving Diversity in a Shifting Legal Landscape* 14 (2015) (noting that “racial/ethnic diversity” is a high priority of selective schools).

This compelling interest is deeply rooted in our Nation’s history. The Founders knew that expanding the reach of quality education in the United States was a “sure foundation” “for the preservation of freedom and happiness,” Letter from Thomas Jefferson to George Wythe (Aug. 13, 1786) in *The Papers of Thomas Jefferson*, 243, 243–45 (Julian P. Boyd ed., 1954), and that students “from every quarter” of the Nation need access to education, George Washington Eighth Annual Message (Dec. 7, 1796). As this Court has recognized, education “is the very foundation of good citizenship,” *Brown v. Board of Education*, 347 U.S. 483, 493 (1954), and is pivotal for “sustaining our political and cultural

heritage,” *Plyler v. Doe*, 457 U.S. 202, 221 (1981). To “cultivate a set of leaders with legitimacy in the eyes of the citizenry,” it is essential that “the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity.” *Grutter*, 539 U.S. at 332. To that end, “[a]ll members of our heterogeneous society must have confiden[ce] in the openness and integrity of the educational institutions that provide this training.” *Id.*; see also *Sweatt v. Painter*, 339 U.S. 629, 634 (1950).

Strong and persistent racial barriers in many American institutions have constrained opportunities for talented underrepresented minority students and have often prevented colleges and universities from achieving the student body diversity that is “essential if the dream of one Nation, indivisible, is to be realized.” *Grutter*, 539 U.S. at 332. Thus, this Court has repeatedly held that universities may consider race in admissions so long as that consideration is narrowly tailored to achieve the goal of obtaining the “educational benefits” of a diverse student body. *Fisher*, 579 U.S. at 380–81; see also *Grutter*, 539 U.S. at 339. This Court should continue to let universities do so. Considering race as one element in a range of factors—including “geographic origin” or “life spent on the farm,” *Bakke*, 438 U.S. at 316—allows universities to “select those students who will contribute the most to the robust exchange of ideas” on campus, *id.* at 312 (quotation omitted).

**I. STUDENT BODY DIVERSITY AT SELECTIVE HIGHER EDUCATION INSTITUTIONS BENEFITS STUDENTS, INSTITUTIONS, AND SOCIETY**

Education research confirms that there is still a compelling state interest in student body diversity. Empirical findings addressing the benefits of student body diversity are discussed in greater detail in other *amicus curiae* briefs, including the Brief of the American Educational Research Association (“AERA”), which NAEd endorses but does not repeat here. As described more fully in AERA’s brief, the benefits of student body diversity, particularly racial diversity, are considerable and varied: It leads to increased educational benefits, including improved cognitive abilities and critical thinking; promotes civic engagement and the skills needed for professional development and leadership in an increasingly diverse workforce and society; leads to improved classroom environments; helps break down racial stereotypes; and leads to the development of cross-racial understanding critical to students’ success in higher education institutions and beyond.

Attendance at the most selective postsecondary institutions has the highest payoff for students, increasing the likelihood that students will finish their degrees, attend graduate or professional school, and have higher earnings later in life. Ann Mullen et al., *Who Goes to Graduate School? Social and Academic Correlates of Educational Continuation After College*, 76 Socio. Educ. 143, 157 (2003) (finding “[c]ollege selectivity

[] proves to be a significant predictor of graduate school enrollment”); Stacey B. Dale & Alan B. Krueger, *Estimating the Effects of College Characteristics over the Career Using Administrative Earnings Data*, 49 J. Hum. Res. 323, 323, 325–26 (2014) (finding that “[s]tudents who attend higher-quality colleges earn more on average than those who attend colleges of lesser quality,” which holds true for Black and Latino students even when controlling for average SAT scores).

NAEd agrees with the conclusion of *amicus* AERA: Research shows that the interest in student body diversity is as compelling now as it was at the time of *Bakke*, *Grutter*, and *Fisher*—even more so as this Nation has become more diverse and yet more unequal.

## II. THE CONDITIONS THAT AFFECT STUDENT BODY DIVERSITY IN HIGHER EDUCATION HAVE WORSENERD

“[C]ontext matters when reviewing race-based government action under the Equal Protection Clause.” *Grutter*, 549 U.S. at 327 (citing *Gomillion v. Lightfoot*, 364 U.S. 339, 343–44 (1960)). In *Grutter*, this Court expressed hope that the context of higher education would change by 2028 such that race-conscious admissions would no longer be necessary. Unfortunately, that context has not improved—to the contrary, disparities in the underlying conditions that impact prospects for college and university admissions remain, and in some respects have worsened in recent decades.

These inequities, which are compounding and interact in a manner that intensifies their impacts, include increased school segregation, increased economic inequality, lack of parental educational attainment and, most recently, the highly unequal impact of the COVID-19 pandemic, which disproportionately disrupted the education of underrepresented minority students. Together, these factors continue to negatively impact student body diversity and the educational attainment of underrepresented minority students.<sup>3</sup>

One indicator of this dynamic is the ongoing underrepresentation of Black students at selective colleges and universities, and overrepresentation at for-profit colleges, less selective universities, and open-access community colleges. See Tomas Monarrez & Kelia Washington, *Racial and Ethnic Representation in Postsecondary Education* 41–42, Urban Institute (2020), <https://tinyurl.com/yc5a3xey>.

---

<sup>3</sup> Black students are still only 68% as likely as White students to attain a bachelor's degree or higher, and only 47% as likely as Asian students to do so; Latino students are only 49% as likely to attain a bachelor's degree as White students. Nat'l Ctr. for Educ. Stat., U.S. Dep't of Educ. *Digest of Education Statistics*, tbl. 104.10 (2021), <https://tinyurl.com/2p8mm8xz>.

### A. School segregation has deepened

School segregation significantly limits underrepresented minority students’ access to the high-quality primary and secondary schools that can best prepare them for the postsecondary admissions process. This problem has only worsened in recent decades as desegregation policies have ended. See Erica Frankenberg et al., *Harming our Common Future: America’s Segregated Schools 65 Years After Brown* 21 (2019), <https://tinyurl.com/3ccavj6m> (finding an increase in segregation since the 1980s and that the share of “schools that enroll 90-100% non-[W]hite students [] has more than tripled from 5.7% in 1988 to 18.2% in 2016”). As of 2018, roughly 40% of Black students nationwide attended schools that are more than 90% non-White—an 8% increase since 1988. See Table 1.

**Table 1. Percentage of Black Students in Intensely Segregated (90-100%) non-White Schools by Region, 1968-2018<sup>4</sup>**

	1968	1980	1988	2001	2006	2011	2016	2018
<b>South</b>	77.8	23.0	24.0	31.0	32.9	34.2	36.4	37.0
<b>Border</b>	60.2	37.0	34.5	41.6	42.0	40.9	42.2	42.1
<b>Northeast</b>	42.7	48.7	48.0	51.2	50.8	50.8	51.5	51.5
<b>Midwest</b>	58.0	43.6	41.8	46.8	45.8	43.1	42.0	40.7
<b>West</b>	50.8	33.7	28.6	30.0	30.1	34.0	37.7	38.2
<b>US Total</b>	64.3	33.2	32.1	37.4	38.5	38.8	40.1	40.1

Income segregation in schools has also increased alongside racial segregation. Black, Latino, and

<sup>4</sup> Gary Orfield & Danielle Jarvie, The Civil Rights Project, *Black Segregation Matters: School Resegregation and Black Educational Opportunities* 29 (2020), <https://tinyurl.com/mr2cjf5z>.

American Indian students are more likely to attend schools predominately comprised of low-income students today than they were in 1996. In the 2018 to 2019 school year, the average Black student attended a school with 69% low-income students—an increase of 26% since 1996. *See* Table 2.

**Table 2. Percent Low-Income Students in Schools Attended by the Average Student by Race and Year<sup>5</sup>**

	Black Student	Latino Student	American Indian Student
1996-97	43	46	31
2010-11	65	62	62
2018-19	69	65	72

Economic and racial segregation has a substantial negative effect on educational outcomes for underrepresented minority students. *See* Douglas S. Massey & Mary J. Fischer, *The Effect of Childhood Segregation on Minority Academic Performance at Selective Colleges*, 29 *Ethnic & Racial Stud.* 1, 1 (2006) (study of nearly 4,000 representative students found that Black and Latino students from segregated environments were less prepared academically for post-secondary education). Desegregation has been linked to “significantly higher educational attainment,” “greater college attendance and completion rates,” and a “30 percent increase in annual earnings.” Rucker C. Johnson, *Children of the Dream: Why School Integration Works* 60 (2019). Highly qualified teachers are not evenly distributed across schools and are also less likely to be present in highly segregated schools.

---

<sup>5</sup> *Id.*, 27.

Hamilton Lankford et al., *Teacher Sorting and the Plight of Urban Schools: A Descriptive Analysis*, 24 *Educ. Eval. & Pol’y. Analysis* 37, 54–55 (2002) (concluding that low-income and underrepresented minority students are more likely to be in schools with less qualified teachers). In addition, segregated schools provide less challenging curricula, have higher drop-out rates, and their students have lower test scores and graduation rates. See Geoffrey D. Borman & Maritza Dowling, *Schools and Inequality: A Multilevel Analysis of Coleman’s Equality of Educational Opportunity Data*, 112 *Tchrs. Coll. Rec.* 1201, 1238–39 (2010) (finding a high correlation between school outcomes and the composition of the school).

Segregated schools are also less likely to offer the rigorous college preparation courses sought by competitive universities, which directly hurts student educational outcomes. Philip Handwerk et al., *Access to Success: Patterns of Advanced Placement Participation in U.S. High Schools* 17–19 (2008), <https://tinyurl.com/583kdm2c> (finding a lack of underrepresented minorities among advanced placement examinees). Only 56% of Black students are in schools with a high availability of advanced placement courses, compared to 83% of Asian students. *Id.* at 16. Because of these structural barriers, Black and Latino students are much less likely to be enrolled in rigorous college preparatory classes than White or Asian students. For example, in 2019, only 6% of Black and 9% of Latino students graduated with a calculus course, compared to 14% of White and 44% of Asian/Pacific Islander students. Nat’l Ctr. for Educ. Stat., U.S. Dep’t of Educ.,



*National Assessment of Educational Progress (NAEP) High School Transcript Study 1990–2019* (2019), <https://tinyurl.com/4rnynpes>.

The availability of advanced course offerings in segregated secondary schools affects student body diversity at colleges and universities by diminishing the admissions prospects of underrepresented minority students. The most important admissions criteria that colleges and universities consider is prior academic achievement—most notably, a student’s academic grade point average and the rigor of the courses completed during high school. Michal Kurlaender & Kramer Cohen, *Predicting College Success: How Do Different High School Assessments Measure Up?* 4 (2019), <https://tinyurl.com/yc3efjh5> (noting that “applicants with higher [grades] or test scores are more likely to be admitted to college”). The limited access to rigorous college preparatory courses in racially segregated and low-income schools makes it more difficult for minority students to demonstrate their academic capacity to these universities.

But that does not mean these students do not thrive at prestigious and selective institutions. Contrary to the so-called “mismatch hypothesis” touted by critics of race-conscious admissions, *see, e.g.*, Brief of *Amicus Curiae* National Association of Scholars in Support of Petitioner 8, students whose secondary school records place them below their college peers (referred to as “overmatched” students) are not at a greater risk of academic failure or attrition if they attend a more selective college or university than a less

demanding one. See Zachary Bleemer, *Affirmative Action, Mismatch, and Economic Mobility After California's Proposition 209*, 137 Q. J. Econ. 115, 118, 121 (2022) (noting data contrary to the mismatch hypothesis); Sigal Alon & Marta Tienda, *Assessing the "Mismatch" Hypothesis: Differences in College Graduation Rates by Institutional Selectivity*, 78 Socio. Educ. 294, 309 (2005) (concluding that the mismatch hypothesis is "empirically groundless"); Michal Kurlaender & Eric Grodsky, *Mismatch and the Paternalistic Justification for Selective College Admissions*, 86 Socio. Educ. 294, 294, 307 (2013) (concluding students are no more or less likely to drop out when they are "overmatched"). In fact, the likelihood that a student will complete a bachelor's degree and earn higher wages increases when they attend a more selective postsecondary institution, even if they are overmatched for that school. Jonathan Smith, *Ova and Out: Using Twins to Estimate the Educational Returns to Attending a Selective College*, 36 Econ. Ed. Rev. 166, 167 (2013) (attendance at selective postsecondary institutions increases likelihood of graduating; "undermatching does reduce a student's probability of graduating whereas overmatching has no pronounced effect"); Mark Hoekstra, *The Effect of Attending the Flagship State University on Earnings: A Discontinuity Based Approach*, 91 Rev. Econ. & Stat. 717, 724 (2009) (finding that attending the most selective institutions increases earnings).

## **B. Income and wealth inequality remains severe**

Underrepresented minority students are disadvantaged when applying to colleges and universities due to inequalities in wealth and income. Research demonstrates that inequalities in wealth and income, which have deepened in recent decades, negatively affect underrepresented minority students' access to high-quality preschool, elementary, and high school education, as well as family and community opportunities, and that in turn also negatively impacts higher education opportunities. Gary Orfield, *The Walls Around Education: The Failure of Colorblind Policy for Higher Education* 46 (2022).

Underrepresented minority children are more likely to live in poverty than White and Asian children. In 1993, the median net worth of White households was ten times that of Black households, with a difference of approximately \$40,000—by 2019, the gap between White and Black households had grown to over \$135,000. Asian households have a median net worth that is over fifteen times that of Black households. *See* Table 3. Similar patterns exist concerning income. In 2019, the median income was \$76,057 in White households and \$98,174 in Asian households, as compared to \$56,113 in Latino households and \$45,438 in Black households. U.S. Census Bureau, *Real Median Household Income by Race and Hispanic Origin: 1967 to 2019* (2020), <https://tinyurl.com/ms4m96cu>.

**Table 3. Median Value of Assets for Households (Net Worth) by Race/Ethnicity (1993, 2004, 2019)<sup>6</sup>**

	2019	2004	1993
<b>Total</b>	\$130,500	\$79,800	\$37,587
<b>Asian</b>	\$206,400	\$107,690	-
<b>White</b>	\$150,300	\$98,025	\$45,740
<b>Hispanic (any race)</b>	\$31,700	\$13,375	\$4,656
<b>Black</b>	\$14,100	\$8,650	\$4,418

Underrepresented minority children are also more likely to live in isolated poverty, which means poverty that is geographically concentrated. See Kids Help Data Ctr., *Children Living in High Poverty Areas by Race and Ethnicity in the United States* (2022), <https://tinyurl.com/2p85pfbb>. While isolated poverty affects 9% of all American children and 4% of Asian children, it affects 22% of Black children, 24% of American Indian children, and 13% of Latino children. *Id.* Isolated poverty is particularly harmful because it can lead to cumulative consequences; for example, concentrated-poverty communities are also more likely to have substandard schools. Orfield, *supra*, at 61.

The impact of income and wealth on educational outcomes starts at the earliest level. Pre-kindergarten

---

<sup>6</sup> U.S. Census Bureau, Asset Ownership of Households: 1993 (1993), <https://tinyurl.com/47uy9nym>; U.S. Census Bureau, Median Value of Assets for Households, by Type of Asset Owned and Selected Characteristics: 2004 (2004), <https://tinyurl.com/mra6yf7m>; U.S. Census Bureau, Median Value of Assets for Households, by Type of Asset Owned and Selected Characteristics: 2019 (2019), <https://tinyurl.com/2wuce7w6>.

programs are essential preparation for students, giving them the necessary set of intellectual, social, and emotional competencies that foster success in kindergarten and beyond. Greg J. Duncan & Katherine Magnuson, *Investing in Preschool Programs*, 27 *J. Econ. Pers.* 109, 110 (2013) (finding “lasting positive effects on such outcomes as greater educational attainment, higher earnings, and lower rates of crime” from well-known prekindergarten programs). Access to high quality pre-kindergarten programs is largely dependent on income, however. This same dynamic is repeated throughout primary and secondary schools. Students who attend well-resourced primary and secondary schools are more likely to attend well-resourced colleges or universities. See Heather E. Price, *The Fractured College Prep Pipeline: Hoarding Opportunities to Learn* (2021). The opposite is true for students attending under-resourced schools in concentrated-poverty communities, which have lower budgets, higher teacher and leadership turnover, greater student transiency, and reduced access to rigorous curricular choices and opportunities to learn.

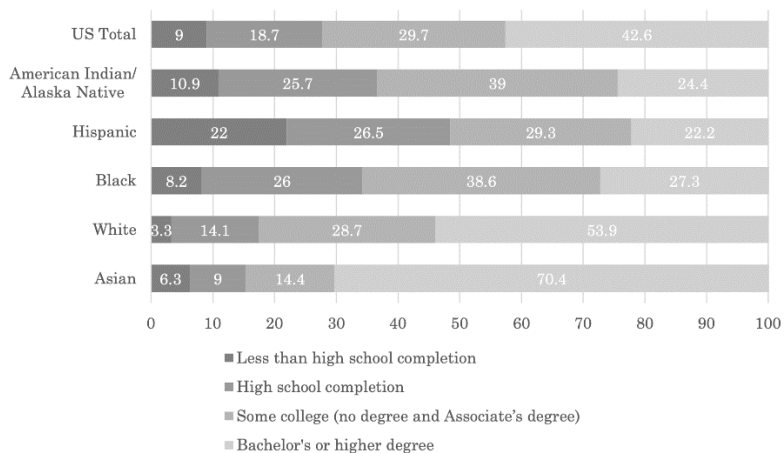
Research shows the negative effects of poverty and concentrated-poverty schools on educational attainment and student body diversity. Low-income students are thirteen times less likely to graduate high school on time. Nat’l Ctr. For Educ. Stat., Nat’l Ctr. for Educ. Stat., *Digest of Education Statistics*, tbl. 104.92 (2016), <https://tinyurl.com/2f32kxn9>. Students from the highest socioeconomic group are almost three times more likely to be enrolled in postsecondary education compared to students in the lowest

socioeconomic tier. Nat'l Ctr. for Educ. Stat., U.S. Dep't of Educ., *The Condition of Education 2* (2019), <https://tinyurl.com/34d4keh2>. Students in the lowest socioeconomic bracket were five times less likely to be employed or enrolled in postsecondary education than students from the highest socioeconomic group, *id.*—and these effects are more likely to be experienced by Black and Latino students.

### **C. Gaps in parents' educational attainment persist**

In addition to income inequality and school segregation, underrepresented minority students are less likely to live in a household where at least one parent has attained postsecondary education, and that has a direct impact on their own educational success. Fifty-four percent of White parents and 70% of Asian parents have a bachelor's degree or higher while the same is only true for 22% of Latino parents, 27% of Black parents, and 24% of American Indian parents. *See* Table 4.

**Table 4. Highest education level of parents of children under age 18 by race (%) (2019)<sup>7</sup>**



Research shows that differences in the educational attainment of parents leads to differences in the educational opportunities available to students. Studies show that “students whose parents have not attended college often face significant challenges in accessing postsecondary education, succeeding academically once they enroll, and completing a degree.” Emily F. Cataldi et al., *First-Generation Students: College Access, Persistence and Postbachelor’s Outcomes 2* (2018) (citations omitted). Nevertheless, these disparities are largely attenuated once these students attend more selective universities, such as Harvard, and flagship schools such as University of North Carolina. See Bleemer, *supra*, at 156; Kurlaender & Grodsky, *supra*, at 294; William G. Bowen & Derek Bok, *The Shape of*

<sup>7</sup> Nat’l Ctr. for Educ. Stat., U.S. Dep’t of Educ., *Digest of Education Statistics*, tbl. 104.70 (2020), <https://tinyurl.com/4hyn7uvm>.

*the River: Long-Term Consequences of Considering Race in College and University Admissions* 61–63, 87–88, 97–98, 123 (2000) (examining impact of race-conscious admissions policies on over 45,000 students and finding that underrepresented minority students at elite colleges as compared to their peers at less-selective institutions were more likely to graduate college, to enter and complete graduate school, to earn more income, and to participate in civic and public service).

The broader advantages associated with higher parental educational attainment are significant and further entrench other preexisting disparities beyond education attainment. See Christina d’Addio, *Intergenerational Transmission of Disadvantage: Mobility or Immobility Across Generations? A Review of the Evidence for OECD Countries*, Social, Employment and Migration Working Papers No. 52, Org. for Econ. Coop. & Dev. 51–67 (2007). Parental higher education is strongly correlated to higher rates of home ownership, higher incomes, stable marriages, and better health—and all of these factors impact the success and achievement of the children. Orfield, *supra*, at 53. Thus, parental education is correlated not only with parents’ own economic success but also with the success and achievement of their children. See Kristen L. Perkins & Robert J. Sampson, *Compounded Deprivation in the Transition to Adulthood: The Intersection of Racial and Economic Inequality Among Chicagoans, 1995-2003*, 1 Russel Sage Found. J. Soc. Sci. 35, 46 (2015) (finding that adolescents whose parents have not completed high school are three times as likely to experience poverty).



**D. COVID-19 reflected and deepened existing educational racial inequality**

The COVID-19 pandemic has highlighted and worsened stark racial differences in education. The pandemic disrupted all levels of education—from elementary to postsecondary. But this disruption did not impact all students equally; it disproportionately impacted underrepresented minority students, further entrenching educational inequality. Research shows that school closures and disruptions to learning during the COVID-19 pandemic exacerbated existing racial inequalities in education, which will impact short-term and longer-term education outcomes. See Heather J. Hough, et al., *The Impact of the COVID-19 Pandemic on Students and Educational Systems, Critical Actions for Recovery, and the Role of Research in the Years Ahead* 20–21 (2022). Black and Latino students faced greater obstacles to learning than their White and Asian peers.<sup>8</sup> See Youth Truth, *Students Weigh In, Part II: Learning & Well-Being During COVID-19* 11–12 (2021), <https://tinyurl.com/3kmst4zb>.

---

<sup>8</sup> These obstacles included feelings of depression, stress, or anxiety, home and family responsibilities, health of students and their families, technological limitations, including limited or no internet access and limited access to computer devices, and not having an adult to help with schoolwork. Youth Truth, *Students Weigh In, Part II: Learning & Well-Being During COVID-19* 10 (2021), <https://tinyurl.com/3kmst4zb>.

These inequalities led to a “learning lag” that was unequally distributed by race. Learning lag—the difference between a “typical learning trajectory” and students’ actual learning—was most severe among Black, Latino, American Indian, and other disadvantaged students. Hough, *supra*, at 6; *see also* Libby Pier, et al., *COVID-19 Impacts on Student Learning*, Pol’y Analysis Cal. Educ. 1, 18 (2021) (finding “students who were economically disadvantaged, English learners, and Latin[o] experienced greater learning lag” than other students). Research also shows the learning lag was greater in schools that serve a higher proportion of Black and Latino students. Curriculum Assocs., *Understanding Student Learning: Insights from Fall 2021* 14 (2021), <https://tinyurl.com/2wnb45yp>.

Low-income schools were also more severely impacted by the COVID-19 pandemic. Megan Kuhfeld, et al., *Test Score Patterns Across Three COVID-19-impacted School Years 7–8* (Annenberg Brown Univ., Ed-WorkingPaper No. 22-521, 2022). During the COVID-19 pandemic, the performance gap between high-poverty and low-poverty schools widened an additional 15% in reading and 20% in math as measured by test scores. *Id.* In addition to the direct impact on the quality of education provided, the COVID-19 pandemic also impacted students’ plans to attend college or university, causing many students to delay or cancel those plans altogether, leading to severe drops in college enrollment for low-income students and Black students. Nat’l Student Clearinghouse, *Current Term Enrollment Estimates 2* (2022), <https://tinyurl.com/yfca355e>.

The COVID-19 pandemic has cast a sharp spotlight on the racial inequities in our Nation. These inequities make it far more difficult for our top colleges and universities to achieve the pedagogical benefits that a diverse student body provides, which this Court has repeatedly recognized as a compelling interest.

### **III. RACE-CONSCIOUS ADMISSIONS POLICIES ARE THE ONLY EFFECTIVE MECHANISM TO PRODUCE MEANINGFUL STUDENT BODY DIVERSITY**

This Court expressed hope in *Grutter* that race-conscious admissions would one day no longer be necessary. 539 U.S. at 341–42. That day has not yet come because no “workable race-neutral alternatives that will achieve [] diversity” currently exist. *Id.* at 339. While each college or university must make its own assessment of which policies are necessary to achieve its unique admissions goals, research confirms that race-conscious admissions remain necessary because they are the only effective means to produce meaningful diversity in selective higher education institutions.

#### **A. Abandoning race-conscious policies greatly increases racial gaps**

Nine states have banned race-conscious admissions in their state schools,<sup>9</sup> and the experience in those

---

<sup>9</sup> See Idaho Code § 67-5909A (2020) (barring Idaho state schools from “grant[ing] preferential treatment to [] any individual [] on the basis of race . . . .”); Okla. Const. art. II, § 36A (barring Oklahoma state institutions from “grant[ing] preferential treatment

states has given researchers the opportunity to measure empirically the impact of abandoning race-conscious admissions. That evidence has consistently demonstrated that abandoning race-conscious admissions decreased student body diversity. Thus, it is even more apparent today than at the time of *Bakke*, *Grutter*, or *Fisher* that prohibiting race-conscious admissions would “require a dramatic sacrifice of diversity.” *Grutter*, 539 U.S. at 340.

Studies documenting the impact of eliminating race-conscious admissions have consistently found negative effects on the admission of underrepresented minority students in higher education. *See* Bleemer, *supra*, at 115 (concluding that “ending affirmative

---

to[] any individual . . . on the basis of race . . . .”); N.H. Rev. Stat. Ann. § 187-A:16-a (2012) (barring New Hampshire “state college[s] and universit[ies]” from granting “preferential treatment in . . . admission based on race . . . .”); Ariz. Const. art. II, § 36 (barring Arizona state institutions from “grant[ing] preferential treatment to . . . any individual . . . on the basis of race . . . .”); Neb. Const. art. I, § 30 (barring Nebraska state institutions from “grant[ing] preferential treatment to[] any individual . . . . on the basis of race . . . .”); Mich. Const. art. 1, § 26 (barring Michigan state colleges, universities, and school districts from “grant[ing] preferential treatment to[] any individual . . . on the basis of race . . . .”); Fla. Executive Order 99-281 (1999) (ordering the Florida Board of Regents to “implement a policy prohibiting the use of racial . . . preferences . . . in admissions to all Florida institutions of Higher Education”); Wash. Rev. Code § 49.60.400 (1998) (barring Washington state institutions from “grant[ing] preferential treatment to[] any individual . . . on the basis of race . . . .”); Cal. Const. art. I, § 31 (barring California state institutions from “grant[ing] preferential treatment to[] any individual . . . on the basis of race . . . [in] public education . . . .”).

action caused [University of California’s] underrepresented minority . . . freshman applicants to cascade into lower-quality colleges”); Mark C. Long, *Affirmative Action and Its Alternatives in Public Universities: What Do We Know?* 67 *Pub. Admin. Rev.* 315, 315 (2007) (finding a “decline in minorities’ relative share of enrollment at flagship public universities after affirmative action was eliminated”); Mark C. Long & Nicole A. Bateman, *Long-Run Changes in Underrepresentation After Affirmative Action Bans in Public Universities*, 42 *Educ. Evaluation & Pol. Analysis* 188, 188 (2020) (concluding that “the elimination of affirmative action has led to persistent declines in the share of underrepresented minorities among students admitted to and enrolling in public flagship universities in these states”); Peter Hinrichs, *The Effects of Affirmative Action Bans on College Enrollment, Educational Attainment, and the Demographic Composition of Universities*, 94 *Rev. Econ. & Stats.* 712, 712 (2012) (concluding that banning race-conscious admissions “decrease[s] underrepresented minority enrollment and increase[s] white enrollment at selective colleges”). A major 2020 study of enrollment data showed that banning race-conscious admissions policies led to an immediate decline in admissions of underrepresented minority students across both elite and flagship campuses, and this decline worsened over time. Long & Bateman, *supra*, at 188.

Banning race-conscious admissions has a negative impact on diversity even when factoring in alternative admissions strategies that universities and colleges have employed to mitigate this consequence. *Id.* Since

the ban on race-conscious admissions in California, the University of California has invested millions of dollars in alternative policies to create student body diversity. See William C. Kidder & Patricia Gándara, *Two Decades After the Affirmative Action Ban: Evaluating the University of California’s Race-Neutral Efforts* 34 (2015), <https://tinyurl.com/2p8c55ca>. Those approaches included outreach, partnerships with high minority high schools, targeted recruitment efforts, and other initiatives. These efforts have been unsuccessful: “in spite of high investments of both human and financial resources in many areas, the [University of California] has never recovered the same level of diversity that it had before the loss of affirmative action nearly 20 years ago.” *Id.* at i.

Similarly, research from Texas shows that the state’s “Top 10% Plan”—which was intended as a race-neutral policy to increase student diversity—has failed to achieve substantial racial diversity. See Stella M. Flores & Catherine L. Horne, *Texas Top Ten Percent Plan: How It Works, What Are Its Limits, and Recommendations to Consider* 17 (2015), <https://tinyurl.com/mrxx92fx> (summarizing recent research). The Top 10% Plan guaranteed the top tenth percentile of students in every state high school admission to one of Texas’s elite public universities. As of 2020, the Top 10% Plan has created “little to no equity-producing effects.” Kalene E. Cortes & Daniel Klasik, *Uniform Admissions, Unequal Access: Did the Top 10% Plan Increase Access to Selective Flagship Institutions*, 87 *Econ. Educ. Rev.* 1 (2022). Another study found that the Top 10% Plan was able to replicate only a third of

the racial diversity that race-conscious admissions achieved. Long, *supra*, at 322. Further, as this Court observed in *Grutter*, percentage plans have the further negative effect of “preclud[ing] . . . universit[ies] from conducting the individualized assessments necessary to assemble that student body that is not just racially diverse, but diverse along all the qualities valued by the university.” *Grutter*, 539 U.S. at 340.

In addition to reducing overall student body diversity, eliminating race-conscious admissions also causes underrepresented minority students who do attend university or college to attend lower quality universities and colleges. Bleemer, *supra*, at 118. That, in turn, results in lower degree attainment and lower average wages for minority students into at least their twenties and thirties. *Id.*; see Section I, *supra*.

*Amici* Oklahoma et al. incorrectly assert that data from the nine states that have banned race-conscious admissions “undermines *Grutter*’s assumption that diversity cannot be achieved by any other means” because public universities in states with bans are “no less diverse” than a cherry-picked selection of states without bans. Brief of *Amici Curiae* Oklahoma and 18 Other States in Support of Petitioner at 9, 11. Their brief does not cite a single empirical study undermining the consistent body of research that establishes the negative impacts on diversity from eliminating race-conscious admissions. Nor do they cite a single study examining the comparative effectiveness of race-conscious admissions and race-neutral alternatives to support their assertion that this Court in *Grutter*

erred. In fact, the Oklahoma brief nowhere considers socioeconomic factors, the prevalence of residential segregation, the prevalence of isolated poverty, school quality, or other essential factors in its purported “analysis” of the impact of race-conscious admissions on student body diversity.

**B. Income-based policies cannot produce meaningful diversity**

Research also shows that income-based admissions policies are an insufficient alternative to race-conscious admissions. Income-based approaches provide students with an admissions advantage based on their socioeconomic background, instead of their race or ethnicity. Undoubtedly, increasing the admissions of students from low-income families is itself a valuable goal, but it is a distinct goal and is not a substitute for race-conscious admissions if the goal is to increase racial student body diversity. Income-based approaches are unable to “generate a level of minority representation anywhere close to its current level [with race-conscious admissions].” Harry J. Holzer & David Neumark, *Affirmative Action: What Do We Know?*, 25 J. Pol’y Analysis & Mgmt. 463, 476 (2006) (summarizing research).

Researchers employing sophisticated computer modeling of various admissions plans have reached the same conclusion. In one 2017 study, researchers ran a simulation of university population demographics under a range of alternative admissions policies and concluded that schools with race-conscious admissions are more racially diverse and that income-



based approaches that exclude the consideration of race are less effective at creating diverse and representative student bodies. 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, 654 (2018) (finding socioeconomic status (“SES”) based plans “are unlikely to reproduce high levels of racial diversity relative to those achieved by race-based policies unless they are paired with targeted race recruiting and provide admissions boosts that may prove prohibitively large and costly”).

Research also shows that in addition to being less effective, income-based alternatives to race-conscious admissions are much more costly to administer. Income-based alternatives would significantly increase financial aid costs in comparison to race-conscious policies, and many universities would not be able to meet this increased financial burden. See Reardon et al., *supra*, at 652 (“Currently, very few colleges are able to meet the full demonstrated financial need of the students they enroll *without* the use of SES-based affirmative action, so an additional influx of lower-income students would likely stretch limited resources even more thinly.”). While race and income are correlated, they do not directly overlap, which means that universities must admit greater numbers of low-income students to achieve meaningful racial diversity than they can afford given their aid budgets. 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)

(“The correlation between race and family income, while strong, is not strong enough to permit the latter to function as a useful proxy for race in the pursuit of diversity.”).

**C. Reliance on standardized testing and grades cannot produce meaningful diversity**

Some critics of race-conscious admissions policies contend that admissions should be judged solely based on “merit”—which they presume can be judged objectively by emphasizing standardized tests and grades. *See* Pet. Br. at 13, 23–24, 42–43 (No. 20-1199). “Meritorious” entry to institutions of higher education, however, involves an individualized, holistic review of applicants, with grades and testing being just one part of the measure of “merit” to examine the attributes of an applicant (others include extracurriculars, sports, musical talent, work experience, prior learning environments, and potential obstacles). Tests and grades are not the sole or dominant criteria or measure of merit used to ensure all forms of diversity.

Critically, the vast majority of U.S. colleges and universities, including Harvard and the University of North Carolina, have now abandoned the requirement of admissions tests. Nick Anderson, *Harvard Won’t Require SAT or ACT Through 2026 As Test-Optional Push Grows*, Wash. Post (Dec. 16, 2021) (More than “90 percent of schools” on U.S. News & World Report lists of top 100 liberal arts colleges and top 100 universities nationwide” did not require test score for admissions in 2021.). And for good reason. Admissions tests

attempt to predict performance in college courses but do not measure creativity, perseverance, leadership, or many other dimensions that are important to campus communities, to college persistence, and to later life success. See Kurlaender & Cohen, *supra*, at i (concluding that standardized tests are not a “strong predictor[] of second-year persistence at California State University or University of California campuses”); see also Daniel Koretz, *The Testing Charade: Pretending to Make Schools Better* (2017).

Over-reliance on standardized tests harms underrepresented minority students. The mean score on the math section of the SAT for all test-takers is 511 out of 800, but the average score for Black students is 428 compared to 538 for White students. Richard V. Reeves & Dimitrios Halikias, *Race Gaps in SAT Scores Highlight Inequality and Hinder Upward Mobility*, (2017), <https://tinyurl.com/2p9cv5hv>. This achievement gap has remained unchanged for fifteen years. According to a 2015 study, over a third of the variance in SAT scores can now be predicted based on factors known at birth such as family income, parental education, and race/ethnicity—and race/ethnicity has the strongest predictive value. Saul Geiser, *The Growing Correlation Between Race and SAT Scores: New Findings from California 4* (Ctr. for Higher Studies in Educ., Res. & Occasional Paper Series: CSHE. 10.15, 2015).

Over-reliance on high school grades is also insufficient given well-documented inequities in school resources (including teacher qualifications), as well as

resources located in students' neighborhoods and families. See Sections II.A, B *supra*. School test scores are "strongly related to parents' resources and education, and the student's previous schooling advantages." Orfield, *supra*, at 84. In fact, high-stakes testing further contributes to worsened outcomes at minority-segregated schools, "producing a focus on rote skill and test-taking strategies." *Id.*, at 161.

In contrast to over-reliance on standardized testing and grades, most universities and colleges have adopted the type of "highly individualized, holistic review" that gives weight to "all the ways an applicant might contribute to a diverse educational environment," which this Court endorsed in *Grutter* and which Harvard and the University of North Carolina employ. 539 U.S. at 337; Resp. Br. at 15–17 (No. 20-1199); Resp. Br. at 8–15 (No. 21-707). Research shows that this holistic approach is necessary to foster the "robust exchange of ideas" that student body diversity makes possible. *Grutter*, 539 U.S. at 327. The Nation's colleges and universities play a critical role in crossing lines of social division and exposing students to a diversity of ideas necessary to advance democracy and an engaged citizenry. This Court should not deprive this Nation's top universities and colleges of the tools they need to accomplish this critical goal.

\* \* \*

## CONCLUSION

For the foregoing reasons, the Court should uphold the judgment below.

Dated: New York, NY  
August 1, 2022

Respectfully submitted,

AMY I. BERMAN  
NATIONAL ACADEMY OF  
EDUCATION  
500 Fifth Street NW  
Washington, DC 20001  
(202) 271-5554

YELENA KONANOVA  
*Counsel of Record*  
CAITLIN J. HALLIGAN  
MATHEW ELDER  
SELENDY GAY ELSBERG PLLC  
1290 Avenue of the Americas  
New York, New York 10104  
(212) 390-9000  
lkonanova@selendygay.com

*Counsel for Amicus Curiae*