

Nos. 20-1199 & 21-707

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IN THE  
**Supreme Court of the United States**

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

v.

PRESIDENT & FELLOWS OF HARVARD COLLEGE,  
*Respondent.*

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

v.

UNIVERSITY OF NORTH CAROLINA, ET AL.,  
*Respondents.*

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

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**BRIEF OF AMERICAN FEDERATION OF  
TEACHERS AS *AMICUS CURIAE* IN SUPPORT  
OF RESPONDENTS**

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

The American Federation of Teachers, an affiliate of the AFL-CIO, is the largest higher-education union in the United States. AFT represents 1.7 million members in more than 3,000 local affiliates nationwide. Its members include pre-K through 12th-grade teachers, paraprofessionals, and other school-related personnel; higher education faculty and professional staff; and approximately 80,000 early childhood educators. AFT is committed to high-quality education, economic opportunity, fairness, and justice.

Educators are uniquely positioned to provide insight on the benefits of student racial diversity. Because of its keen interest in educational quality and equality, *amicus* has a particular interest in providing the Court with teachers' evidence-backed perspective on the value of racial diversity in higher education and of the race-conscious admissions policies that make that diversity possible.

## INTRODUCTION AND SUMMARY OF ARGUMENT

Higher-education institutions that employ race-conscious admissions programs consider them vital to the institutions' educational missions. Those beliefs are well founded—not just because they're made from

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<sup>1</sup> Pursuant to Supreme Court Rule 37.6, counsel for *amicus curiae* states that no counsel for any party authored this brief in whole or in part, and no person other than *amicus* and its counsel made a monetary contribution intended to fund the preparation or submission of this brief. All parties in both cases have lodged letters granting blanket consent to the filing of *amicus curiae* briefs.

universities' unique vantage point and with the benefit of decades of experience, but because research demonstrates the broad and numerous benefits of such programs. Those benefits aren't confined to students of color; rather, *all* students benefit from contact and intellectual engagement with peers of different races. American society, too, benefits when higher education is accessible to all. Education is the pathway to all manner of professions that are vital to our economy and society, from medicine to engineering and, indeed, careers in education itself. There are also other, less easily measured benefits to ensuring fair access and robust participation in higher education by people of all races and backgrounds, including promoting racial harmony through integration of our college campuses.

Petitioner's proposed blanket ban on any consideration of race in admissions undermines these compelling interests. Because race-conscious admission policies are a patchwork, with some States having banned them outright, it's possible to examine the results of such bans and to envision a world in which universities nationwide were prohibited from bearing applicants' race in mind when performing holistic reviews. The results are unsettling, both for students of color and for universities as they pursue their educational missions.

The United States is only a few decades removed from the era in which racial diversity on college campuses was verboten, and it has enjoyed the gains of educational diversity for an even shorter time. Universities, students, and society still need the benefits of the race-conscious admissions programs this Court sanctioned in *Grutter v. Bollinger*, 539 U.S. 306 (2003). The judgments below should be affirmed,

and universities like Harvard and UNC that choose to employ such programs should be permitted to continue to do so.

### **ARGUMENT**

For the bulk of this Nation's history, vast portions of our citizens were denied access to higher education because of their race or sex. The result was a profound stratification that extended beyond education to nearly every aspect of our collective economic and social lives. Even today, unequal access to education persists, with ripple effects that stand in the way of the kind of fair, diverse, and harmonious society the Constitution was designed to foster. As this Court has recognized, institutions of higher learning have a compelling interest in promoting diversity in the ranks of their students, not only to improve the opportunities for students of color but also to enhance the educational experience for all students. Doing so furthermore produces broader benefits for a still-stratified economy and society. And it helps some of the most important institutions in our society avoid unwittingly perpetuating the racial segregation that stains our history.

#### **I. Ensuring Equal Access To Educational Opportunities Is A Compelling State Interest.**

Petitioners ask this Court to overrule *Grutter v. Bollinger*, 539 U.S. 306 (2003), and impose a blanket prohibition on any consideration of race in admissions to institutions of higher education. The Court should reject that invitation. Consideration of race in a limited and constrained manner is vital to ensuring equal access to education, promoting quality educational experiences, and securing for the Nation



the vital benefits that flow from producing a body of college graduates who truly represent America.

**A. Diverse Educational Experiences Benefit All Students.**

As this Court noted in *Grutter*, a diverse student body brings “substantial” educational benefits. 539 U.S. at 327-33. For example, studying with peers of different races/ethnicities is positively correlated with growth in critical thinking and problem-solving in students of all races.<sup>2</sup> Students with more frequent cross-racial interaction show more gains in general knowledge, critical thinking, and problem-solving than those with less interaction.<sup>3</sup> And a greater degree of classroom racial diversity is associated with a higher GPA at graduation.<sup>4</sup>

White students, as well as students of color, benefit measurably from classroom and campus racial diversity. Classroom racial diversity has been shown in a national study to improve learning outcomes for white college students.<sup>5</sup> And white students’ critical

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<sup>2</sup> Sylvia Hurtado, *Linking Diversity and Educational Purpose: How Diversity Affects the Classroom Environment and Student Development*, in *Diversity Challenged: Evidence on the Impact of Affirmative Action* 187, 192, 196-98 (Gary Orfield ed., 2001).

<sup>3</sup> Mitchell J. Chang et al., *The Educational Benefits of Sustaining Cross-Racial Interaction Among Undergraduates*, 77 J. Higher Educ. 430, 449 (2006).

<sup>4</sup> Yan Lau, *Does Classroom Diversity Improve Academic Outcomes?* 22 (Dec. 2016) (unpublished), <https://www.aeaweb.org/conference/2017/preliminary/paper/4kZNaAFy>.

<sup>5</sup> Patricia Gurin et al., *Diversity and Higher Education: Theory and Impact on Educational Outcomes*, 72 Harv. Educ. Rev. 330, 351-52 (2002), <https://www.iwu.edu/diversity/diversity-higher.pdf>.

thinking is improved by the presence of Black students in discussion groups, as well as the presence of other white members who reported having sustained contact with racially diverse peers.<sup>6</sup>

Notably, the benefits of student racial diversity aren't confined to the classroom environment. In fact, informal interactions among students of different races is even more beneficial for college students than classroom diversity, "accounting for higher levels of intellectual engagement and self-assessed academic skills" and consistently influencing "all educational outcomes" for all four racial groups studied: Black, Latinx, white, and Asian American<sup>7</sup> students.<sup>8</sup> There's also a strong correlation between white students' critical thinking and their level of sustained contact with peers from different racial groups.<sup>9</sup>

### **B. Access To Quality Higher Education Is Particularly Important For Students Of Color.**

Access to higher education is particularly important for young people of color. Higher education remains a gateway to many of the most rewarding and important professions. Any young person who dreams of being a K-12 teacher, a member of the academe, an architect or an engineer, a doctor or a nurse, an

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<sup>6</sup> See generally Anthony Lising Antonio et al., *Research Report: Effects of Racial Diversity on Complex Thinking in College Students*, 15 Psych. Sci. 507 (2003), <https://pubmed.ncbi.nlm.nih.gov/15270993/>.

<sup>7</sup> This study did not differentiate between Asian American subgroups.

<sup>8</sup> Gurin, *supra* note 5, at 351-52, 359.

<sup>9</sup> See Antonio et al., *supra* note 6, at 509.

attorney or a judge or a Supreme Court police officer, must first pursue and succeed in higher education.

So it's no surprise that post-high-school education is strongly correlated with economic success. More education is correlated with more desirable jobs and more earnings.<sup>10</sup> Despite rising costs, undergraduate education remains a good economic investment, with every dollar spent on a college degree yielding about a 15% return in the form of higher wages.<sup>11</sup> College graduates are less likely to be unemployed than others, and their periods of unemployment, when they occur, are shorter.<sup>12</sup>

Access to highly selective schools is particularly valuable for students of color. Institutional selectivity increases earnings<sup>13</sup> and graduation rates.<sup>14</sup> For Black and Latinx students, graduating from a prestigious university increases earnings even after controlling for

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<sup>10</sup> Michael Hout, *Social and Economic Returns to College Education in the United States*, 38 Ann. Rev. Socio. 379, 381-82 (2012), <http://www.collegetransitions.com/wp-content/uploads/2014/05/hout-returns-to-college-education.pdf>.

<sup>11</sup> Jaison R. Abel & Richard Deitz, *Do the Benefits of College Still Outweigh the Costs?*, 20 Current Issues Econ. & Fin., no. 3, 2014, at 1, 7, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2477864](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2477864).

<sup>12</sup> Hout, *supra* note 10, at 381.

<sup>13</sup> Yingyi Ma & Gokhan Savas, *Which Is More Consequential: Fields of Study or Institutional Selectivity?*, 37 Rev. Higher Educ. 221, 235 (2014).

<sup>14</sup> Shomon Shamsuddin, *Berkeley or Bust? Estimating the Causal Effect of College Selectivity on Bachelor's Degree Completion*, 57 Rsch. Higher Educ. 795, 813 (2016), <https://link.springer.com/article/10.1007/s11162-016-9408-0>.

other factors such as SAT scores.<sup>15</sup> Such students are also 31% more likely to complete their degrees if they attend highly selective universities than if they attend non-selective institutions (compared with 14% for white students).<sup>16</sup>

### **C. Society Benefits When Educational Opportunities Are Widely Accessible.**

Students are not the only ones who benefit from diversity in higher education. Society as a whole also enjoys substantial rewards when our institutions of higher learning produce graduates from every part of our diverse population.

#### **1. Improving Access To Higher Education Decreases Racial Stratification Of The Professions.**

America's status as a cultural and racial melting pot is one of its greatest strengths. In order to realize the potential benefits of America's inherent diversity, it's essential that those professions that enable people to make a broad impact—professions that almost

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<sup>15</sup> Stacy Dale & Alan B. Krueger, *Estimating the Return to College Selectivity over the Career Using Administrative Earnings Data* 24 (Nat'l Bureau of Econ. Rsch., Working Paper No. 17159, 2011), [https://www.nber.org/system/files/working\\_papers/w17159/w17159.pdf](https://www.nber.org/system/files/working_papers/w17159/w17159.pdf). The same is not true for white students. *See ibid.*

<sup>16</sup> Tatiana Melguizo, *Quality Matters: Assessing the Impact of Attending More Selective Institutions on College Completion Rates of Minorities*, 49 *Rsch. Higher Educ.* 214, 229 (2008); *see also id.* at 225 (finding that Black and Latinx students attending the most selective institutions have a 92% chance of graduating, whereas those attending non-selective institutions have only a 45% chance).

inevitably require higher education—are accessible to people of color.

For example, there are few professions with broader social impact than teaching itself, which also demonstrably benefits when its members reflect the broad racial diversity of this Nation. For example, it has been shown that all students (white and of-color) benefit from being taught by teachers of all races.<sup>17</sup> And it is particularly beneficial for students of color to have the experience of being taught by teachers who look like them.<sup>18</sup> At the college level, a less racially diverse faculty is associated with lower graduation rates for almost all students.<sup>19</sup> Meanwhile, having a faculty member of the same race/ethnicity predicts higher GPAs<sup>20</sup> and higher graduation rates.<sup>21</sup> But many students still aren't reaping the benefits of teacher racial diversity: Over 79% of public K-12 teachers are white,<sup>22</sup> as compared with 46% of their

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<sup>17</sup> Rebecca Stout et al., *The Relationship Between Faculty Diversity and Graduation Rates in Higher Education*, 29 *Intercultural Educ.* 399, 411 (2018).

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> Jasmín D. Llamas et al., *The Case for Greater Faculty Diversity: Examining the Educational Impacts of Student-Faculty Racial/Ethnic Match*, 24 *Race Ethnicity & Educ.* 375, 384 (2021).

<sup>21</sup> *Ibid.*; Stout et al., *supra* note 17, at 411.

<sup>22</sup> Nat'l Ctr. for Educ. Stat., Inst. of Educ. Sci., U.S. Dep't of Educ., NCES 2020-142, *Characteristics of Public and Private Elementary and Secondary School Teachers in the United States: Results from the 2017-18 National Teacher and Principal Survey* 7 tbl.1 (Apr. 2020), <https://nces.ed.gov/pubs2020/2020142.pdf>.

students,<sup>23</sup> and while nearly half of undergraduate students are of color,<sup>24</sup> higher-education faculty is 73% white.<sup>25</sup>

To give but one more example, improving access to higher education can also improve the diversity of the medical profession, significantly benefiting all Americans, particularly people of color. Part of the cause of America's historically high healthcare costs is a persistent shortage of healthcare professionals.<sup>26</sup> Increasing the number of students of color with college degrees providing entrances to these professions would help alleviate the shortages, improving access to health care for everyone while helping constrain the

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<sup>23</sup> Nat'l Ctr. for Educ. Stat., Inst. of Educ. Sci., U.S. Dep't of Educ., *Condition of Education, Racial/Ethnic Enrollment in Public Schools*, <https://nces.ed.gov/programs/coe/indicator/cge> (last updated May 2022).

<sup>24</sup> Lorelle L. Espinosa et al., Am. Council on Educ., *Race and Ethnicity in Higher Education: A Status Report* 45 (2019), <https://vtechworks.lib.vt.edu/bitstream/handle/10919/89187/RaceEthnicityHighEducation.pdf?sequence=1&isAllowed=y>.

<sup>25</sup> *Id.* at 249.

<sup>26</sup> See, e.g., Timothy M. Snavely, *A Brief Economic Analysis of the Looming Nursing Shortage in the United States*, 34 *Nursing Econ.* 98, 99 (2016) (“[N]ursing shortages directly contribute to increased health care costs.”); Jessica Bartlett, *Nursing Shortage at Hospitals Leads to Multimillion-Dollar Costs*, *Bos. Globe* (Jul. 12, 2022), <https://www.bostonglobe.com/2022/07/12/metro/nursing-shortage-hospitals-leads-multimillion-dollar-costs/>.

cost.<sup>27</sup> In addition, just as students of color benefit from seeing teachers who look like them, patients of color experience tangible benefits from a more racially diverse healthcare profession. For example, Black and Latinx Americans report receiving better health care from physicians of the same race.<sup>28</sup> Indeed, patients of color treated by doctors of the same race have been shown more likely to receive preventative services and needed medical care.<sup>29</sup> Black men, in particular, are more likely to use preventative services after meeting with a doctor of the same race—and those doctors are more likely to write additional notes,<sup>30</sup> indicating more attentiveness and the potential for better care. These findings are important because of persistent

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<sup>27</sup> The demographics of registered nurses, for example, skew heavily white: Nearly 81% of RNs are white. Richard A. Smiley et al., *The 2020 National Nursing Workforce Survey*, 12 J. Nursing Regul. S14 (Supp. Apr. 2021). As the population of the United States ages, demand for nurses is growing. Lisa M. Haddad et al., *Nursing Shortage*, Nat'l Libr. Med. (Feb. 22, 2022), <https://www.ncbi.nlm.nih.gov/books/NBK493175/>. But the median age of RNs is 52 years old, and one-fifth of respondent nurses in a 2020 national survey planned to retire from nursing within the next five years. Smiley et al., *supra*, at S12, S27.

<sup>28</sup> Raynard Kington et al., *Increasing Racial and Ethnic Diversity Among Physicians: An Intervention to Address Health Disparities?*, in *The Right Thing to Do, the Smart Thing to Do: Enhancing Diversity in the Health Professions: Summary of the Symposium on Diversity in Health Professions in Honor of Herbert W. Nickens, M.D.* 57, 81 (2001), <https://www.ncbi.nlm.nih.gov/books/NBK223632/>.

<sup>29</sup> *Ibid.*

<sup>30</sup> See Marcella Alsan et al., *Does Diversity Matter for Health? Experimental Evidence from Oakland*, 109 Am. Econ. Rev. 4071, 4074-75, 4092-93 (2019), <https://www.aeaweb.org/articles?id=10.1257/aer.20181446>.

discrepancies in health outcomes among racial groups. Mortality risk is consistently higher for Black and Native Americans than for whites,<sup>31</sup> and Black men have the lowest life expectancy of any major demographic group in the United States.<sup>32</sup> And childhood obesity is more prevalent among Black, Latinx, and Native Americans than among whites and Asian Americans.<sup>33</sup>

## **2. Diversity In Education Promotes Racial Harmony.**

*Grutter* observed that racial diversity in higher education “better prepares students for an increasingly diverse workforce and society.” 539 U.S. at 330 (citation omitted). That is no less true, or important, today.

America has become more racially diverse since 2003, not less,<sup>34</sup> and racial tensions remain a serious

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<sup>31</sup> David R. Williams et al., *Race, Socioeconomic Status, and Health: Complexities, Ongoing Challenges, and Research Opportunities*, *Annals N.Y. Acad. Scis.*, 2010, at 69, 71, <https://nyaspubs.onlinelibrary.wiley.com/doi/10.1111/j.1749-6632.2009.05339.x>.

<sup>32</sup> Alsan et al., *supra* note 30, at 4071.

<sup>33</sup> Williams et al., *supra* note 31, at 72.

<sup>34</sup> *Compare* U.S. Census Bureau, *Census 2000 Shows America’s Diversity* (Mar. 12, 2001), [https://www.census.gov/newsroom/releases/archives/census\\_2000/cb01cn61.html#:~:text=White%2075.1%20percent,Asian%203.6%20percent](https://www.census.gov/newsroom/releases/archives/census_2000/cb01cn61.html#:~:text=White%2075.1%20percent,Asian%203.6%20percent), *with* U.S. Census Bureau, *QuickFacts: United States* (July 1, 2021), <https://www.census.gov/quickfacts/fact/table/US/PST045221>.



problem.<sup>35</sup> Schools are a principal place in which young people are exposed to people who are different from themselves, and such exposure reduces interracial hostility. Much like workplace diversity reduces bias,<sup>36</sup> college students' frequency of cross-racial interaction has a demonstrated, significant impact on their ability to accept different races and cultures.<sup>37</sup> Even students who themselves have few interactions with people of other races have been shown to be more accepting of racial diversity when attending a racially diverse school.<sup>38</sup>

Now is hardly the time to diminish the opportunities of all students to live some of the most formative years of their lives working and learning with people of all races.

## **II. The Compelling Interest In Achieving Educational Diversity Has Not Faded Away With The Passage Of Time.**

The data show that race-conscious admissions programs like those sanctioned in *Grutter* have done real work. The college enrollment rates for 18- to 24-

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<sup>35</sup> *E.g.*, Juliana Menasce Horowitz et al., *Race in America 2019: How Americans See the State of Race Relations*, Pew Rsch. Ctr. (Apr. 9, 2019), <https://www.pewresearch.org/social-trends/2019/04/09/how-americans-see-the-state-of-race-relations/> (“A majority of Americans say race relations in the United States are bad, and of those, about seven-in-ten say things are getting even worse.”).

<sup>36</sup> Sean Darling-Hammond et al., *Interracial Contact at Work: Does Workplace Diversity Reduce Bias*, 24 Grp. Processes & Intergroup Rels. 1114, 1114 (2021), [https://rascl.berkeley.edu/assets/files/Hammond%20et%20al.\\_2020\\_GIPR.pdf](https://rascl.berkeley.edu/assets/files/Hammond%20et%20al._2020_GIPR.pdf).

<sup>37</sup> Chang et al., *supra* note 3, at 449.

<sup>38</sup> *See id.* at 449-50.

year-old Black and Latinx students increased between 2000 and 2018<sup>39</sup>; the share of students of color at public colleges has grown significantly, going from 1 of every 5 public college students in 1980 to nearly 1 in 2 in 2018<sup>40</sup>; and the proportion of Black Americans over 24 years of age who have attained a bachelor's degree or higher has risen significantly since 2000.<sup>41</sup> That is not, however, a reason to abandon the tools that have helped achieve these successes, for there is still much work to be done.

The race-conscious admissions policies sanctioned by *Grutter* are still necessary to close the educational gap, because both college enrollment and degree-attainment rates are still racially skewed. The racial demographics of college students are out of step with the demographics of college-aged Americans: By share of the U.S. population, Blacks and non-Hispanic whites are underrepresented among 18-to-24-year-old college students, while whites and Asians are

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<sup>39</sup> Nat'l Ctr. for Educ. Stat., Inst. of Educ. Sci., U.S. Dep't of Educ., NCES 2020-144, *The Condition of Education 2020*, at 125 (2020), <https://nces.ed.gov/pubs2020/2020144.pdf>.

<sup>40</sup> Mark Huelsman, Dēmos, *Social Exclusion: The State of State U for Black Students* 4 (Dec. 2018), [https://www.demos.org/sites/default/files/publications/SocialExclusion\\_StateOf.pdf](https://www.demos.org/sites/default/files/publications/SocialExclusion_StateOf.pdf).

<sup>41</sup> See U.S. Census Bureau, *Census Bureau Releases New Educational Attainment Data* (Feb. 24, 2022), <https://www.census.gov/newsroom/press-releases/2022/educational-attainment.html>; U.S. Census Bureau, *Educational Attainment: 2000*, at 5 (Aug. 2003), <https://www2.census.gov/library/publications/decennial/2000/briefs/c2kbr-24.pdf>.

overrepresented.<sup>42</sup> Black, Latinx, Pacific Islander, and Native American 18- to 24-year-olds are still less likely to be enrolled in two- or four-year institutions than white and Asian American students,<sup>43</sup> and Black Americans 25 and older are significantly less likely to have a bachelor's degree or higher than whites and Asians.<sup>44</sup>

The racial gap is also significant at selective schools in particular. For example, while Black students make up roughly 16% of the total traditional college-age population, less than 5% of enrollees at flagship schools—large, selective public universities—were Black in the 2015-2016 school year.<sup>45</sup> In 2019, public flagship schools in fifteen states—including North Carolina—had at least a ten-point gap between the percentage of Black public high-school graduates in their States and the Black share of freshman who enrolled in the fall.<sup>46</sup>

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<sup>42</sup> See U.S. Census Bureau, *School Enrollment in the United States: October 2017 - Detailed Tables* tbl.4 (Dec. 11, 2018), <https://www.census.gov/data/tables/2017/demo/school-enrollment/2017-cps.html>.

<sup>43</sup> *The Condition of Education 2020*, *supra* note 39, at 125.

<sup>44</sup> *Census Bureau Releases New Educational Attainment Data*, *supra* note 41.

<sup>45</sup> Huelsman, *supra* note 40, at 3, 7.

<sup>46</sup> Lauren Lumpkin et al., *Flagship Universities Say Diversity Is a Priority. But Black Enrollment in Many States Continues to Lag.*, *Wash. Post* (Apr. 18, 2021), <https://www.washingtonpost.com/education/2021/04/18/flagship-universities-black-enrollment/>.

### **III. Race-Conscious Admissions Programs Remain Necessary To Ensure An Even Playing Field.**

Petitioner argues that any consideration of race in admissions is unlawful because it provides an unfair advantage based on race. *See* Pet. Br. 48-49. As others have explained, that argument has no merit. But it also ignores that some consideration of race is necessary in order to ensure a level playing field by neutralizing sources of bias that systematically disadvantage some minority applicants.

Even if invisible on the face of an application, racial bias and other race-aligned disadvantages can infect a student's application in subtle ways. Bias can manifest, for example, in letters of recommendation. Colleges consider letters of recommendation to be more important components of college applications than extracurricular activities, class rank, and Advanced Placement (AP) test scores.<sup>47</sup> But research shows that, even when controlling for grades, white students receive more praise for their substantive competence in narrative evaluations, whereas evaluations of students of color focus more on their personal qualities.<sup>48</sup>

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<sup>47</sup> Melissa Clinedinst & Anna-Maria Koranteng, Nat'l Ass'n for Coll. Admission Counseling, *2017 State of College Admission 17*, <https://www.nacacnet.org/globalassets/documents/publications/research/soca17final.pdf>.

<sup>48</sup> Alexandra E. Rojek et al., *Differences in Narrative Language in Evaluations of Medical Students by Gender and Under-represented Minority Status*, 34 J. Gen. Internal Med. 684, 684-90 (2019), [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6502922/pdf/11606\\_2019\\_Article\\_4889.pdf](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6502922/pdf/11606_2019_Article_4889.pdf).

Overall academic performance, too, can be affected by subconscious bias. Teacher expectations of student success are closely tied to that success: All else equal, tenth-grade students whose teachers have high expectations of them are three times more likely to graduate from college than those with low teacher expectations.<sup>49</sup> And research has shown that— independent of factors like prior achievement and motivation—teacher expectations affect both skill development<sup>50</sup> and grades.<sup>51</sup> But these influential expectations are susceptible of unconscious bias. For example, high-school teachers expect 58% of their white students to obtain four-year degrees, but their expectations for their Black students’ collegiate

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<sup>49</sup> Ulrich Boser et al., Ctr. for Am. Progress, *The Power of the Pygmalion Effect 2* (Oct. 6, 2014), <https://files.eric.ed.gov/fulltext/ED564606.pdf>; see also Scott Jaschik, *Expectations, Race and College Success*, Inside Higher Ed (Oct. 24, 2017), <https://www.insidehighered.com/news/2017/10/24/study-finds-high-school-teachers-have-differing-expectations-black-and-white> (both Black and white students with similar preparation “are more likely to graduate from college if their high school teachers believe they will”).

<sup>50</sup> Sarah Gentrup et al., *Self-Fulfilling Prophecies in the Classroom: Teacher Expectations, Teacher Feedback and Student Achievement*, 66 Learning & Instruction, 2020, at 9, <https://www.sciencedirect.com/science/article/pii/S095947521930177X>.

<sup>51</sup> Lee Jussim & Jacquelynne S. Eccles, *Teacher Expectations II: Construction and Reflection of Student Achievement*, 63 J. Personality & Soc. Psych. 947, 958 (1992), <https://sites.rutgers.edu/lee-jussim/wp-content/uploads/sites/135/2019/05/Jussim-Eccles-1992-JPSP.pdf>.

success are that just 37% of them will graduate college.<sup>52</sup>

Finally, other systemic inequities that have a disparate impact on students of color can affect the strength of college applications. Teachers at small, well-resourced schools are best positioned to write compelling letters of recommendation,<sup>53</sup> but students of color are more likely than white students to attend high schools that are crowded and under-resourced.<sup>54</sup> And while colleges consider standardized test scores one of the four most important elements of a college application,<sup>55</sup> research shows that annual family income is strongly correlated with a student's SAT

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<sup>52</sup> Jaschik, *Expectations, Race and College Success*, *supra* note 49.

<sup>53</sup> Scott Jaschik, *Recommendation Letters and Bias in Admissions*, *Inside Higher Ed* (Oct. 22, 2018), <https://www.insidehighered.com/admissions/article/2018/10/22/do-recommendation-letters-insert-bias-college-admissions-decisions>.

<sup>54</sup> See Linda Darling-Hammond, *Inequality in Teaching and Schooling: How Opportunity is Rationed to Students of Color in America*, in *The Right Thing to Do, the Smart Thing to Do: Enhancing Diversity in the Health Professions: Summary of the Symposium on Diversity in Health Professions in Honor of Herbert W. Nickens, M.D.* 208, 208-09, 213 (2001), <https://www.ncbi.nlm.nih.gov/books/NBK223640/>.

<sup>55</sup> Clinedinst & Koranteng, *supra* note 47, at 17.

scores.<sup>56</sup> Given that students of color are disproportionately likely to come from socioeconomically disadvantaged backgrounds,<sup>57</sup> the primacy of standardized test scores in colleges' application-review process provides an additional reason to permit schools to consider students' race in their holistic reviews.

Knowing and accounting for a student's race is therefore necessary for schools to avoid unwittingly perpetuating bias and discrimination in their admissions systems.

#### **IV. Race-Neutral Alternatives Don't Provide The Same Benefits.**

Petitioner argues that schools can achieve their compelling interests without knowing or taking into account applicants' race. *See* Pet. Br. 33-34, 44-45, 56-57. That assertion, however, is not borne out in the experiences of schools that have chosen, or been forced,

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<sup>56</sup> *See, e.g.,* Ezekiel J. Dixon-Román et al., *Race, Poverty and SAT Scores: Modeling the Influences of Family Income on Black and White High School Students' SAT Performance*, 115 *Tchrs. Coll. Rec.*, Apr. 2013, at 1, 21, [https://www.researchgate.net/publication/280232788\\_Race\\_Poverty\\_and\\_SAT\\_Scores\\_Modeling\\_the\\_Influences\\_of\\_Family\\_Income\\_on\\_Black\\_and\\_White\\_High\\_School\\_Students'\\_SAT\\_Performance](https://www.researchgate.net/publication/280232788_Race_Poverty_and_SAT_Scores_Modeling_the_Influences_of_Family_Income_on_Black_and_White_High_School_Students'_SAT_Performance); Josh Zumbrun, *SAT Scores and Income Inequality: How Wealthier Kids Rank Higher*, *Wall St. J.* (Oct. 7, 2014), <https://www.wsj.com/articles/BL-REB-28270>.

<sup>57</sup> Black Americans are most likely to live in poverty, followed by Hispanics of any race, then by Asians and non-Hispanic Whites. John Creamer, *Poverty Rates for Blacks and Hispanics Reached Historic Lows in 2019*, U.S. Census Bureau (Sept. 15, 2020), <https://www.census.gov/library/stories/2020/09/poverty-rates-for-blacks-and-hispanics-reached-historic-lows-in-2019.html>.

to abandon any consideration of race in admissions. These results of those real-world experiments are sobering and should not be replicated nationwide.

California, which banned race-conscious admissions at California public universities in 1998 via amendment to the state constitution,<sup>58</sup> is a case in point. Following the ban, Black enrollment as a proportion of the student body has fallen in both the University of California (UC) system and the California State University (CSU) system, being cut nearly in half at the CSUs.<sup>59</sup> Latinx and Native American students are now severely underrepresented at UCs and CSUs, respectively.<sup>60</sup> What's more, enrollments in the UC system as a whole mask the effects at the four most selective campuses, where Black, Latinx, and Native American enrollment fell precipitously when race-conscious admissions were banned.<sup>61</sup>

These results are indicative of a broader trend. One study showed that, with respect to highly ranked public institutions, "changes in representation caused

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<sup>58</sup> See Cal. Const. art. I, § 31.

<sup>59</sup> Thomas Peele & Daniel J. Willis, *Dropping Affirmative Action Had Huge Impact on California's Public Universities*, EdSource (Oct. 29, 2020), <https://edsource.org/2020/dropping-affirmative-action-had-huge-impact-on-californias-public-universities/642437>.

<sup>60</sup> *Ibid.*

<sup>61</sup> Peter Hinrichs, *The Effects of Affirmative Action Bans on College Enrollment, Educational Attainment, and the Demographic Composition of Universities*, 94 Rev. Econ. & Stat. 712, 719-20 (Aug. 2012), <https://direct.mit.edu/rest/article-abstract/94/3/712/58001/The-Effects-of-Affirmative-Action-Bans-on-College>.



by affirmative action bans are very large in relative terms” and include decreases in Black, Latinx, and Native American enrollment, and significant increases in white enrollment, along with increases in Asian American enrollment (when treating Asian Americans as a single group).<sup>62</sup> Banning race-conscious admissions affects graduate education as well. For example, the implementation of race-conscious-admissions bans in eight states caused Black, Latinx, Native American, and Pacific Islander medical students’ enrollment in those states’ public medical schools to fall by 37%.<sup>63</sup>

Race-conscious-admissions bans have lasting effects, both on degree attainment and socioeconomic status. In California, Black, Latinx, and Native American UC applicants’ undergraduate and graduate degree attainment declined following the ban.<sup>64</sup> The ban also caused such “applicants to earn five percent lower average annual wages between ages 24 and 34 than they would have earned had affirmative action continued.”<sup>65</sup> By 2014, California’s race-conscious-admissions ban had decreased the number of high-

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<sup>62</sup> *Id.* at 717.

<sup>63</sup> Dan P. Ly et al., *Affirmative Action Bans and Enrollment of Students from Underrepresented Racial and Ethnic Groups in U.S. Public Medical Schools*, 175 *Annals Internal Med.* 873, 875 (June 2022).

<sup>64</sup> Zachary Bleemer, *Affirmative Action, Mismatch, and Economic Mobility After California’s Proposition 209*, at 3 (Univ. of Cal. Berkely Ctr. for Stud. in Higher Educ., Research & Occasional Paper Series CSHE.10.2020, 2020), <https://cshe.berkeley.edu/publications/affirmative-action-mismatch-and-economic-mobility-after-california’s-proposition-209>.

<sup>65</sup> *Id.* at 3.

earning Black, Latinx, and Native American Californians in their early 30s by at least 3%.<sup>66</sup> In other words, the end of race-conscious admissions in California had a measurable and negative economic impact on broad swaths of Californians.

Were race-conscious admissions prohibited nationwide, these negative effects would be felt everywhere. Research has shown that a nationwide ban on the consideration of race in college admissions would cause the representation of Black and Latinx students at all four-year universities to decline by 2%—but that figure jumps to 10% with respect to the most selective institutions.<sup>67</sup> And these results are not meaningfully altered by the use of policy changes intended to counteract the loss of race consideration, such as admitting all students in the top 10% of their high-school classes, increased minority recruiting, or increased minority-student support.<sup>68</sup> Given the significance of university selectivity for students' graduation rates and post-graduation income, *see supra* at 6, this substantial reduction in the accessibility of the most selective schools is disturbing.

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As shown above, the race-conscious admissions policies made possible by *Grutter* have done substantial good, but the need for such policies persists. The Court should allow universities—

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<sup>66</sup> *Ibid.*

<sup>67</sup> Jessica S. Howell, *Assessing the Impact of Eliminating Affirmative Action in Higher Education*, 28 J. Lab. Econ. 113, 151 (2010).

<sup>68</sup> *Id.* at 151-54.

entities uniquely positioned to assess the benefits of student racial diversity—to continue to use *Grutter*-compliant race-conscious admissions policies.

**CONCLUSION**

For the foregoing reasons, the Court should affirm the judgments of the First Circuit and the Middle District of North Carolina below.

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