

Nos. 20-1199 & 21-707

IN THE
Supreme Court of the United States

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

v.

PRESIDENT AND FELLOWS OF HARVARD COLLEGE

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

v.

UNIVERSITY OF NORTH CAROLINA, ET AL.

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

**BRIEF OF THE NATIONAL ASSOCIATION OF
BASKETBALL COACHES, WOMEN'S BASKETBALL
COACHES ASSOCIATION, GENO AURIEMMA,
MICHAEL KRZYZEWSKI, NOLAN RICHARDSON,
BILL SELF, TARA VANDERVEER, ROY WILLIAMS,
AND 342 ADDITIONAL CURRENT OR FORMER
COLLEGE HEAD BASKETBALL COACHES AS
AMICI CURIAE IN SUPPORT OF RESPONDENTS**

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INTEREST OF THE *AMICI CURIAE*¹

The National Association of Basketball Coaches (NABC) represents thousands of coaches from around the country and from every level of basketball. Started in 1927, the NABC has tracked this nation's evolution on race and diversity, and has made particular efforts in recent years to ensure that leadership in athletic departments reflects the considerable diversity of their teams.

The Women's Basketball Coaches Association (WBCA) represents thousands of women and men who coach women's and girls' basketball on every competitive level of the sport. The WBCA has worked to expand educational, professional, and athletic opportunities for female players of all races and backgrounds since its founding in 1981.

Both NABC and WBCA have long supported the use of holistic admissions policies by universities and have consistently opposed ballot initiatives that would impose a blanket prohibition on considering race as part of a holistic admissions process, including through amicus submissions. *E.g.*, *Fisher v. Univ. of Tex. at Austin*, 579 U.S. 365 (2016).

The NABC and WBCA are joined by 348 current and former head basketball coaches, listed in the Appendix, who have joined in their individual capacities.

¹ All parties have consented to the filing of this brief. No counsel for any party authored this brief in whole or in part, and no party, counsel, or person other than *amici*, their members, and their counsel contributed money to fund the preparation or submission of this brief.

Amici have a strong interest in the question presented. Coaches see each day the value that diversity and broadened perspectives give student athletes and the entire campus community. Coaches also witness the educational advantages their players receive when teams are diverse, and coaches experience firsthand how holistic admissions policies that account for all of an applicant's background, including race, are instrumental to building diverse, successful teams in college sports and in society at large. They see their players take the lessons learned from living, studying, and playing in that environment to communities beyond the confines of campus.

Many college sports teams are among the most diverse groups on campus, and coaches recognize the dangers of allowing athletics to become a diverse island in an otherwise homogeneous student body, isolating athletes from the broader university community. Student athletes are of course *both* athletes *and* students, and they engage with peers from throughout the university community in class, through extracurriculars, and in dining halls and dormitories.

Finally, coaches understand the unique role athletics play in bringing together students, staff, faculty, and community members from racially diverse backgrounds. *Amici* therefore offer their perspective as the Court considers these important cases.

SUMMARY OF THE ARGUMENT

This Court has long recognized the crucial educational benefits that come from racial diversity on campus. And for good reason: diverse groups collaborate better and offer expanded perspectives, and diverse ed-

educational institutions benefit all students by better preparing them for success in a pluralistic society.

In this brief, *amici* highlight the experiences of former and current student athletes and coaches at universities across America to illustrate how racial and ethnic diversity in collegiate athletics has expanded perspectives, taught valuable leadership skills, prepared student athletes for their future careers, and laid the groundwork for diversity and inclusion at the highest levels of government, business, the military, and many other fields—the very benefits of diversity this Court has long recognized and endorsed. *Amici* have witnessed these benefits redound to student athletes from *all* backgrounds, not just those from specific minority groups.

As *amici* know from experience, the diversity that enriches student athletes' college experience is made possible by a contextualized, holistic admissions process that takes into account all the factors relevant to an applicant's background—including race, but also a range of other characteristics. The Court has correctly recognized that this kind of individualized, whole-person review furthers schools' compelling interest in cultivating racial diversity on campus while also honoring the Constitution's requirement of equal treatment. The Court should do so again here.

Amici also write to caution that taking the opposite course and upending decades of this Court's precedent by forbidding any consideration of race in college admissions would have dramatic consequences for student athletics and university culture generally. Experience teaches that when universities are categorically prohibited from considering race in admissions, racial diversity in the student body plunges, leading to isolation and

harmful stereotyping for surviving pockets of diversity on campus—including sports teams. The ultimate result would be to deprive all students of the benefits of a diverse education, with consequences that last far beyond graduation. The example of college athletes and extensive research show that a diverse student body makes not just for better students during college, but also for better citizens after graduation, and it improves organizational competitiveness. These qualities are more important than ever, as American society becomes increasingly diverse, and as Americans find themselves in an ever more competitive and interconnected world. Frustrating the cultivation of diversity through a holistic admissions process would leave college athletics programs, university communities, and society as a whole worse off.

The Court should affirm the decisions below, and reaffirm that holistic admission policies are a constitutionally permissible means to achieve the compelling interest in a diverse university education.

ARGUMENT

I. Racial diversity in higher education continues to be a compelling interest to the health of the Nation.

1. Nearly half a century ago, this Court recognized that “the attainment of a diverse student body . . . clearly is a constitutionally permissible goal for an institution of higher education.” *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 311-12 (1978) (Powell, J., announcing the judgment of the Court). The reason is that diversity in education serves one of the most compelling state interests: ensuring “the nation’s future,” which “depends upon leaders trained

through wide exposure to the ideas and mores of students as diverse as this Nation of many peoples.” *Id.* at 313 (quotation marks omitted).

In the decades since, this Court has repeatedly affirmed the fundamental importance of that interest. “As this Court has said, enrolling a diverse student body ‘promotes cross-racial understanding, helps to break down racial stereotypes, and enables students to better understand persons of different races.’” *Fisher v. Univ. of Texas at Austin*, 579 U.S. 365, 381 (2016) (quoting *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003)). “Equally important, ‘student body diversity promotes learning outcomes, and better prepares students for an increasingly diverse workforce and society.’” *Id.* (quoting *Grutter*, 539 U.S. at 330). Finally, diversity in higher education ensures that “the path to leadership [is] visibly open to talented and qualified individuals of every race and ethnicity,” *Grutter*, 539 U.S. at 332, which in turn “cultivat[es] a set of leaders with legitimacy in the eyes of the citizenry,” *Fisher*, 539 U.S. at 382 (quotation marks omitted).

The Court has also been consistent about how universities can advance this compelling interest within the limits of equal protection. The same precedent explains that if an admissions program does not operate as a racial quota, but rather appropriately considers race as part of an individualized and holistic assessment of each applicant, it can satisfy strict scrutiny. In *Grutter*, for example the Court upheld the University of Michigan Law School’s holistic admissions policy, because race was one “‘soft’ variable” among many that admissions officers considered in their review. 539 U.S. at 337. And most recently, in *Fisher*, the Court upheld the constitutionality of a similar holistic admissions

policy at the University of Texas. Because the university had carefully documented the educational benefits it sought to achieve through promoting student-body diversity, it considered race only as one part of a much broader individualized inquiry, and alternative race-neutral approaches to achieving these benefits had proven unsuccessful, the university's admissions program satisfied strict scrutiny. 539 U.S. at 387-88.

In these cases, the courts below followed this Court's guidance and concluded, based on a thorough review of extensive trial records, that holistic admissions programs at Harvard College and the University of North Carolina (UNC) were narrowly tailored to serve those schools' considered interest in promoting student-body diversity. Petitioner's fact-bound disagreement with those painstaking analyses offers no convincing reason to disturb the lower courts' application of precedent. So petitioner instead leads with the argument that this Court has simply been mistaken all along about the compelling interest in student-body diversity. *See* Pet'r Br. Part I.

2. Petitioner is wrong. As explained further below, the educational benefits of student-body diversity are far from speculative or chimerical. *Amici's* own experiences and voluminous scholarship demonstrate that those benefits are powerfully concrete. *See generally* Parts II & III, *infra*.

And as it is plain that racial diversity in higher education has already produced tangible benefits for the Nation, it is equally clear that now is not the time to change course and categorically forbid consideration of race in a holistic admissions process. Much work remains to achieve the "paramount government objective" of "[e]ffective participation by members of all racial and

ethnic groups in the civic life of our Nation.” *Grutter*, 539 U.S. at 332 (quotation marks omitted). Data from the roughly twenty years since this Court decided *Grutter* demonstrate that racial gaps in higher education² and pay³ still need to be closed. And persistent challenges in cross-racial understanding continue to affect Americans of *all* backgrounds—not just Black Americans, say, or Hispanic Americans—as the surge in anti-Asian-American violence during the Covid-19 pandemic has made painfully clear. See Equal Justice Initiative, *FBI Reports Hate Crimes at Highest Level in 12 Years*, EJI (Sept. 9, 2021), <https://eji.org/news/fbi-reports-hate-crimes-at-highest-level-in-12-years/>.

For these reasons, it also makes little sense to conclude that dicta in *Grutter*, 539 U.S. at 343, about an aspirational 25-year horizon for holistic admissions constitutes a hard “deadline” for those policies, as petitioner urges. Pet’r Br. 68. That has not been this Court’s approach since *Grutter*. Instead, the Court has continued to ask whether there is “significant evidence,

² *E.g.*, U.S. Census Bureau, *CPS Historical Time Series Tables: Table A-2. Percent of People 25 years and Over Who Have Completed High School or College, by Race, Hispanic Origin and Sex: Selected Years 1940 to 2021* (2022), <https://www2.census.gov/programs-surveys/demo/tables/educational-attainment/time-series/cps-historical-time-series/ta2a-2.xlsx> (reporting increasing gap by race in Americans over 25 who had completed at least four years of college between 2003 and 2021).

³ *Compare 2003 Annual Averages: Table 37. Median weekly earnings of full-time wage and salary workers by selected characteristics*, 247 (2004), <https://www.bls.gov/cps/cpsa2003.pdf>, with U.S. Bureau Lab. Stats., *Labor Force Statistics from the Current Population Survey: Table 37. Median Weekly Earnings of Full-Time Wage and Salary Workers by Selected Characteristics, 2021*, 92 (PDF) (2022), <https://www.bls.gov/cps/cpsa2021.pdf> (showing gap by race in increased weekly earnings from 2003 to 2022).

both statistical and anecdotal, in support of [a] [u]niversity’s position” that an interest in student-body diversity remains compelling and the means to achieve it remain narrowly tailored. *Fisher*, 579 U.S. at 383. The Court should do the same here.

3. The remainder of this brief will show that the experiences of *amici* and student athletes are “significant evidence” demonstrating that the benefits of student-body diversity have been and continue to be of vital importance for universities and for our society.

Amici have observed these benefits firsthand, because college sports teams are often among the most diverse communities on university campuses. As of 2021, 44% of men’s basketball players were Black, 38% were white, and 10% were Hispanic, Asian, or multiple races. NCAA, *Sport Sponsorship, Participation and Demographics Search* [Table View: Coach and Student-Athlete Demographics by Sport], <http://www.ncaa.org/about/resources/research/ncaa-demographics-database> (last visited July 29, 2022). On the women’s side, 30% of players were Black, 50% were white, and 12% were Hispanic, Asian, or multiple races.⁴ *Id.* These numbers

⁴ To be sure, the percentage of racial-minority players in a college sport is not the *only* means of gauging diversity in that sport. As with other organizations, diversity in college sports is ultimately achieved by bringing together people of varied backgrounds, including people belonging to racial minorities. Because a robust presence of people belonging to racial-minority groups is *one* of a number of hallmarks of a diverse organization, statistics on participation by racial minorities can surely be used as *one* means of evaluating diversity in an organization, without succumbing to the facile conflation of “diversity” with “people of color” suggested by some of petitioner’s *amici*. See Amicus Br. of Freedom X, at 12. And statistics on levels of participation by racial minorities can be especially relevant for organizations that, like many college sports teams, were historically all-white.

show that college sports teams anticipate and reflect the increasing diversity of the Nation, which continues toward a “majority-minority” makeup. See Jonathan Vespa et al., U.S. Census Bureau, *Demographic Turning Points for the United States: Population Projections for 2020 to 2060* (rev. Feb. 2020), <https://www.census.gov/content/dam/Census/library/publications/2020/demo/p25-1144.pdf>.

Given the marked diversity of many college athletics programs, it is hardly surprising that “student athletes in general have significantly greater engagement with diversity than their non-athlete peers.” Ty M. Cruce & Thomas F. Nelson Laird, *What’s the Score? Diverse Experiences Among Collegiate Athletes and Non-Athletes* 15 (2009), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.169.5840&rep=rep1&type=pdf>. This means that student athletes are more likely to experience the educational benefits of racially diverse interactions, “including intellectual and social self-confidence, openness to diversity, critical thinking, and problem-solving.” *Id.* at 4; see also Lisa Wolf-Wendel et al., *There’s No “I” in “Team”*: Lessons from Athletics on Community Building, 24 Rev. Higher Educ. 369, 369-70 (2001). It also means student athletes will be especially harmed if the Court precludes consideration of race in a holistic admissions process, leaving college-athletics programs as isolated and stereotyped enclaves of diversity. See Part III, *infra*.

Examining the experiences of student athletes therefore provides valuable insight into the crucial benefits that flow from diverse teams—benefits that admissions programs like those at Harvard, UNC, and

universities around the country seek to provide for *all* students in order to secure the “nation’s future.” *Bakke*, 438 U.S. at 313 (citation omitted).

II. The experience of student athletes demonstrates the benefits of racial diversity in higher education.

For over a half century, student athletes have been at the forefront of our most significant cultural conversations and have risen to top of our most important institutions. They have been leaders during their time at college, where they have advanced cross-racial understanding through their interactions with teammates and through their own example. They have also been leaders after graduation, using lessons learned in college to inform how they shape policy and run businesses. This leadership continues today, and it is made possible by the diverse culture student athletes encounter within their teams and throughout campus.

A. Student athletes have historically played a pivotal role in advancing racial equality.

Racial diversity in college athletics has changed American history.

As recently as the latter half of the twentieth century, many major university athletic programs were open only to white athletes. For example, the Southeastern Conference did not have an African-American basketball player until 1967, when Perry Wallace joined Vanderbilt’s team. Liz Entman, *Perry Wallace, pioneer who integrated SEC basketball, has died*, Vanderbilt News (Dec. 4, 2017), <https://news.vanderbilt.edu/2017/12/04/perry-wallace-pioneer-who-integrated-sec-basketball-has-died/>. Wallace’s experience was far from easy, and

was sometimes frightening: he and his teammates faced “rabid hostility” from fans at other southern campuses, including protests, thrown bottles, and racial slurs. *Id.* Despite this adversity, Wallace became captain of the team, received a Southeastern Conference Sportsmanship award, and was named the most popular man on campus his senior year. *Id.* After graduating from Vanderbilt with an engineering degree in 1970, Wallace went to Columbia Law School, then had a distinguished career practicing law at DOJ and EPA and teaching at several law schools. *Id.*

Pioneers like Wallace had a profound effect on their teammates and the whole country. By playing alongside minority student athletes, white student athletes began questioning and resisting discriminatory practices they may previously have accepted or ignored. In 1956, for example, the Harvard basketball team agreed to play in a winter holiday tournament in New Orleans. Bill Pennington, *In 1956, a Racial Law Repelled Harvard’s Team*, N.Y. Times (Mar. 14, 2012), <https://nyti.ms/39Q9qvU>. But the Louisiana legislature passed “anti-mixing” legislation barring interracial athletic events and imposing segregated seating at games. *Id.* Although the Harvard team at the time was all-white, the team’s center for the previous three seasons, Bob Bowman, was Black. *Id.* As Philip Haughey, a senior on the team at the time, recalled, “[O]ur reaction was, ‘So Bob wouldn’t have been able to come?’ There was no debate after that. We weren’t going. Yes, we were now an all-white team, but if that was their attitude, then no one was going.” *Id.* It was, as another player on the team put it, “the right decision, just on principle.” *Id.* One historian observed that “Harvard’s rebuke, which was resistance from a notable place, exerted the kind of public pressure that began to hem in the

South in ways it did not expect.” *Id.*

The Harvard team’s behavior was no anomaly. Other integrated teams similarly pushed back against discriminatory practices. In 1958, the University of Buffalo football team was invited to the first bowl game in its history—the Tangerine Bowl in Orlando, where the team was to play Florida State. Eric Neel, *All Or Nothing*, ESPN, <https://es.pn/3Nxj84z> (last visited July 29, 2022). The invitation had a condition, however. The team’s two African-American players would not be allowed to take the field because the bowl stadium’s leaseholder banned interracial games. *Id.* The university administration put the decision whether to participate in the hands of the players. *Id.* According to those players, “there was no discussion”—the team unanimously agreed not to participate. *Id.* That unanimity came from the fact that players like Joe Oliveiro, a first-generation college student from an all-white, Italian-American suburb of Buffalo, had experienced the “revelation” of an integrated sports team, where he came to feel “like a citizen of some bigger place.” *Id.*

B. Racial diversity in college athletics promotes cross-racial understanding.

Still today, experiencing racially diverse teams helps transform student athletes into campus leaders.

1. The transformative impact of experiencing racially diverse teams holds true for student athletes from *all* kinds of backgrounds—including Asian-American students. As already discussed, *see* p. 7, *supra*, the Covid-19 pandemic has brought with it a worrying spike in violence against Asian Americans. Asian-American student athletes have led the charge to confront the problem, and they have done so by drawing on their ex-

periences with diverse teams on the court and the playing field.

For example, Nathalie Chou, a recently graduated Chinese-American UCLA basketball player, has spoken about what she learned from the Black players on her team who faced discrimination “on a daily basis.” Nathalie Chou & Charlotte Gibson, *UCLA’s Natalie Chou Won’t Stand for Anti-Asian Racism Related to Coronavirus*, ESPN (Mar. 26, 2020), https://www.espn.com/espnw/voices/story/_/id/28955666/ucla-natalie-chou-stand-anti-asian-racism-related-coronavirus. Because of “see[ing] [Black teammates] stand up for themselves and for what is right,” Chou “kn[e]w that” her own decision to “speak[] out now” about challenges facing Asian Americans was “the right thing to do.” *Id.* As a result of her teammates’ example, Chou has taken to social media to discuss the widespread harm caused by calling Covid-19 the “China virus,” as well as the pernicious effect of the “model minority” stereotype regularly applied to Asian-Americans. *Id.*

Likewise, Jackson He, a Chinese-American football player at Arizona State, has “shown the power of sports to break down cultural barriers” facing Asian Americans. Scott Stump, *How Asian American Athletes Are Addressing Anti-Asian Hate and Racism*, Today (May 31, 2021) (*Asian American Athletes*), <https://www.today.com/news/how-asian-american-athletes-are-addressing-anti-asian-hate-racism-t220042>. In the fall of 2020, He “became the first Chinese-born player to score a touchdown at the highest level of college football.” *Id.* In addition to speaking out against anti-Asian discrimination during the Covid-19 pandemic, He has “cited his friendship with Rachaad White, an African American running back at Arizona State, as some-

thing that sports helped facilitate,” and said that their friendship has “illustrate[d]” to the wider community “that the younger generation” of student athletes “looks to break down racial barriers.” *Id.*

2. One of the most outspoken advocates for the Asian and Asian-American communities in sports is Jeremy Lin, a former Harvard student athlete who has been a star of professional basketball in the NBA and beyond. During the height of the Covid-19 pandemic, Lin penned an article pleading for *all* to fight racism and xenophobia. Jeremy Lin, *The Darkness Has Not Overcome It*, *Players’ Trib.* (Apr. 13, 2020), <https://www.theplayerstribune.com/articles/jeremy-lin-darkness-has-not-overcome-it>. Lin has passionately advocated for the next generation of Asian-American athletes to “break more barriers . . . [a]nd then bring others up with you.” *Asian American Athletes, supra.*

Lin attributes much of his success to the mentorship of Harvard basketball Coach Tommy Amaker, who, when he was hired, was the only Black coach at Harvard.⁵ Since joining Harvard, Coach Amaker has recruited many successful minority athletes like Lin, and in the process has changed the image of Harvard’s basketball program, which had previously been dominated by white players. David Tannenwald, *Higher Education: How Basketball Coach Tommy Amaker Has Transformed Harvard*, *SB Nation* (Mar. 6, 2014), <https://www.sbnation.com/longform/2014/3/6/5474320/harvard->

⁵ See Amir Mamdani, *Remembering Where He Came From: Five Minutes with Jeremy Lin*, *Harv. Crimson* (Feb. 8, 2019), <https://www.thecrimson.com/article/2019/2/8/mbb-jeremylinfeature19/> (*Jeremy Lin*); Ted Kirby, *The Amaker Era Begins*, *Harv. Crimson* (Apr. 15, 2007), <https://www.thecrimson.com/article/2007/4/15/the-amaker-era-begins-tommy-amaker/>.

basketball-tommy-amaker-profile-ncaa-tournament-2014 (*Amaker*). Amaker, in the words of Robbie Feinberg, another Harvard player, “teaches” his recruits “just as much about becoming responsible, well-rounded young men as he teaches us about the game of basketball.” Robbie Feinberg, *Written Senior Perspective*, Harv. Crimson (May 30, 2019), <https://www.the-crimson.com/article/2019/5/30/mbb-seniorperspective-feinberg/>. Feinberg, who is white, called “tour[ing] the Martin Luther King Jr. Memorial in D.C.” a highlight of his time on the Harvard basketball team. *Id.*

As Lin’s example makes clear, Amaker’s commitment to racial diversity and mentoring has been felt far beyond the basketball courts and the Harvard campus. Former U.S. Senator Mo Cowan has described “a swelling of pride” in Boston’s “black community” as it witnessed Amaker “in the midst of doing something that perhaps they perceived as near impossible”: creating a diverse and successful men’s basketball program as the Black head coach at the oldest college in the country. *Amaker, supra.*

3. Much like Lin’s experience with Amaker at Harvard, recent student athletes at UNC and other universities have described how their coaches have “cultivated [a] community space” in which teammates can learn from diverse perspectives. Grant Hughes, *UNC Linebacker Praises Mack Brown’s Response to Racial Injustice*, 247Sports (June 10, 2020), <https://247sports.com/college/north-carolina/Article/UNC-Jake-Lawler-Praises-Mack-Brown-Racial-Injustice-George-Floyd-148019563/>. For example, Jake Lawler, a Black student athlete who played as a linebacker for UNC, has praised the team’s white coach, Mack Brown, for his forceful denunciation of police violence against young

Black men, as well as his encouragement of frank and direct conversation around that difficult issue within the team. *Id.*

Similarly, when UCLA soccer player Kaiya McCullough approached Amanda Cromwell, the coach of the UCLA women's soccer team, about the possibility of kneeling during the national anthem before a game to protest racially charged police brutality, Cromwell began a discussion with the entire team about how to support McCullough. Alexandra Vollman, *College Athletes Speak Out*, Insight Into Diversity (Nov. 15, 2017), <https://www.insightintodiversity.com/college-athletes-speak-out/>. The team collectively decided to come out to the field with arms locked and to kneel before the anthem; those who wanted to remain kneeling during the anthem could kneel, and those who wanted to stand could stand. *Id.* McCullough, who is Black, was “overwhelmed” by the team's response, and the team continued to follow the same inclusive and respectful approach moving forward. *Id.* The experience of listening and coming to understand different perspectives has changed the ways that UCLA women's soccer players view their teammates and their broader role in the community: members of the team have, for example, expanded their community outreach through work with inner-city families and the Los Angeles Police Department. *Id.*

In short, student athletes today, inspired by racial diversity on their teams, continue to be leaders in their university communities. And like their predecessors in the Civil Rights Era, their leadership has advanced cultural understanding on and off campus.

C. Student athletes have drawn from their experiences on diverse teams to become leaders in every part of society.

Student athletes, enriched by their experiences on racially diverse college sports teams, do not stop being leaders upon graduation. These same student athletes have gone on to become presidents, generals, and CEOs, and they have regularly cited their experiences on diverse college teams as crucial to their success.

1. The unique ways that participation in college sports can promote cross-racial understanding and cooperation have left their mark on politicians from both sides of the aisle and have guided their approach to policy. Former Senator Bill Bradley has written and spoken about how experiencing racial diversity as a basketball player at Princeton shaped his career. Asking himself “[w]hy, of all the places in America, is that ideal” of racial harmony “closest to being achieved on a basketball court,” he came to realize:

[I]t’s because the community of a team is so close that you have to talk with one another; the travel is so constant that you have to interact with one another; the competition is so intense that you have to challenge one another; the game is so fluid that you have to depend on one another; the high and low moments are so frequent that you learn to share them; the season is so long that it brings you to mutual acceptance. That is not to say that no racists have ever survived a multiracial team experience with their prejudices intact, but my guess is that the numbers are few.

Bill Bradley, *Values of the Game* 78-79 (1998).

Later, Bradley's experience as a student athlete helped him understand the dynamics and mission of the U.S. Senate:

After I was in the Senate about five months, I was sitting in the Democratic cloakroom at about 11 o'clock at night—we were having late votes . . . I thought to myself, "You know, this isn't a lot different than the Knick locker room." At core, both are a matter of getting different people from different backgrounds with different experiences and different personal agendas to agree on a shared goal and work toward it. That process defines both teamwork and the public interest.

Bill Bradley, *Hall of Fame Enshrinement Speech*, YouTube (May 2, 1983), <https://www.youtube.com/watch?v=uNt1wo5ekiE> (starting at 12:55).

Similarly, in his eulogy for President Gerald Ford—another star student athlete—President George W. Bush drew a direct parallel between the lessons Ford learned from his college team and the choices he made as a leader. As Bush observed, Ford's character and leadership, which allowed him to help heal the nation after the trauma of President Nixon's resignation, first manifested when he was on the University of Michigan football team. *President Bush's Eulogy for Gerald R. Ford*, N.Y. Times (Jan. 2, 2007), <https://nyti.ms/3sTYwfa>. While Ford was at Michigan, Georgia Tech came to play in Ann Arbor. *Id.* But Georgia Tech refused to participate if Willis Ward, a Black player on the Michigan team, took the field. Ford, Bush recalled, was enraged when the Michigan administration agreed

to this condition, and only participated in the game after Ward specifically asked him to play. *Id.* As Bush observed, Ward never forgot Ford’s principled position, and Ford did not forget it, either: “[T]hree decades later he proudly supported the Civil Rights Act and the Voting Rights Act in the United States Congress.” *Id.*

2. Of course, the positive impacts of diverse interactions through university athletics programs are not limited to racial diversity alone. These experiences have helped shape the careers of women in leadership roles across the country—particularly for those who find themselves at the intersection of numerous underrepresented groups. Jodi Gillette, who played basketball for Dartmouth and is a member of the Standing Rock Sioux, served under President Obama as the Nation’s first Native American deputy associate director of the Office of Intergovernmental Affairs. Dirk Olin, *Native Intelligence*, Dartmouth Alumni Magazine (May-June 2010), <https://dartmouthalumnimagazine.com/articles/native-intelligence>. She chose Dartmouth “because of its reputation for recruiting and retaining Native American students,” and she excelled on and off the court: she was elected president of Native Americans at Dartmouth and was a Rockefeller Center intern. *Id.* As part of the Obama administration, she worked tirelessly to improve communication and relations between American Indians and the federal government. *Id.*

Loretta Reynolds, who played on the women’s varsity basketball team at the U.S. Naval Academy, has gone on to become one of only a handful of women ever to be promoted to the rank of Lieutenant General in the Marine Corps. John R. Miles, *Bold Leader Spotlight: Lieutenant General Loretta ‘Lori’ Reynolds, USMC*, *Bold Business* (Oct. 18, 2018), <https://www.boldbusiness>

.com/human-achievement/bold-leader-spotlight-lieutenant-general-lori-reynolds-usmc/. She has tied her success directly to her experience as a student athlete: “The things I learned on the basketball court absolutely helped me as a young Marine officer, in terms of being part of a team, leading the team, never letting the team down. The Marine Corps is all about team work; everyone doing their part for the team mission.” *Id.*

For women in the business world, experience in college athletics has turned out to be virtually a rite of passage. Many of America’s most prominent female business leaders—Meg Whitman, former CEO of Hewlett Packard; Indra Nooyi, a member of Amazon’s board and former CEO of PepsiCo; and Lynn Elsenhans, board member of Saudi Aramco and former CEO of Sunoco—were college athletes. Abigail Hess, *If You Want To Be a CEO Later, Play Sports Now*, CNBC (Jan. 11, 2017), <https://cnb.cx/3NGiphL>. Indeed, a study by Ernst & Young showed that 94% of women holding C-Suite positions had played sports. *Why female athletes make winning entrepreneurs* Ernst & Young 1 (2017), <https://go.ey.com/3wRauqO>.

* * *

Summing up, the culture of diversity in college athletics has had, and continues to have, a powerfully positive influence on the culture, economy, laws, and politics of the Nation. The benefits of diversity in college sports are as tangible today as they were when players like Perry Wallace began integrating college teams, changing the hearts and minds of teammates and Americans everywhere.

III. Holistic admissions is narrowly tailored to advance educational diversity, and holistic review benefits all students, including student athletes.

1. “A university is in large part defined by those intangible qualities which are incapable of objective measurement but which make for greatness.” *Fisher*, 579 U.S. at 388 (citation and internal quotation marks omitted). Diversity is one of those “intangible qualities” that make American universities great. Diversity on the playing fields and at the seminar table produces graduates who are good citizens, not just good students.

In order to cultivate “intangible qualities” like diversity on campus, universities must be able to employ flexible admissions policies that go beyond “objective measurement.” After all, as this Court has already observed, “privileging one” quantifiable “characteristic,” like raw academic achievement, “above all others does not lead to a diverse student body.” *Id.* at 386. Unsurprisingly, then, this Court has repeatedly held that the constitutionally permissible means for achieving diversity in higher education is a policy that examines *all* relevant aspects of an applicant’s background—including race, but only as one factor among many others, such as academic performance, geography, socioeconomic experience, and character. *Grutter*, 539 U.S. at 337; *Fisher*, 579 U.S. at 386-88. Those decisions were correct. Holistic review—the kind of admissions policy this Court has consistently upheld and that is practiced by Harvard, UNC, and universities across the country—produces the intangible quality of diversity on campus while also honoring equal protection.

At bottom, as the scholarship explains, “[h]olistic admissions . . . is the consideration of more than just

academic preparation in the college admissions process,” and “[i]t assesses and considers areas such as life skills and noncognitive attributes that have shown to be strong predictors of retention and student success.” David Kalsbeek et al., *Employing Noncognitive Variables to Improve Admissions, and Increase Student Diversity and Retention*, 2 Strategic Mgmt. Quarterly 132-50 (July 2013) (*Noncognitive Variables*). The approach proceeds from a proposition rooted in “common sense and the observation of students in many educational contexts”: “non-cognitive” attributes—those that “reflect race, culture, gender, and knowledge that is learned and demonstrated in nontraditional ways”—“are demonstrably important in accounting for student success.” *Id.*

To put it simply, predicting how far an applicant can go with a university education, or how much an applicant might achieve on campus and after graduation, requires learning where the student is coming from. Test scores and grades tell part of that story, but not all of it. Predictably, those measures of traditional academic accomplishment favor students from traditional cultural and educational backgrounds. *Id.* And they will certainly not reflect the many nonacademic factors—including perseverance and rising above adversity—that can shape an applicant’s path to university. One of those factors may be an applicant’s race—which all the evidence shows, and no one seriously denies, continues to profoundly affect the experience of Americans. *See pp. 6-7, supra.* When students express that their lived experiences—like growing up as a member of a racial minority—have played a key part in their upbringing and early education, success in college is sometimes best predicted by looking beyond test scores to evidence of “experiential” and “contextual” intelli-

gence, or the ability to adapt to new environments and relate knowledge to shifting contexts. *Noncognitive Variables, supra.*

Holistic review develops methods for assessing those criteria alongside traditional academic metrics. *Id.* This kind of broadened inquiry is the exact *opposite* of a mechanical, single-issue quota, and it treats all applicants equally, as individuals who deserve rigorous, context-specific consideration. It helps schools identify qualified applicants from a range of underrepresented backgrounds, not cherry-pick members of favored racial groups at predetermined numbers. At an elite university like Harvard or UNC, for example, holistic review can bring into focus the potential contribution to campus culture of a promising applicant from a poor rural community, or of a promising applicant from a lower socio-economic background, or of an athlete from an immigrant family, and all the ways that race may intersect with those lived experiences.

Employing holistic review does not just sharpen review of applications from nontraditional candidates and produce a more diverse incoming class. It also boosts the performance of student cohorts and of the institution as a whole. “The results from . . . colleges and universities that have embraced holistic admissions . . . include students’ academic success and improved institutional persistence and graduation rates—particularly among students who may be disadvantaged by traditional admissions practices.” *Id.*

The data bear these conclusions out. Take a study of the performance of law reviews conducted to “assess the diversity rationale” animating this Court’s precedents on holistic admissions. Adam Chilton et al., *Assessing Affirmative Action’s Diversity Rationale*, 122

Colum. L. Rev. 331, 331 (2022). Researchers examined the effect of the “adoption of diversity policies” on the performance of “flagship law reviews of the top 20 law schools” across several decades, using a dataset of “nearly 13,000 articles.” *Id.* at 337. The findings were striking: adoption of “law review membership diversity policies” led to an “increase [in] median article citations by roughly 25%.” *Id.* Another study of health-professional schools that employ holistic admissions found improvement in institutional culture and performance virtually across the board. The relevant schools reported increased diversity “not only in race, ethnicity, and gender, but also in experience, socioeconomic status and perspective.” *New Study Finds Holistic Admissions Benefit Health Professions Schools*, Nat’l Inst. on Minority Health and Health Disparities, <https://www.nimhd.nih.gov/news-events/features/training-workforce-dev/holistic-admissions.html#:~:text=Leaders%20from%2091%20percent%20of,who%20would%20have%20been%20excluded> (last visited July 29, 2022). The vast majority of the schools also found that test scores, GPA, and graduation rates remained steady or improved, and that holistic review led to “admissions of students who are better prepared for success in the profession.” *Id.*

2. The Harvard and UNC admissions programs at issue here offer case studies in how holistic review policies benefit the entire student body, including student athletes.

Both schools’ athletics programs show a deep commitment to the importance of a diverse as well as rigorous education. For example, Harvard’s Director of Athletics, Bob Scalise, has “prioritized integrating the aspects of diversity and inclusion” into Harvard’s athletics program. *Athletics for the 21st Century*, Harv. Ga-

zette (Sept. 16, 2019), <https://news.harvard.edu/gazette/story/2019/09/evolution-of-the-student-athlete-experience-at-harvard-examined/>. In an interview, Scalise highlighted exposure to people “from all different backgrounds, different races and religions, political views, sexual orientations, all on the same team working together to achieve a common purpose,” as “a really important part of an education for our young people.” *Id.* In a similar vein, UNC’s athletics department is committed to the university’s broader mission of “building understanding across differences, creating conditions to ensure the equitable educational and social benefits of diversity and cultivating an inclusive and supportive environment” on the playing fields and across campus. Univ. of N.C. at Chapel Hill Athletics, *Diversity, Equity & Inclusion*, N.C. (Feb. 15, 2022), <https://goheels.com/news/2020/7/29/general-diversity-inclusion.aspx>.

This whole-person approach benefits the impressive individuals ultimately recruited as student athletes, including Asian-American candidates. Return for a moment to the example of Jeremy Lin, the Harvard player who has become a star professional basketball player. *See* pp. 14-15, *supra*. A graduate of Palo Alto High School in northern California, Lin graduated with a 4.2 (4.0 scale) GPA and a 1430 SAT score (1600 scale)—excellent academic marks, but not a slam-dunk for admission to Harvard. Julie Park, *Race on Campus: Debunking Myths with Data* 86 (2018). As a strong basketball player, Lin certainly would have scored well in the athletic rating used in the admissions process, but that is hardly a guarantee for admission to Harvard. Through Harvard’s holistic review, however, Lin was able to demonstrate talents and potential in multiple areas, including his experience as a child of Taiwanese immigrants, and admissions reviewers were

able to identify the various ways he could contribute to the university's mission. And Lin did so both during and after graduation, including by making a million-dollar donation to the college after he signed with the Brooklyn Nets—much of it directed towards Harvard's financial aid program. *See Jeremy Lin, supra.*

Lin's story exemplifies how a holistic review enriches a university community. The students who are admitted through this approach inspire their peers by breaking stereotypes: a son of Taiwanese immigrants with a gift for playing basketball—or perhaps a young Black woman who is a first-generation college student with a passion for particle physics, or a working-class young white man inspired by opera. It is exactly the approach universities should be taking as “laboratories for experimentation” in the “enduring challenge to our Nation's education system to reconcile the pursuit of diversity with the constitutional promise of equal treatment and dignity.” *Fisher*, 579 U.S. at 388 (citation omitted).

IV. Holding that holistic admissions policies are unconstitutional would erode campus diversity, impose special harms on college athletes, and harm American competitiveness.

As already explained, diversity in higher education remains a compelling interest and helps ensure that the “nation's future” stays bright, *Bakke*, 438 U.S. at 313 (citation omitted), and holistic admissions programs advance that interest in line with “the constitutional promise of equal treatment and dignity,” *Fisher*, 579 U.S. at 388. For this reason alone, the Court should reject petitioner's arguments to sweep aside decades of important precedent. But there is another reason to decline petitioner's dangerous invitation:

pulling the rug out from under universities and categorically forbidding consideration of race in a holistic admissions program will lead to “loneliness and isolation” in those patches of campus culture that remain diverse after, *id.* at 384—including college sports teams.

Although athletics programs are often uniquely diverse components of the university community, the benefits of diversity would be lost if athletics programs were to become one of the *only* racially diverse components. Not only would the rest of the campus be cut off from the benefits of racial diversity this Court has recognized, but students from underrepresented racial backgrounds (including student athletes) would be stigmatized, reinforcing negative racial stereotypes. And of course, students who graduate without experiencing diverse populations throughout their educational experiences would find themselves ill-prepared to excel in a diverse, globalized workforce.

1. The risks of restricting campus diversity to student athletics are well documented. The NCAA, after conducting extensive interviews with faculty, administrators, coaches, and students, as well as canvassing data from 911 athletics administrators representing 258 NCAA Division I athletics departments, observed that “[a] number of people in our research, both within and outside the athletics department, spoke to the importance of the athletics department, its members, and the activities being fully integrated into the fabric of the university.” George B. Cunningham et al., *Diversity in Athletics: An Assessment of Exemplars and Institutional Best Practices* 16 (2009), <https://dokument.pub/diversity-in-athletics-ncaaorg-the-official-site-of-flipbook-pdf.html>. The study concluded that the bene-

fits of diversity in athletic teams and in the greater campus community were deeply “interconnected[]”:

What happens in the broader campus community is likely to impact people’s reactions to the athletics department and their likelihood of supporting campus sport events. Students in our research continually pointed to the connection between the diversity culture on the campus and what they perceived to be the diversity culture in the athletics department. For instance, students believed that strained race relations within the university community were emblematic of the racial dynamics within the athletics department. And, this interconnectedness worked the other way, too, such that students were more likely to be involved with athletic events when they believed that the university had a progressive diversity culture.

Id. at 22. A college athletics program’s diversity is only as strong as the diversity of the university as a whole, and *vice versa*.

When universities are prevented from cultivating diversity across the whole student body, the results can be disastrous. In 1996, California voters passed Proposition 209, a ballot measure forbidding the consideration of race in admissions. As a result, the number of racial-minority admits at UCLA plummeted to the point where, of the 4,852 freshmen arriving on campus in the fall of 2006, only 96 were Black—the lowest number of Black freshmen since 1973. Rebecca Trounson, *A Startling Statistic at UCLA*, L.A. Times (June 3, 2006), <https://www.latimes.com/archives/la-xpm-2006-jun-03-me-ucla3-story.html> (*Startling Statistic*). This small group of incoming Black students was quickly

branded the “infamous 96.” Erika Hayasaki, *A Voice for Diversity at UCLA*, L.A. Times (Dec. 3, 2006), <https://www.latimes.com/archives/la-xpm-2006-dec-03-me-freshman3-story.html>. Twenty of these Black freshmen were athletes, and those who were not—such as D’Juan Farmer, a pre-med student from Compton—were regularly assumed to be by their peers. *Id.*

The UCLA community was “shocked” by the paucity of Black matriculants, and university administrators declared the situation a “crisis.” *Startling Statistic, supra*. The university’s provost acknowledged that “the quality of our education experience is absolutely affected, as well as our obligation to the citizens of this state.” *Id.* And Black freshmen like Farmer worried that the “unwelcoming stereotypes about the campus [would] lead to a bigger drop in the number of black freshmen next year,” organized protests against Proposition 209. *Voice for Diversity, supra*. The effects on UCLA’s student body were not isolated; Prop 209 has caused harm throughout California. Research shows that, since the passage of Prop 209, racial-minority applicants to the California university system earned fewer STEM and graduate degrees, experienced overall declines in post-graduation wages, and have been discouraged from applying to public universities in the first place. See Zachary Bleemer, *Affirmative Action, Mismatch, and Economic Mobility After California’s Proposition 209*, 10 Berkeley Ctr. For Stud. In Higher Educ. 1, 24 (2020).

UCLA’s experience in the wake of Prop 209 vividly illustrates the need for diversity *both* in athletic teams *and* in the larger campus community. When student athletes are among the only diverse students on campus, they lack other role models and minority peers

with different interests and talents. This creates a “self-fulfilling prophecy whereby fellow students, professors, counselors, and collegiate sports fans assume that the African-American athlete is on campus only for sport participation and not to obtain an education or to excel in academics.” Earl Smith, *Race, Sport, and the American University*, 17 *J. Sport & Soc. Issues* 206, 210 (1993). In other words, as this Court has recognized before, diversity *within*, as well as *among*, racial groups is essential. See *Gratz v. Bollinger*, 539 U.S. 244, 277 (2003) (O’Connor, J., concurring). Otherwise, all members of the campus community—minority and non-minority alike—are denied the opportunity to experience a fully diverse student body, which may in turn lead them consciously or subconsciously to accept the stereotypes that can accompany feeling cabined to one part of student life.

2. The harms of restricting diversity to specific corners of campus can linger post-graduation. Now more than ever, American students must be prepared to succeed in an increasingly competitive and interconnected world. Diversity has proven to be a crucial ingredient of organizational success in this environment. As a report in the Harvard Business Review puts it, “[s]triving to increase workplace diversity is not an empty slogan—it is a good business decision.” Heidi Grant & David Rock, *Why Diverse Teams Are Smarter*, *Harv. Bus. Rev.* (Nov. 4, 2016), <https://hbr.org/2016/11/why-diverse-teams-are-smarter>. That is because diverse businesses outperform their peers: a McKinsey survey showed that “public companies . . . in the top quartile for ethnic and racial diversity in management were 35% more likely to have financial returns above their industry mean, and those in the top quartile for gender diversity were 15% more likely to have returns above

the industry mean.” *Id.* (citing Vivian Hunt et al., *Why Diversity Matters*, McKinsey & Co. (Jan. 2015), <https://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters>).⁶

Here, too, the importance of diversity in businesses and organizations is not limited to racial and ethnic diversity. A global analysis of 2,400 companies showed that “organizations with at least one female board member yielded higher return on equity and higher net income growth than those that did not have any women on the board.” *Id.* (citing Press Release, Credit Suisse (July 31, 2012), <https://www.credit-suisse.com/about-us-news/en/articles/media-releases/42035-201207.html>).

As this research explains, diverse businesses perform better because they work “smarter.” *Id.* “Non-homogenous” groups—whether diverse jury pools or diverse financial-analyst groups—focus more precisely on the facts before them than comparable homogenous teams. *Id.* Diverse teams achieve this greater precision in part because members check each other’s biases and provide different perspectives on the facts, so that as a group they “process information more carefully.” *Id.* They are also more innovative. A study of British firms found that companies with diverse leadership “were more likely to develop new products than those with homogenous leadership.” *Id.*

⁶ See also Vivian Hunt et al., *Delivering Through Diversity*, McKinsey & Co. (Jan. 2018), https://www.mckinsey.com/~/media/mckinsey/business%20functions/people%20and%20organizational%20performance/our%20insights/delivering%20through%20diversity/delivering-through-diversity_full-report.pdf; Dieter Holger, *The Business Case for More Diversity*, Wall St. J. (Oct. 26, 2019), <https://www.wsj.com/articles/the-business-case-for-more-diversity-11572091200>.

So it is not just sports teams that have benefited from increased diversity. Diversity is a tangible asset for organizations of all kinds. And ultimately, diversity strengthens teams and organizations because it improves individual character. The data show that “curricular and cocurricular diversity experiences are positively related to personal growth, purpose in life, recognition of racism, and volunteering behavior among college graduates in their mid-30s.” Nicholas A. Bowman et al., *The Long-Term Effects of College Diversity Experiences: Well-Being and Social Concerns 13 Years After Graduation*, 52 J. of College Student Dev. 729, 737 (2011).

* * *

The qualities encouraged by a diverse education—collective problem solving and innovation, individual empathy and generosity—have never been more valuable. If anything, diversity in higher education has become even *more* important to securing “nation’s future.” *Bakke*, 438 U.S. at 313 (citation omitted). Hamstringing universities from building diverse student bodies through holistic review would harm all students, and would hurt traditionally diverse campus communities like sports teams the most. For all these reasons, the Court should reaffirm its settled understanding that diversity in higher education is a compelling state interest, and that holistic, contextual admissions policies that consider race as one of many factors relevant to an application for admission can satisfy strict scrutiny.

CONCLUSION

The decisions below should be affirmed.

Respectfully submitted.

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APPENDIX

The following individuals listed in this appendix are current or former college head coaches; they are participating as *amici* in their individual capacity and not on behalf of any affiliated college or university.

Lennie Acuff
Natasha Adair
Jesse Agel
Bradley Alexander
Casey Alexander
H. Tommy Amaker
William Anderson
Kevin App
Gus Argenal
Geno Auriemma
Rod Baker
Courtney R. Banghart
Stephen R. Bankson
Adia Barnes
Brian Barnes
R-Jay Barsh
Chad Baruch
Chris Beard
Laura L. Beeman
Tony Bennett
Al Berger
Joanna Bernabei-McNamee
Jim Blaine
Mike Blaine
Kenny Blakeney
Jeff Boals
James Boenheim
Tad Boyle

Anthony Bozzella
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Shereka Wright
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Jay Young
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