No. 11-345

In The
Supreme Court of the United States

ABIGAIL NOEL FISHER,

Petitioner,

v.

UNIVERSITY OF TEXAS AT AUSTIN, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF *AMICUS CURIAE* HARVARD GRADUATE SCHOOL OF EDUCATION STUDENTS FOR DIVERSITY IN SUPPORT OF RESPONDENTS

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TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae Harvard Graduate School of Education ("HGSE") Students for Diversity is an official student organization at HGSE, located in Cambridge, Massachusetts. HGSE Students for Diversity strives to provide student-centered education and advocacy that focuses on issues relating to diversity, law, and educational access. This case is vitally important to *amicus curiae* because its members, including aspiring and former teachers, school administrators, and higher education professionals, are graduate students at a leading education school, who understand, and indeed experience every day, the educational benefits of diversity in higher education.

HGSE Students for Diversity submits a brief that brings to the attention of the Court relevant matter the parties have not already brought to its attention and which may be of considerable help to the Court. Specifically, *amicus curiae* addresses: 1) why the University of Texas at Austin's ("UT") admissions policy is different than the admissions policies that were implemented by a number of universities to

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[1] No counsel to a party wrote this brief in whole or in part, and no counsel to a party or a party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity other than *amicus curiae* made a monetary contribution to this brief's preparation or submission. This brief is submitted pursuant to the blanket consent letters from all parties, on file with the Court.

exclude Jewish students and African American students until the 1960s; 2) why UT's policy is modeled after the inclusive, holistic model that was implemented in the 1960s to increase representation of underrepresented minorities from historically excluded groups; 3) why Petitioner fails to prove that she suffered any harm by UT's admissions policy, a policy that was implemented pursuant to UT's best educational judgment; and 4) why leading educational science supports maintaining diversity in higher education as a compelling state interest.

SUMMARY OF ARGUMENT

Access to higher education has increased over time for racial and ethnic minorities due to evolving admissions practices. The current holistic admissions model analyzes various soft factors, including character, background, and experience, as well as hard factors, including grades and standardized test scores. This model was created in the 1960s to *include* more students from various backgrounds, including members of groups historically excluded from higher education. Thus, the current admissions model differs profoundly from earlier admissions strategies that elite institutions developed before the 1960s to *exclude* and limit certain "undesirable" minorities.

This brief will analyze the development of the current holistic admissions model beginning with a detailed discussion of early twentieth century exclusionary admissions models and practices. It will then

explore how the current race-conscious admissions model at UT differs from the anti-Jewish exclusionary model created in the 1920s at elite colleges and the anti-African American admissions practices of the early twentieth century, but instead mirrors the holistic admissions policy developed in the 1960s that was implemented to include members of historically excluded groups. This brief will then discuss how the basic premise of Petitioner's brief – that she would have been admitted to the Class of 2012 but for race-conscious admissions policies – is purely speculative. This brief will conclude by analyzing a few leading empirical social science studies that supports UT's position – as well as this Court's binding precedent in *Grutter v. Bollinger*, 539 U.S. 306 (2003) – that diversity in higher education remains a compelling state interest.

ARGUMENT

I. The Modern Inclusive Admissions Model is not the Same Exclusionary Model that Limited Jewish Students from Attending Elite Colleges Starting in the 1920s, or the Same Exclusionary Model that Categorically Denied African American Students from Attending State Universities Formerly Designated for Whites Only, like the University of Texas.

Petitioner challenges UT's policy of including an applicant's race among a number of factors that

admissions officers may consider when making discrete, individual admissions decisions.[2] This policy evaluates individual applicants on the basis of both an Achievement Index (AI) for hard factors (i.e., standardized test scores and high school class rank) as well as a Personal Achievement Index (PAI) for soft factors (i.e., content and quality of required essays, leadership, awards and honors, work experience, extracurricular activities, and "special circumstances" including socioeconomic, family, and racial backgrounds). *Fisher v. University of Texas*, 631 F.3d 213, 227-28 (5th Cir. 2011). This admissions model has its foundation in the inclusive practices that commenced in the 1960s. It does not discriminate against students of any race or ethnicity in the same way that the admissions practices of the 1920s-1950s discriminated against Jewish and other students deemed "undesirable." Nor does it categorically deny students of any race or ethnicity either admission or a fair application review in the same way that segregationist practices discriminated against African American students who sought to attend formerly all-white state colleges and universities, like the University of Texas. To understand the context of this modern inclusionary model, we provide a brief historical overview of higher education admissions.

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[2] Petitioner does not challenge the race-neutral Top Ten Percent Law, in which Texas high school seniors in the top ten percent of their class be automatically admitted to any Texas state university. 56 TEX. EDUC. CODE § 51.803 (1997). She failed to gain admittance under this law because she was not in the top ten percent of her high school class.

Before the 1900s, admissions practices at elite colleges (e.g., Harvard, Yale, and Princeton) entailed oral examinations on limited subjects such as Greek and Latin. *See* JEROME KARABEL, THE CHOSEN 22-23 (2005); FREDERICK RUDOLPH, THE AMERICAN COLLEGE AND UNIVERSITY 25 (1962). These colleges drew from local school networks – particularly private boarding schools – to supply their students so college enrollment typically consisted of white male Protestants from wealthy families and elite preparatory schools. *See* KARABEL, at 23; JOHN R. THELIN, A HISTORY OF AMERICAN HIGHER EDUCATION 172 (2004). This composition would slowly change over the next few decades.

Written entrance exams were introduced at reform-minded institutions in the 1890s. *See* RUDOLPH, at 436-38. And during the 1920s, elite colleges started to move away from oral Greek and Latin tests and began to rely more on a national exam created by the College Entrance Examination Board in the early 1900s. *See* NICHOLAS LEMANN, THE BIG TEST 28-41 (2000). Jewish students, as a group, generally performed well on these tests so they were admitted in disproportionate numbers. *See* KARABEL, at 110-36.

Increasing numbers of Jewish students on college campuses created a "Jewish problem" for many schools. *Id.* In response, colleges sought to preserve the Protestant-dominated student bodies of their institutions by instituting strict Jewish quotas. For example, Columbia created the nation's first admissions office in 1919 with the purpose of instituting

policies that would curb Jewish enrollment. KARABEL, at 129. Jerome Karabel explains how such policies worked at Columbia:

> Headed by Adam Leroy Jones, [Columbia Admissions] used subjective criteria in evaluating candidates as it attempted to create a favorable "mix" in the student body. Through an emphasis on qualities such as "character" and "leadership," which could not be quantified, as well as the strategic deployment of discretion in determining which candidates had not passed all the exams might still be admitted, Jones was able to report that the student who enrolled under his tutelage were "very much more desirable" than the ones accepted in previous years.

Id. Harvard, Yale, and Princeton soon followed suit. Similar anti-Jewish sentiment also led to limited enrollment at northern state universities such as the University of Syracuse. *See* Harvey Strum, *Discrimination at Syracuse University*, 4 HIST. OF HIGHER EDUC. ANN. 110 (1984).

A more extreme form of exclusionary admissions practices applied to African Americans during the late 1800s to mid-1900s. Instead of being limited by quotas, African American applicants were categorically not allowed to attend schools designated for whites in many schools across the country by the enforcement of state segregation laws – which were deemed constitutional by the U.S. Supreme Court's approval of the separate-but-equal doctrine in *Plessy v. Ferguson*,

163 U.S. 537 (1896).[3] For example, in *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938), African American applicant Lloyd Gaines could not attend the University of Missouri Law School because state law prohibited integrated higher education. When he applied to the law school, he was summarily rejected based on his race and referred to an out-of-state law school funding program for African American state residents. Gaines brought a successful challenge to the state's refusal to provide in-state legal education for African Americans. Later, in *Sweatt v. Painter*, 339 U.S. 629 (1950), African American student Heman Sweatt was not permitted to attend the University of Texas Law School because of state laws that banned integrated higher education. He brought a successful challenge to the gross disparity in resources of the black law school he was forced to attend and the whites only law school. Like Lloyd Gaines, when Heman Sweatt applied to law school, he was summarily denied solely because of his race. While both litigants benefited from their cases in the separate-but-equal context, this doctrine would not be overturned by this Court until *Brown v. Board of Education*, 347 U.S. 483 (1954).

Even after *Brown*, a number of courts had to repeatedly affirm African American students' rights to not be categorically denied admission because of

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[3] Women were also categorically excluded from admission from many higher educational institutions that rejected coeducation. *See* THELIN, at 173.

their race, and for fair treatment in admissions. In *Lucy v. Adams*, 134 F. Supp. 235 (N.D. Ala. 1955), *aff'd*, 228 F.2d 619 (5th Cir. 1955), *cert. denied*, 351 U.S. 931 (1956), the University of Alabama refused to admit Autherine Lucy and Polly Anne Myers *solely* because they were African American. The district court enjoined the University from refusing their admissions. Despite the Fifth Circuit's affirming the district court ruling, the University of Alabama suspended Lucy, who had enrolled as a graduate student in library science, after a mob prevented her from attending classes, allegedly because it could not secure her safety. *See* GENE ROBERTS & HANK KLIBANOFF, THE RACE BEAT 128-38 (2006). This pattern repeated itself throughout the 1950s and early 1960s, with some institutions of higher education attempting to avoid fair admissions review by refusing even to review applications from African American students. *See, e.g.*, *Holmes v. Danner*, 191 F. Supp. 394 (M.D. Ga. 1961) (finding that the University of Georgia categorically denied Hamilton Holmes admission solely because of his race and refused to review Charlayne Hunter's application solely because of her race, and requiring their admissions).

These obstructionist efforts reached their apogee in the case of James Meredith, an African American student who first sought admission to the University of Mississippi in January 1961. The University of Mississippi registrar summarily rejected James Meredith's application alleging that he did not seek

admission in good faith because he did not submit the required certificates of good character from University alumni and his credits from Jackson State College, then an all-African American state college in Mississippi, were insufficient because Jackson State was not a member of the then all-white Southern Association of Colleges and Secondary Schools. *Meredith v. Fair*, 305 F.2d 343, 346-48 (5th Cir. 1962).

Meredith, not knowing any (white) University alumni in heavily-segregated 1960's Mississippi, submitted good character affidavits from people who knew him. He repeatedly wrote the registrar, seeking re-application and information as to why the University would not accept him for admission. *Id.* After ignoring his numerous letters for a period of time, the registrar again responded that his application was insufficient and again denied him admission. *Id.* Similar to the University of Georgia's treatment of Holmes and Hunter, the Fifth Circuit concluded that "from the moment the [University of Mississippi] discovered Meredith was a Negro they engaged in a carefully calculated campaign of delay, harassment, and masterly inactivity" on his rights to fair review of his application. *Id.* at 344.

Unlike many of the Jewish applicants of the 1920s-1950s, and unlike Lloyd Gaines, Heman Sweatt, Autherine Lucy, Hamilton Holmes, Charlayne Hunter, James Meredith, and many other African American students during this time, Petitioner in this case was not categorically denied admission because she was a member of an "undesirable" group of people. Instead,

Petitioner did not qualify for admission under the Top Ten Percent Law – which accounted for the overwhelming majority of the 2008 admits for the Class of 2012 – and only after *full, holistic consideration on the merits of her application*, was she not admitted to UT.

II. The Modern Inclusive Admissions Model, as Implemented by the University of Texas, Embodies Holistic Review Articulated by the Harvard Plan Cited by Justice Powell in *Bakke* (1978), and Endorsed by this Court in *Grutter* (2003).

As college enrollment rapidly increased during the 1920s, many colleges started moving toward a national standardized exam, but retained discretion to make evaluations of character and leadership. In the 1940s and 1950s, colleges started using a single standardized exam (i.e., the Scholastic Aptitude Test or SAT) as a way of sorting the applicants for admissions purposes. *See* LEMANN, at 85. By the 1960s, the SAT was widely used by colleges nationwide. *Id.* In the new admissions era dominated by the SAT, colleges still maintained their discretion to evaluate the soft factors of their students. For example, in 1961, Wilbur Bender, Dean of Admissions at Harvard from 1952 to 1960, argued that instead of taking just the top one-percent of students based on academic qualifications, Harvard should also consider "a variety of personalities, talents, backgrounds, and career goals." Wilbur Bender, *The Top-One-Percent Policy: A Hard*

Look at the Dangers of an Academically Elite Harvard, HARV. ALUMNI BULL., September 30, 1961, at 21. Harvard would adopt an admissions policy that tried to balance academic criteria with more subjective factors including motivations, backgrounds, and experiences.

The mid- to late-1960s were a time of great social upheaval. College students – from moderates to radicals – were demanding more rights and opportunities to be heard on the issues of the day. *See, e.g.*, Robert Cohen, *This was Their Fight and They Had to Fight It: The FSM's Nonradical Rank and File*, *in* FREE SPEECH MOVEMENT: REFLECTIONS ON BERKELEY IN THE 1960S 222 (Wilson Smith & Reginald E. Zelnick, eds., 2002). During this time, the Civil Rights Movement and other challenges to the status quo created pressure on colleges to admit more students from historically underrepresented groups. After the assassination of Dr. Martin Luther King, Jr. on April 4, 1968, mass campus demonstrations for racial justice, and even rioting in the streets, became more and more commonplace. *See* Julie A. Reuben, *Merit, Mission, and Minority Students*, *in* THE FAITHFUL MIRROR 211 (Michael C. Johanek, ed., 2001).

Colleges could not ignore what was happening. Some colleges experimented with creating alternative educational institutions or instituting open enrollment policies to increase minority enrollment. Reuben, at 220-29. Other colleges remained selective and faced the significant challenge of increasing minority enrollment. Jerome Karabel observes: "The

growing social disorder – embodied ... by racial disturbances in [20] cities, the assassination of Malcolm X in January 1965, and growing antiwar and student movements – provided important backdrop ... [to the realization] that a change in the definition of merit was required if black enrollment was to increase substantially ...." KARABEL, at 384. These selective colleges, thus, started incorporating the educational benefits of having a class with diverse backgrounds and experiences into their definition of "merit." In this way, universities viewed diversity and educational excellence, not in contradiction, but as complementary. The inclusive holistic admissions formula that arose during this time was institutionalized as follows: "1) need-blind admissions; 2) no discrimination against women or Jews; and 3) special consideration for historically underrepresented minorities as well as athletes and legacies." *Id.* at 484.

In the 1978 Supreme Court case, *Regents of the University of California v. Bakke,* 438 U.S. 265, 291 (1978), Alan Bakke, a white male, challenged the special consideration for racial minorities at the University of California at Davis' Medical School. UC-Davis Medical School had two admissions pools – a general pool and a special pool for disadvantaged groups – typically, but not exclusively, from minority backgrounds. Sixteen out of 100 of the total places in the class were reserved for applicants from the special pool. The admitted students from the special pool generally had lower academic credentials than those

admitted in the general pool. Bakke argued that racial minorities, with much lower grades and Medical College Admissions Test scores, being admitted through the special pool, while he was denied admission to the school was a violation of his Equal Protection rights. The U.S. Supreme Court, in a plurality decision authored by Justice Powell, held that race-conscious policies could be used in admissions at public higher education institutions.

Under strict scrutiny, Justice Powell held that the compelling state interest at stake was the benefits of educational diversity because it creates a condition conducive to a "robust exchange of ideas." *Bakke*, 438 U.S. at 312. He observed, "The atmosphere of 'speculation, experiment and creation' – so essential to the quality of higher education – is widely believed to be promoted by a diverse student body." *Id.* Powell further recognized that academic freedom gives universities the discretion to determine whom to admit[4] – based on constitutionally permissible grounds such as the educational benefits of diversity.

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[4] Powell wrote, "Mr. Justice Frankfurter summarized the 'four essential freedoms' that constitute academic freedom: 'It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail *'the four essential freedoms'* of a university – to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and *who may be admitted to study*.' *Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957) (concurring in result)." *Bakke*, 438 U.S. at 312 (emphasis added).

However, he found that UC-Davis' two-tiered admissions model was not narrowly tailored to survive strict scrutiny review. Justice Powell cited the Harvard Plan as an example of an individualized, holistic model of review that would survive strict scrutiny. Harvard College used race as just one of many factors when it conducted its holistic admissions review for each applicant. The appendix Powell attached to his majority opinion containing the Harvard Plan cites to Dean of Admissions Wilbur Bender's 1960 report as encapsulating the ideal of holistic review:

> [I]f scholarly excellence were the sole or even predominant criterion, Harvard College would lose a great deal of its vitality and intellectual excellence and that the quality of the educational experience offered to all students would suffer. *Bakke*, 321-322, *citing* Final Report of W. J. Bender, Chairman of the Admission and Scholarship Committee and Dean of Admissions and Financial Aid, pp. 20 *et seq.* (Cambridge, 1960).

Id. at 321-22. The Plan continues:

> In recent years Harvard College has expanded the concept of diversity to include students from disadvantaged economic, racial and ethnic groups. Harvard College now recruits not only Californians or Louisianans but also blacks and Chicanos and other minority students.

* * *

> When the Committee on Admissions reviews the large middle group of applicants who are "admissible" and deemed capable of doing good work in their courses, the race of an applicant may tip the balance in his favor just as geographic origin or a life spent on a farm may tip the balance in other candidates' cases. A farm boy from Idaho can bring something to Harvard College that a Bostonian cannot offer. Similarly, a black student can usually bring something that a white person cannot offer. The quality of the educational experience of all the students in Harvard College depends in part on these differences in the background and outlook that students bring with them.

Id. at 322-23. The Harvard Plan's description of holistic review, as cited in *Bakke*, effectively articulates the foundation of the inclusionary model that remains in place today at most selective institutions, including the policy at the UT being challenged in this case. Simply put, diversity enhances the educational experience for all students; therefore, individualized review using race as one of many factors of admissions is allowed. This constitutionally permissible use of race was affirmed by this Court in both *Grutter v. Bollinger,* 539 U.S. 306 (2003), and *Gratz v. Bollinger,* 539 U.S. 244 (2003).

In fact, *Grutter* recognized two other dimensions of the educational benefits of diversity in addition to the increased perspectives articulated by *Bakke*. Justice O'Connor, writing for the majority in *Grutter*,

wrote that "student body diversity . . . better prepares [students] as professionals" . . . by "promot[ing] cross-racial understanding, help[ing] to break down racial stereotypes, and enabl[ing] [students] to better understand persons of different races." *Grutter*, 539 U.S. at 330 (internal citations and quotation marks omitted). The Fifth Circuit in this case categorized this dimension of the benefits of diversity as "professionalism." *Fisher*, 631 F.3d at 219. O'Connor also wrote that "[e]ffective participation by members of all racial and ethnic groups in the civic life of this nation is essential if the dream of one Nation, indivisible, is to be realized" and "[i]n order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity." *Grutter*, 539 U.S. at 332. The Fifth Circuit referred to this aspect of the benefits of diversity as "civic engagement." *Fisher*, 631 F.3d at 220.

The modern race-conscious inclusionary model at most selective institutions, including UT, aims to craft a diverse class, recognizing that the multitude of benefits stemming from educational diversity (i.e., increased perspectives, professionalism, and civil engagement) serve a compelling state interest. It is different from an exclusionary model because it does not target groups of people to exclude based on race. *Cf.* KARABEL, *supra* (exclusion of Jewish students); Strum, 4 HIST. OF HIGHER EDUC. ANN. 110, *supra* (same); *Gaines*, 305 U.S. 337 (exclusion of African

American students); *Sweatt*, 339 U.S. 629 (same); *Lucy*, 134 F. Supp. 235 (same); *Holmes*, 191 F. Supp. 394 (same); *Meredith*, 305 F.2d 343 (same). Instead, each applicant gets a flexible, individualized review before a decision is made.

III. Petitioner's Application Received a Fair and Equal Holistic Review Under an Admissions Policy that UT Instituted in its Best Educational Judgment; It Is Merely Speculative that Petitioner Suffered Any Harm by the Policy.

Institutions of higher education maintain the discretion, borne out of constitutionally protected notions of academic freedom, to manage their admissions processes as they see fit as long as their processes are fair and do not infringe upon candidates' constitutional rights. This Court has held that:

> We have long recognized that, given the important purpose of public education and the expansive freedoms of speech and thought associated with the university environment, universities occupy a special niche in our constitutional tradition. . . . Our conclusion that the Law School has a compelling interest in a diverse student body is informed by our view that attaining a diverse student body is at the heart of the Law School's proper institutional mission, and that "good faith" on the part of a university is "presumed" absent "a showing to the contrary."

Grutter, 539 U.S. at 329 (internal citations omitted). *See also Bakke*, 438 U.S. at 312 ("Academic freedom, though not a specifically enumerated constitutional right, long has been viewed as a special concern of the First Amendment. The freedom of a university to make its own judgments as to education includes the selection of its student body."). Based on its best educational judgment and in its exercise of academic freedom, UT has decided that a diverse student body is at the center of its institutional mission. *See* Respondent's Brief, at 5-6. It has, thus, taken a number of steps to achieve a diverse class – including recruitment initiatives, scholarship programs targeting students from lower socioeconomic status backgrounds and students who are the first in their families to attend college, admissions of in-state students at the top 10% of their high school classes, and race-conscious holistic admissions review. *See* Respondent's Brief, at 6-15.

The undeniable truth, however, is that most applicants are denied admission to highly selective colleges because there are many more qualified high school students than available spots at these institutions. In UT's case, the number of available spaces for holistic review is greatly reduced by operation of the Top Ten Percent Law.[5] For example, in 2008, 81% of

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[5] The Texas Top Ten Percent Law is consistent with the constitutionally acceptable means to achieve diversity in the K-12 pupil assignment context articulated by Justice Kennedy's concurring opinion in *Parents Involved in Community Schools v.*

(Continued on following page)

the entering class was admitted under this law. *See Fisher*, 631 F.3d at 227. For the remaining seats, a relatively small number of the most competitive students is admitted based on a holistic evaluation of both hard (test scores, GPAs, and class ranks) and soft (motivations, backgrounds, experiences, etc.) factors. No applicant in the holistic review process is guaranteed admission; she is guaranteed only a fair, holistic review.

There is no genuine dispute that Petitioner's application received the same holistic review as all other in-state applicants outside of the Top Ten Percent category. The basic premise of Petitioner's argument – that she would have been admitted to UT but for the University's evaluation of race as one of many soft factors – is speculative at best. Goodwin Liu observes, "In a highly selective competition where white applicants greatly outnumber minority applicants, and where multiple objective and nonobjective criteria are relevant, the average white applicant will not fare significantly worse under a selection process that is race-conscious than under a process that is race-neutral." Goodwin Liu, *The Causation Fallacy:*

Seattle School District No. 1, 551 U.S. 701, 789 (2007) ("School boards may pursue the goal of bringing together students of diverse backgrounds and races through other means, including strategic site selection of new schools; drawing attendance zones with general recognition of the demographics of neighborhoods; allocating resources for special programs; recruiting students and faculty in a targeted fashion; and tracking enrollments, performance, and other statistics by race.").

Bakke and the Basic Arithmetic of Selective Admissions, 100 MICH. L. REV. 1045, 1078 (2002). *See also* WILLIAM G. BOWEN & DEREK BOK, THE SHAPE OF THE RIVER 33 (1998). Indeed, there is no evidence – direct or inferable – that demonstrates that Petitioner was excluded because of her race.

Moreover, Petitioner's rejection from UT was not due any unfairness in UT's review or to a constitutional flaw in the admissions process. It was, instead, due entirely to UT's finding that Petitioner's application was not amongst the most competitive for one of a few select places in the Class of 2012 – a finding legitimately within UT's constitutional exercise of academic freedom in its admissions policy.

IV. Leading Empirical Social Science Supports UT's Position that Diversity in Higher Education Remains a Compelling State Interest.

Less than ten years ago, the *Grutter* court affirmed Justice Powell's position in *Bakke* that "student body diversity is a compelling state interest that can justify the use of race in university admissions." *Grutter*, 539 U.S. at 325. Race is one of many factors of diversity that a state university may consider in its holistic review of an applicant provided it has a compelling reason for doing so. *Id.* In addition to the compelling reasons UT states in its brief, *see* Respondent's Brief, at 38-46, leading empirical social science affirms that diversity, particularly interactional

diversity, enhances the higher educational environment, and is associated with greater civic, learning, and social outcomes for all students. This brief highlights a few of these studies.

In their groundbreaking study of diversity's impact on higher educational outcomes, Patricia Gurin et al. analyzed a demographically representative sample of first-year students from a national survey conducted by the Higher Educational Research Institute at the University of California – Los Angeles. *See* Patricia Gurin, Eric L. Dey, Sylvia Hurtado & Gerald Gurin, *Diversity and Higher Education Theory and Impact on Educational Outcomes*, 72(3) HARV. EDUC. REV. 330 (2002). Gurin et al. were interested in the educational and democracy outcomes associated with both interactional diversity – the spontaneous engagements that students have with each other in the campus setting – and classroom diversity. They found that informal interactional diversity has a statistically significant positive impact on intellectual engagement and academic skills for students of all racial backgrounds. The impact of classroom diversity on intellectual engagement and academic skills was also statistically significant and positive for white and Latino/a students. Furthermore, the researchers found that informal interactional diversity was significantly related to both citizenship engagement and racial/cultural engagement for all racial groups.

In the same study, Gurin et al. reviewed original data collected from a cohort of University of Michigan

students in their freshman and senior years of college and 13 years after graduation. In the Michigan component of the study, the researchers were able to examine the educational benefits associated with: 1) classroom diversity; 2) the amount and quality of interaction each student had with diverse peers; and 3) the extent to which a student participated in multicultural events and intergroup dialogues. *Id.* Each of these diversity experiences was statistically significant and related to higher levels of active thinking for white students in their senior year. *See also* Uma Jamakumar, *Can Higher Education Meet the Needs of an Increasingly Diverse and Global Society?: Campus Diversity and Cross-Cultural Workforce Competencies*, 78(2) HARV. EDUC. REV. 615 (2008) (discussing how white students specifically benefit from diverse higher educational settings). Classroom diversity and multicultural events that featured interaction among an equal number of diverse peers were significantly related to even higher levels of intellectual engagement among these students. Classroom diversity also showed a smaller, but still statistically significant effect on learning outcomes for Asian and African American students. The researchers further found that all three types of diversity experiences had significant positive effects on the compatibility of difference and the racial/cultural engagement of white students.

In a study of over 50,000 students, Shouping Hu and George D. Kuh delved deeper into the impact of interactional diversity on students from all racial

groups across multiple types of higher educational institutions, including doctoral research institutions, liberal arts colleges, and general colleges. Shouping Hu & George D. Kuh, *Diversity Experiences and College Student Learning and Personal Development*, 44(3) J. OF C. STUDENT DEV. 320 (2003). Hu and Kuh found that students from different types of institutions made statistically significant gains from interactional diversity experiences, with white students making greater gains due to diversity than students of color in technology preparation, diversity competence, and general educational outcomes. *Id.* Students of color, on average, gained more from diversity than white students in vocational preparation and intellectual development. Thus, empirical evidence demonstrates that experiences with interactional diversity have positive effects for virtually all students in all types of higher education settings.

Social science, therefore, supports UT's best educational judgment that diversity both inside and outside the classroom benefits the institution as a whole.

CONCLUSION

College admissions in this country began as an open admissions system for sons of wealthy white families that attended certain elite preparatory schools. It developed into a system in which standardized examinations were becoming the norm for elite

schools. When students from certain "undesirable" groups excelled on these tests, the admissions system was transformed into one that used the subjective qualities to filter many of these students out without further review. This was the system in place at most selective colleges when the Civil Rights Movement and other rights advocacy gained ground. However, since the 1960s, this same discretion is now being used to include historically excluded groups. The University of Texas' admissions policy is based on the inclusionary model. It aims to craft a diverse class using individualized, holistic review, fully recognizing the educational benefits of diversity for the entire institution. And recent social science supports the university's judgment regarding the educational benefits of diversity. Petitioner fails to prove any individual harm based on this policy. Indeed, her application received the same fair and equal holistic review afforded those from all students outside of the Top Ten Percent.

The Fifth Circuit's holding should, therefore, be affirmed.

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