
**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 AMICI CURIAE MEMBERS
OF ASIAN AMERICAN CENTER FOR ADVANCING
JUSTICE, ET AL. IN SUPPORT OF RESPONDENTS**

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<i>Grutter v. Bollinger</i> , 539 U.S. 306 (2003)	<i>passim</i>
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<i>Regents of Univ. of Cal. v. Bakke</i> , 438 U.S. 265 (1978).....	9, 25, 33
<i>Smith v. Univ. of Washington</i> , 392 F.3d 367 (9th Cir. 2004)	10
<i>Sweatt v. Painter</i> , 339 U.S. 629 (1950)	3
<i>Tape v. Hurley</i> , 66 Cal. 473 (1885).....	8
TREATISES AND OTHER AUTHORITIES	
Sigal Alon & Marta Tienda, <i>Diversity, Oppor- tunity and the Shifting Meritocracy in Higher Education</i> , 72 Am. Soc. Rev. 487 (2007).....	30, 31
Angelo N. Ancheta, <i>Race, Rights, and the Asian American Experience</i> (2d ed. 2006)	11, 14
<i>Asian Americans for Affirmative Action, The Nation</i> (Jan. 8, 2007)	2
Asian Am. Ctr. for Advancing Justice, <i>A Com- munity of Contrasts: Asian Americans in the United States: 2011</i> (2011).....	8

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Asian Am. Ctr. for Advancing Justice, <i>Overlooked: The Asian American Contractor Experience</i> (2012).....	14
Asian Am. Institute, <i>Asian Americans and Public Contracting: Equal Opportunities, Laws, and Politics</i> (2008).....	12
Asian Am. Justice Ctr., <i>Equal Access: Unlocking Government Doors for Asian American Businesses: Public Contracting Affirmative Action Laws and Policies</i> (2008).....	12, 14
Asian Pac. Americans in Higher Education, <i>80-20's College Admissions Survey: Important Evidence or Junk Science?</i> , APAHE Policy Paper (June 2012).....	2
Associated Press, <i>Student Quits At U.C.L.A. Over Rant</i> , N.Y. Times, Mar. 19, 2011.....	20
Nicholas A. Bowman, <i>The Conditional Effects of Interracial Interactions on College Student Outcomes</i> , J. of College Student Dev. (forthcoming)	22
Nicholas A. Bowman & Tiffany M. Griffin, <i>Secondary Transfer Effects of Interracial Contact: The Moderating Role of Social Status</i> , 18 Cultural Diversity & Ethnic Minority Psychol. 35 (2012)	23
Liz Camuti, <i>CUPD Investigating Whether Reported Assault was Hate Crime</i> , Cornell Daily Sun, June 9, 2011.....	20

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Edward M. Chen, <i>The Judiciary, Diversity, and Justice for All</i> , 91 Cal. L. Rev. 1109 (2003)	13
Doug Chin, <i>Affirmative Action Debate Heats Up in Washington State</i> , New America Media, Apr. 17, 2005	2
Gabriel J. Chin et al., <i>Beyond Self-Interest: Asian Pacific Americans Toward a Community of Justice, A Policy Analysis of Affirmative Action</i> , 4 Asian Pac. Am. L.J. 129 (1996)	7
CNN Wire Staff, <i>California College's Student President Stabbed: Hate Crime Alleged</i> , CNN, Apr. 19, 2010	20
The College Board, <i>2008 College-Bound Seniors State Profile Report – Texas</i> (2008).....	29
Committee of 100, <i>The Committee of 100's Asian Pacific American (APA) Corporate Board Report Card</i> (2004)	12
Meera E. Deo, <i>The Promise of Grutter: Diverse Interactions at the University of Michigan Law School</i> , 17 Mich. J. Race & L. 63 (2011).....	18, 19, 20
William T. Dickens & Thomas J. Kane, <i>Racial Test Score Differences as Evidence of Reverse Discrimination: Less than Meets the Eye</i> , 38 Indus. Relations 331 (1999).....	31
Elaine Ejigu, <i>UC Hate Crimes: Where Are We Now?</i> , City on a Hill Press, Mar. 3, 2011	20

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Mark E. Engberg & Sylvia Hurtado, <i>Developing Pluralistic Skills and Dispositions in College: Examining Racial/Ethnic Group Differences</i> , 82 J. Higher Educ. 416 (2011)	16, 18
Patricia Gurin et al., <i>Diversity and Higher Education: Theory and Impact on Educational Outcomes</i> , 72 Harv. Educ. Rev. 330 (2002).....	16, 19, 22, 23
Karen Kurotsuchi Inkelas, <i>Diversity's Missing Minority: Asian Pacific American Undergraduates' Attitudes Toward Affirmative Action</i> , 74 J. Higher Educ. 601 (2003).....	20
Uma M. Jayakumar, <i>Can Higher Education Meet the Needs of an Increasingly Diverse and Global Society?: Campus Diversity and Cross-Cultural Workforce Competencies</i> , 78 Harv. Educ. Rev. 615 (2008).....	16
Jerry Kang, <i>Negative Action Against Asian Americans: The Internal Instability of Dworkin's Defense of Affirmative Action</i> , 31 Harv. C.R.-C.L. L. Rev. 1 (1996)	25
William C. Kidder, <i>Does the LSAT Mirror or Magnify Racial and Ethnic Differences in Educational Attainment?: A Study of Equally Achieving "Elite" College Students</i> , 89 Cal. L. Rev. 1055 (2001).....	33
William C. Kidder, <i>Misshaping the River: Proposition 209 and Lessons for Fisher Case</i> (2012).....	28

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William C. Kidder, <i>Negative Action Versus Affirmative Action: Asian Pacific Americans are Still Caught in the Crossfire</i> , 11 Mich. J. Race & L. 605 (2006).....	25
William C. Kidder, <i>Situating Asian Pacific Americans in the Law School Affirmative Action Debate: Empirical Facts About Thernstrom's Rhetorical Acts</i> , 7 Asian L.J. 29 (2000).....	10
Claire Jean Kim, <i>The Racial Triangulation of Asian Americans</i> , 27 Politics & Society 105 (1999).....	7
Jacqueline E. King & Gigi G. Gomez, Am. Council on Educ., <i>On the Pathway to the Presidency: Characteristics of Higher Education's Senior Leadership</i> (2008)	16
Joyce Kuo, <i>Excluded, Segregated and Forgotten: A Historical View of the Discrimination of Chinese Americans in Public Schools</i> , 5 Asian L.J. 181 (1998).....	8
Stewart Kwoh & Julie A. Su, <i>A Shared History And Vision</i> , New America Media, Mar. 27, 2007	3
Leadership Educ. for Asian Pacifics, Inc., <i>2011 Fortune 500 API Executive Officers and Top Earners</i> (2012).....	12

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Sharon S. Lee, <i>The De-Minoritization of Asian Americans: A Historical Examination of the Representations of Asian Americans in Affirmative Action Admissions Policies at the University of California</i> , 15 Asian Am. L.J. 129 (2008).....	9, 10, 21
Oliver Libaw, <i>How Are Colleges Handling Hate Crimes?</i> , ABC News, May 11, 2012	20
Adrian Liu, <i>Affirmative Action & Negative Action: How Jian Li's Case Can Benefit Asian Americans</i> , 13 Mich. J. Race & L. 391 (2008).....	25
Mark C. Long & Marta Tienda, <i>Changes in Texas Universities' Applicant Pools After the Hopwood Decision</i> , 39 Soc. Sci. Research 48 (2010).....	30
<i>Los Angeles Times Exit Poll: The General Election, November 5, 1996</i> , L.A. Times, 1996.....	2
<i>Model Minority Myth Revisited: An Interdisciplinary Approach to Demystifying Asian American Educational Experiences</i> (Guofang Li & Lihshing Wang eds., 2008)	21
Samuel D. Museus et al., <i>Racial Differences in the Effects of Campus Racial Climate on Degree Completion: A Structural Equation Model</i> , 32 Review of Higher Educ. 107 (2008).....	20

TABLE OF AUTHORITIES – Continued

	Page
Nat'l Asian Pac. Am. Legal Consortium, <i>2000 Audit of Violence Against Asian Pacific Americans: Responding to Hate Crimes: A Special Focus on College Campuses</i> (2000).....	21
Nat'l Comm'n on Asian Am. & Pac. Islander Research in Educ., <i>The Attitudes of Asian Americans Toward Affirmative Action</i> (2012).....	2
Paul M. Ong, <i>The Affirmative Action Divide</i> , in <i>Asian American Politics – Law, Participation, and Policy</i> 377 (Don T. Nakanishi & James S. Lai eds., 2003)	2
Gary Orfield & Chungmei Lee, <i>Historic Reversals, Accelerating Resegregation, and the Need for New Integration Strategies</i> , The Civil Rights Project, U.C.L.A. (2007)	8
Valerie Ooka Pang et al., <i>Asian American and Pacific Islander Students: Equity and the Achievement Gap</i> , 40 <i>Educ. Researcher</i> 378 (2011).....	31
Oiyan A. Poon et al., <i>Accurate Data: Next Step in Giving Asian Pacific Americans Equal Access to Public Contracts</i> (2010).....	14
The Princeton Review, <i>SAT Test Preparation</i> (2012).....	31
<i>Reports Submitted on Behalf of the University of Michigan: The Compelling Need for Diversity in Higher Education</i> , 5 <i>Mich. J. Race & L.</i> 243 (1999).....	29, 32

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Jay Rosner, <i>Disparate Outcomes by Design: University Admissions Tests</i> , 12 Berkeley La Raza L.J. 377 (2001)	31
Jessie M. Rothstein, <i>College Performance Predictions and the SAT</i> , 121 J. Econometrics 297 (2004)	30
Victor B. Saenz et al., <i>Factors Influencing Positive Interactions Across Race for African American, Asian American, Latino, and White College Students</i> , 48 Research in Higher Educ. 1 (2007)	17, 19
Maria Veronica Santelices & Mark Wilson, <i>Unfair Treatment?: The Case of Freedle, the SAT, and the Standardization Approach to Differential Item Functioning</i> , 80 Harv. Educ. Rev. 106 (2010)	33
Barbara Schneider et al., <i>Barriers to Educational Opportunities for Hispanics in the United States</i> , in <i>Hispanics and the Future of America</i> 179 (Marta Tienda & Faith Mitchell eds., 2006)	32
Martin Shapiro, <i>A Psychometric Model for Preserving Discrimination</i> , 12 Berkeley La Raza L.J. 387 (2001)	33
Claude M. Steele, <i>Whistling Vivaldi: And Other Clues How Stereotypes Affect Us</i> (2010)	33

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Rebecca L. Stotzer & Emily Hossellman, <i>Hate Crimes on Campus: Racial/Ethnic Diversity and Campus Safety</i> , 27 <i>J. Interpersonal Violence</i> 644 (2012).....	21
Robert T. Teranishi, <i>Asians in the Ivory Tower: Dilemmas of Racial Inequality in American Higher Education</i> (2010)	32
Robert T. Teranishi, <i>Southeast Asians, School Segregation, and Postsecondary Outcomes</i> , Comm'n on Asian Am. Research in Higher Educ., N.Y.U. (2004).....	8
Marta Tienda & Sunny Xinchun Niu, <i>Flagships, Feeders, and the Texas Top 10% Law: A Test of the "Brain Drain" Hypothesis</i> , 77 <i>J. Higher Educ.</i> 712 (2006).....	30
Nellie Tran & Dina Birman, <i>Questioning the Model Minority: Studies of Asian American Academic Performance</i> , 1 <i>Asian Am. J. Psychol.</i> 106 (2010)	7, 33
U.S. Comm'n on Civil Rights, <i>Civil Rights Issues Facing Asian Americans in the 1990s</i> (1992).....	12
<i>Who's Sitting on the Federal Bench</i> , Wash. Post, Aug. 26, 2009	12
Deborah Woo, U.S. Dep't of Labor, Glass Ceiling Comm'n, <i>Glass Ceiling and Asian Americans</i> (1994)	12
Frank H. Wu, <i>Yellow: Race in America Beyond Black and White</i> 58 (2002).....	7

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Jeremy S. Wu & Carson K. Eoyang, <i>Asian Pacific American Senior Executives in the Federal Government</i> , 4 AAPI Nexus 39 (2006).....	12
Yu-Wen Ying et al., <i>Asian American College Students as Model Minorities: An Examination of Their Overall Competence</i> , 7 Cultural Diversity & Ethnic Minority Psychol. 59 (2001).....	17, 21
Gwendolyn Yip & Karen Narasaki, <i>Affirming the California Experience with Affirmative Action</i> , 1 Nexus J. Op. 22 (1996)	10

INTEREST OF *AMICI*¹

This brief is submitted by members of the Asian American Center for Advancing Justice (“Advancing Justice”), an affiliation of four nonprofit, nonpartisan organizations: the Asian American Institute from Chicago, the Asian American Justice Center from Washington, D.C., the Asian Law Caucus from San Francisco, and the Asian Pacific American Legal Center from Los Angeles. Through litigation, direct legal services, policy advocacy, community outreach and education, and organizing, Advancing Justice’s mission is to promote a fair and equitable society for all by working for civil and human rights and empowering Asian Americans and Pacific Islanders and other underserved communities. Members of Advancing Justice routinely file *amicus curiae* briefs in cases in this Court and other courts, including an *amicus curiae* brief in *Grutter v. Bollinger*.

Advancing Justice is joined on this brief by more than seventy civil rights groups, advocacy organizations, bar associations, business associations, academic institutions, and student organizations (collectively, “*Amici*”). For a list and description of the various *amici* joining this brief, see Appendix A.

¹ The parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

Amici have longstanding histories of serving the interests of Asian Americans, Native Hawaiians, and Pacific Islanders.

Amici, like the majority of Asian American voters in California, Michigan, Washington, and other states who have opposed referenda to eliminate race-conscious programs, support the proper use of race-conscious programs.² National opinion polls consistently show that a majority of Asian Americans are in favor of race-conscious programs.³ This support

² One of Petitioner's *amici* asserts – based on responses to questions on its own website – that Asian Americans oppose the use of race-conscious programs. See Amicus Brief of the Louis D. Brandeis Center for Human Rights Under Law, the 80-20 National Asian American Educational Foundation, et al. (“80-20 Br.”) at 1-2. This is not true. See, e.g., *Los Angeles Times Exit Poll: The General Election, November 5, 1996*, L.A. Times, 1996, <http://www.latimes.com/media/acrobat/2008-10/43120439.pdf>; *Asian Americans for Affirmative Action*, The Nation (Jan. 8, 2007), available at <http://www.thenation.com/blog/asian-americans-affirmative-action#>; Doug Chin, *Affirmative Action Debate Heats Up in Washington State*, New America Media, Apr. 17, 2005, http://news.newamericamedia.org/news/view_article.html?article_id=e27f2dbeaaa6dd98e87b171d1cc5cbdc (noting “similar percentage” of Asian Americans voted against Initiative 200 in Washington State as against Proposition 209); Paul M. Ong, *The Affirmative Action Divide*, in *Asian American Politics – Law, Participation, and Policy* 377 n.65 (Don T. Nakanishi & James S. Lai eds., 2003).

³ See, e.g., Nat’l Comm’n on Asian Am. & Pac. Islander Research in Educ., *The Attitudes of Asian Americans Toward Affirmative Action* (2012), available at http://www.nyu.edu/projects/care/CARE-affirmative_action_polling-1v2.pdf; Asian Pac. Americans in Higher Education, *80-20’s College Admissions Survey: Important Evidence or Junk Science?*, APAHE Policy

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continues today, as numerous organizations representing a wide swath of the Asian American community join this *amicus curiae* brief in support of Respondent and race-conscious programs designed to improve equal access for all. *Amici* recognize that Asian Americans and other minority groups have fought together against racial discrimination and for greater civil rights, protections, justice, and equality in this country. *Amici* recognize that Asian Americans have obtained greater rights and opportunities as a result of historic civil rights struggles led by other minority communities.⁴

SUMMARY OF ARGUMENT

Amici Asian American advocacy organizations submit this brief in support of Respondent University of Texas at Austin (“UT Austin”), a state institution whose mission for many years has been to train leaders for the State of Texas. *See Sweatt v. Painter*, 339 U.S. 629, 634 (1950); *Grutter v. Bollinger*, 539 U.S. 306, 332 (2003). Petitioner and several of her supporting *amici* specifically assert that Asian American applicants to UT Austin are harmed by the

Paper (June 2012), available at <http://aaldef.org/APAHE%20Policy%20Brief.pdf>.

⁴ See, e.g., Stewart Kwoh & Julie A. Su, *A Shared History And Vision*, New America Media, Mar. 27, 2007, http://news.newamericamedia.org/news/view_article.html?article_id=5865061e5e6d42458536481ade0be453.

challenged admissions program. *Amici* submitting this brief categorically reject that contention. Asian American applicants suffer no harm. To the contrary, UT Austin's Asian American students receive the educational benefits of a diverse student body, which is central to the educational goals of a public university in today's heterogeneous society.

Not unlike African Americans, Latinos, and Native Americans, the Asian American community has experienced a long history of racial discrimination, including *de jure* racial segregation in public education. Indeed, Asian Americans were initially included in race-conscious university admissions programs when few Asian Americans attended universities. Asian Americans' educational attainments, however, have not translated into commensurate gains in achieving leadership positions in business and other endeavors. As a result, Asian Americans continue to be included in race-conscious opportunity programs, particularly in public contracting.

As recognized by this Court, there is a compelling need for universities to prepare students for an increasingly diverse workforce, to promote cross-racial understanding, and to reduce stereotyping and isolation of minorities. *Post-Grutter* social science studies confirm substantial benefits for all students, including Asian Americans, from a diverse student body: Research shows that developing stronger cross-cultural competencies may better equip students with leadership skills for an increasingly diverse workplace, and also change other groups' potentially

negative perceptions of Asian Americans. Increasing cross-racial interactions, particularly in the classroom, improves learning while promoting understanding and breaking down stereotypes. Asian American students share in these benefits as well as contribute to them. Recent research also confirms that diminishing the force of stereotypes cannot be accomplished with only token numbers of minority students and that all students, including Asian Americans, benefit from interracial interactions.

Petitioner's *amici* nevertheless contend that Asian Americans are discriminatorily punished by the holistic admissions program based on Asian Americans' higher SAT test scores. This argument has no factual support. A careful review of the data shows that admission rates and average SAT scores for Asian Americans remain constant whether or not race-conscious admissions programs like UT Austin's are in operation, which refutes any suggestion that such admissions programs impose a "penalty" on Asian Americans and are the "root cause" of a test score gap. Moreover, SAT scores are only one of several admissions criteria. There is no shortfall in the proportion of Asian Americans admitted or enrolled compared to the proportion of Asian Americans who applied. Asian Americans suffer no differential treatment, and there is no evidence of a rigid numerical quota at work. The "test score gap" is not specific to the holistic admissions program and exists in the Top Ten Percent admissions program as well. Test scores, in any event, are an inaccurate measure of

past achievement and an incomplete predictor of future potential. Accordingly, UT Austin is well within the proper exercise of its First Amendment freedoms in choosing its students with a holistic admissions program that relies on more than SAT scores alone. *See Grutter*, 539 U.S. at 329.

ARGUMENT

I. Asian Americans benefit from a variety of race-conscious programs justified by diversity or other compelling interests.

Asian Americans, Pacific Islanders, African Americans, Latinos, and Native Americans share a history of racial segregation in education. Despite this shared history, Petitioner and several *amici* argue that admissions programs that provide equal opportunity for African Americans and Latinos necessarily harm Asian Americans.⁵ Worse, Petitioner and

⁵ *See, e.g.*, Petitioner’s Brief (“Pet. Br.”) at 7 (claiming that UT Austin’s holistic admissions policy works “to the detriment of Asian Americans” and “subject[s] them to the same inequality as White applicants”); Amicus Brief of the Asian American Legal Foundation and the Judicial Education Project (“AALF Br.”) at 6 (conflating race-conscious programs designed to benefit under-represented groups with “invidious discrimination against Asian Americans”); 80-20 Brief at 3 (claiming that Asian Americans have been “[p]articularly hard-hit” in the “zero-sum” game of university admissions). *Amici* also note that Petitioner (who is white) lacks standing to challenge UT Austin’s holistic admissions policy on the basis of its purported harm to Asian Americans, given that adopting Petitioner’s rationale would not

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supporting *amici* seek to use Asian Americans as a wedge group to curtail opportunities for minorities.⁶ These claims ignore the reality that Asian Americans directly benefit from the diversity achieved by race-conscious programs and suffer no harm.

This *amicus* brief, filed by those who have long served the interests of Asian Americans, aims to correct this revisionist history and explain why Asian Americans and other Americans benefit from the holistic consideration of race to achieve diversity and pathways to leadership that are “visibly open to talented and qualified individuals of every race and ethnicity.” *Grutter*, 539 U.S. at 332.

A. Asian Americans benefit from race-conscious admissions programs in higher education.

Asian Americans, like African Americans, Latinos, and Native Americans, were subject to historic exclusion and *de jure* segregation in public education,

necessarily have benefitted her admissions prospects because she is not Asian American.

⁶ See, e.g., Frank H. Wu, *Yellow: Race in America Beyond Black and White* 58 (2002); Gabriel J. Chin et al., *Beyond Self-Interest: Asian Pacific Americans Toward a Community of Justice, A Policy Analysis of Affirmative Action*, 4 *Asian Pac. Am. L.J.* 129, 151 (1996); Claire Jean Kim, *The Racial Triangulation of Asian Americans*, 27 *Politics & Society* 105, 122-23 (1999); Nellie Tran & Dina Birman, *Questioning the Model Minority: Studies of Asian American Academic Performance*, 1 *Asian Am. J. Psychol.* 106, 107 (2010).

particularly in California with its significant Asian American population.⁷ Even after the California Supreme Court ruled in 1885 that the San Francisco School Board was required to provide Chinese students a public education, the California Legislature provided separate, segregated schools for “children of Mongolian or Chinese descent” until 1947.⁸ Although *Brown v. Board of Education*, 347 U.S. 483 (1954), invalidated the “separate but equal” doctrine, it did not end racial discrimination in public education or its harms for Asian American communities.⁹

⁷ See, e.g., *Gong Lum v. Rice*, 275 U.S. 78 (1927); see also Joyce Kuo, *Excluded, Segregated and Forgotten: A Historical View of the Discrimination of Chinese Americans in Public Schools*, 5 Asian L.J. 181, 190-200 (1998).

⁸ See *Tape v. Hurley*, 66 Cal. 473, 474 (1885); Kuo, *supra* note 7, at 198 n.115.

⁹ Indeed, educational inequalities for Asian Americans and other racial minorities continue to persist. Unfortunately, public K-12 schools are more segregated today than they were forty years ago. See Gary Orfield & Chungmei Lee, *Historic Reversals, Accelerating Resegregation, and the Need for New Integration Strategies*, The Civil Rights Project, U.C.L.A. (2007). Some Asian American subgroups – Hmong, Cambodian, Laotian and Vietnamese Americans – have educational attainment rates similar to those of Latinos and African Americans. See Asian Am. Ctr. for Advancing Justice, *A Community of Contrasts: Asian Americans in the United States: 2011* at 30-31 (2011), available at http://www.advancingjustice.org/pdf/Community_of_Contrast.pdf; see also Robert T. Teranishi, *Southeast Asians, School Segregation, and Postsecondary Outcomes*, Comm’n on Asian Am. Research in Higher Educ., N.Y.U. (2004); Amicus Brief of the Asian American Legal Defense and Education Fund (“AALDEF Br.”) at Parts II.B.-II.C.

Race-conscious admissions programs played a critical role in opening the doors of public and private universities to many Asian Americans in the 1960s and 1970s.¹⁰ For example, in the 1960s, California instituted desegregation efforts for public higher education that included a variety of race-conscious programs, such as the University of California's Educational Opportunity Programs – community outreach, recruitment, and tutoring programs for low-income and minority students.¹¹ The programs considered applicants' racial background as supplemental admissions criteria. *See, e.g., Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 274-75 (1978) (including Asian Americans in UC Davis Medical School's race-conscious admissions program). As the number of some Asian American subgroups admitted to the UC system increased, these groups' inclusion as under-represented groups under the race-conscious admissions programs ended.¹² However, race-conscious

¹⁰ Sharon S. Lee, *The De-Minoritization of Asian Americans: A Historical Examination of the Representations of Asian Americans in Affirmative Action Admissions Policies at the University of California*, 15 *Asian Am. L.J.* 129, 132 n.16 (2008) (citing historical inclusion of Asian Americans in minority recruitment efforts at selective schools such as Princeton and Yale).

¹¹ *See id.* at 132.

¹² *See, e.g., id.* at 143. The fact that the UC system ended inclusion of some Asian American subgroups in these programs demonstrates that, contrary to the claims of Petitioner and her *amici*, colleges and universities are committed to meaningful durational limits on race-conscious admissions. *See Grutter*, 539 U.S. at 342.

admissions programs at the UC's flagship schools continued to include Filipino Americans through the 1990s.¹³ In addition to undergraduate admissions, Asian Americans were also identified beneficiaries of race-conscious admissions programs at graduate and professional schools, including law schools at UC Berkeley (formerly Boalt Hall), UCLA, and University of Washington.¹⁴

Even when not formally identified as an underrepresented group, holistic race-conscious policies (like UT Austin's) allow for individualized consideration of how Asian Americans' personal and background characteristics, including race, may benefit the institution or organization. *See, e.g.*, Pet. for Writ. of Cert., App. A at 46a. For example, universities may determine the need to improve equal access for Asian Americans in majors or fields where they continue to be underrepresented. And not only do Asian

¹³ See Gwendolyn Yip & Karen Narasaki, *Affirming the California Experience with Affirmative Action*, 1 Nexus J. Op. 22, 28 (1996) (noting the decline in undergraduate admissions rate of Filipino Americans to Berkeley from 32% to 18% after they were no longer included in race-conscious admissions programs in the 1990s); Lee, *supra* note 10, at 143 n.64 (noting that Filipino Americans continued to be included in UCLA's undergraduate race-conscious admissions programs until mid-1980s).

¹⁴ William C. Kidder, *Situating Asian Pacific Americans in the Law School Affirmative Action Debate: Empirical Facts About Thernstrom's Rhetorical Acts*, 7 Asian L.J. 29, 30 (2000); Lee, *supra* note 10, at 136; *Smith v. Univ. of Washington*, 392 F.3d 367, 379 (9th Cir. 2004).

Americans contribute to the diversity of those institutions, they directly benefit from those diverse environments. *See Part II infra.*

B. Asian Americans continue to face barriers to equal opportunity in other sectors of American life, and are appropriately included in race-conscious programs to improve opportunity.

Historically, Asian Americans have benefitted from race-conscious programs in their workplaces. For example, in the 1980s, Asian American construction firms in San Francisco received approximately 5% of the contracts for school district construction, despite making up over 20% of the available and fully qualified construction firms; it was not until after the school district implemented a race-conscious plan that Asian American participation in contracting with the district increased.¹⁵

Today, even for Asian Americans who have obtained higher education, those gains have not necessarily translated to commensurate advances in other sectors of American life. For example, Asian American men are less likely to hold leadership positions as managers in private businesses than are similarly

¹⁵ Angelo N. Ancheta, *Race, Rights, and the Asian American Experience* 160 (2d ed. 2006).

qualified non-Latino white men.¹⁶ Asian Americans are less likely to hold leadership positions in government, compared to their peers with the same credentials.¹⁷ Asian Americans also hold few positions on corporate boards of directors or in elected office.¹⁸ Studies suggest that “glass ceilings” prevent their advancement into higher management and leadership positions in the workplace.¹⁹ Likewise, there are few Asian American federal judges.²⁰

¹⁶ See Asian Am. Institute, *Asian Americans and Public Contracting: Equal Opportunities, Laws, and Politics* 19-20 (2008); U.S. Comm’n on Civil Rights, *Civil Rights Issues Facing Asian Americans in the 1990s* (1992); Asian Am. Justice Ctr., *Equal Access: Unlocking Government Doors for Asian American Businesses: Public Contracting Affirmative Action Laws and Policies* 19 (2008), available at http://www.advancingequality.org/attachments/files/342/Equal_Access.pdf.

¹⁷ See generally Jeremy S. Wu & Carson K. Eoyang, *Asian Pacific American Senior Executives in the Federal Government*, 4 AAPI Nexus 39 (2006).

¹⁸ See, e.g., Committee of 100, *The Committee of 100’s Asian Pacific American (APA) Corporate Board Report Card* (2004); Leadership Educ. for Asian Pacifics, Inc., *2011 Fortune 500 API Executive Officers and Top Earners* 4 (2012), available at http://www.leap.org/docs/2012_LEAP_EOFORTUNE500_Full_Report.pdf; Jeremy S. Wu, *supra* note 17.

¹⁹ *Equal Access*, *supra* note 16, at 19-20; Deborah Woo, U.S. Dep’t of Labor, Glass Ceiling Comm’n, *Glass Ceiling and Asian Americans* (1994); see also *Chin v. Runnels*, 343 F. Supp. 2d 891, 907 (N.D. Cal. 2004) (reviewing Federal Glass Ceiling Commission’s report and other sources).

²⁰ *Who’s Sitting on the Federal Bench*, Wash. Post, Aug. 26, 2009 (covering Russell Wheeler’s study for the Brookings Institution and noting “Asian American judges have been so rare

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In Texas, fully 54% of Asian Americans over the age of 25 have at least a bachelor's degree, compared to 34% of non-Hispanic whites.²¹ Nevertheless, in Texas, 13% of white employees are managers compared to 9% of Asian Americans.²² The per-capita income of Asian Americans in Texas is three-quarters of the non-Hispanic white per-capita income.²³

Studies consistently find that Asian American businesses, like other minority-owned businesses, receive few public contracts because of explicit discrimination, lack of requests for bids from minority-owned businesses, difficulty obtaining funding, and

on the federal bench that Wheeler did not account for them in his historical survey"); see also Edward M. Chen, *The Judiciary, Diversity, and Justice for All*, 91 Cal. L. Rev. 1109 (2003) (reviewing data, associated challenges, and importance of a diverse judiciary).

²¹ Jonathan Ong, UCLA School of Public Affairs, Data Tabulated from 2006-2010 5-year American Community Survey (Tables B15002, C15002D, C15002H) (downloaded on June 22, 2012 from <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>) (on file with author).

²² Paul Ong, UCLA School of Public Affairs, Data Tabulated from 2006-2010 American Community Service Public Use Microdata Sample (downloaded on June 7, 2012 from http://www.census.gov/acs/www/data_documentation/data_via_ftp/) (on file with author).

²³ Jonathan Ong, UCLA School of Public Affairs, Data Tabulated from 2006-2010 American Community Survey 5-year ACS Estimates (Tables B19301, B19301D, B19301H) (downloaded on June 25, 2012 from <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>) (on file with author) (showing average per capita income for non-Hispanic whites of \$34,826 and for Asian Americans of \$28,253 in Texas).

relationship advantages of white-owned businesses.²⁴ Accordingly, governmental agencies include Asian American-owned businesses in race-conscious programs.²⁵

Therefore, the need for race-conscious programs that include Asian Americans continues where they are denied equal opportunity. Asian Americans, like other racial minorities, would be harmed by a ruling that takes away an institution's ability to consider the compelling need for such race-conscious programs.

²⁴ See Asian Am. Ctr. for Advancing Justice, *Overlooked: The Asian American Contractor Experience*, at ii-iii, 34 (2012), available at http://www.advancingequality.org/files/Minority_Contracting_Full_layout_Singles-Final.pdf (describing discrimination and other barriers to participating in government contracting); Oiyen A. Poon et al., *Accurate Data: Next Step in Giving Asian Pacific Americans Equal Access to Public Contracts* 7-9, 52-60 (2010), available at http://www.advancingequality.org/attachments/files/470/Accurate%20Data_Next%20Step%20in%20Giving%20Asian%20Pacific%20Americans%20Equal%20Access%20to%20Public%20Contracts.pdf (conducting empirical research on under-utilization of Asian American firms in local government contracting programs in construction, architecture, civil engineering, and technology); *Equal Access*, *supra* note 16, at 28-29 (analyzing census data showing that Asian American firms are underrepresented in construction and professional/scientific/technical services, two key sectors for government contracting).

²⁵ *Equal Access*, *supra* note 16, at 26; Ancheta, *supra* note 15.

II. Asian Americans benefit from and contribute to the diverse learning environments fostered by UT Austin's holistic admissions program.

Asian American students also benefit from and contribute to the diversity produced by holistic admissions decisions. “[T]he educational benefits that diversity is designed to produce . . . are substantial,” *Grutter*, 539 U.S. at 330, including: training for a diverse workplace, increasing cross-racial interactions, and reducing isolation of racial groups. Recent social science research confirms these benefits.

A. Diverse learning environments train students for a diverse workforce.

In *Grutter*, the Court cited social science research that diversity “better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals.” 539 U.S. at 330-31 (citing sources and amicus materials of business groups and military leaders). “These benefits are not theoretical but real.” *Id.*

Recent social science research confirms *Grutter* in this respect. As high levels of residential segregation reduce the likelihood that elementary and high school students will learn in integrated environments, colleges and universities play an increasingly critical role in exposing students to diversity necessary for

career advancement.²⁶ In particular, these institutions provide students with “pluralistic orientations” “essential for graduates in the twenty-first century” in the global economy.²⁷ “[W]hile there is great value in exposure to diversity in high school, the power of collegial interactions across race is most influential with regard to developing cross-cultural workforce competencies.”²⁸

As noted above, higher educational attainment has not translated into commensurate leadership positions for Asian Americans.²⁹ Research demonstrates that developing stronger cross-cultural competencies may better equip all students, including Asian Americans, in developing leadership skills, as well as change other groups’ perceptions of Asian

²⁶ See Uma M. Jayakumar, *Can Higher Education Meet the Needs of an Increasingly Diverse and Global Society?: Campus Diversity and Cross-Cultural Workforce Competencies*, 78 Harv. Educ. Rev. 615, 643 (2008) (“Cumulative exposure to racial diversity throughout the educational pipeline and particularly in higher education is likely to facilitate the development of cross-culturally competent citizens.”); Patricia Gurin et al., *Diversity and Higher Education: Theory and Impact on Educational Outcomes*, 72 Harv. Educ. Rev. 330, 360 (2002).

²⁷ Mark E. Engberg & Sylvia Hurtado, *Developing Pluralistic Skills and Dispositions in College: Examining Racial/Ethnic Group Differences*, 82 J. Higher Educ. 416, 434, 436 (2011).

²⁸ Jayakumar, *supra* note 26, at 642-43.

²⁹ See Part I.B *supra*. For example, Asian Americans only make up one percent of college and university presidents in the United States. See Jacqueline E. King & Gigi G. Gomez, Am. Council on Educ., *On the Pathway to the Presidency: Characteristics of Higher Education’s Senior Leadership* 20 (2008).

Americans and create greater professional opportunities for Asian Americans.³⁰

Research shows that “[i]f Asian Americans are minimally engaged in exploring cross-racial friendships during [college], they may be even less likely to do so in the future.”³¹ However, one study found that Asian American students with the greatest racial and ethnic diversity in their intimate social network enjoyed a significantly higher sense of efficacy and competence than those with less racially and ethnically mixed networks.³² In another national study of students from ten universities, researchers found that Asian Americans who experienced positive interactions with students of other races and participated in campus activities designed to expose students to diverse groups had significantly higher pluralistic orientations, a trait that includes the ability to see an issue from multiple perspectives,

³⁰ *See infra.*

³¹ Yu-Wen Ying et al., *Asian American College Students as Model Minorities: An Examination of Their Overall Competence*, 7 *Cultural Diversity & Ethnic Minority Psychol.* 59, 69 (2001); *see also* Victor B. Saenz et al., *Factors Influencing Positive Interactions Across Race for African American, Asian American, Latino, and White College Students*, 48 *Research in Higher Educ.* 1, 27 (2007) (noting that intergroup anxiety of Asian American students is ameliorated by increased classroom opportunities for intensive dialogue with diverse peers).

³² Ying, *supra* note 31, at 69.

discuss controversial issues, and be open to having one's views challenged.³³

B. Race-conscious admissions programs lead to increased cross-racial interactions and understanding.

In addition to training future leaders, *Grutter* recognized the compelling need for universities to generally promote “cross-racial understanding,” “break down racial stereotypes,” and help students “better understand persons of different races.” 539 U.S. at 330. Social science research since *Grutter* has affirmed that race-conscious admissions policies have a positive effect on campus-wide diversity and, consequently, cross-racial interactions.³⁴ Enrollment of students of color in meaningful numbers improves “structural diversity” at an institution, a precondition for “interactional diversity” among its students.³⁵

Research also supports UT Austin’s educational judgment that racial diversity is especially important in the classroom, where meaningful interactions between diverse groups are more likely to enhance

³³ Engberg, *supra* note 27, at 434.

³⁴ For a more detailed discussion of these benefits on students in general, see the *amicus* brief filed by the American Educational Research Ass’n, et al.

³⁵ See Engberg, *supra* note 27, at 420; Meera E. Deo, *The Promise of Grutter: Diverse Interactions at the University of Michigan Law School*, 17 Mich. J. Race & L. 63, 94 (2011).

cross-racial understanding.³⁶ Asian American students share in these benefits. A 2007 longitudinal study of 4,757 freshmen at nine universities, including 686 Asian American students, found that “having increased classroom opportunities for intensive dialogue with diverse peers” is “a positive influence on the quality of cross-racial contact for Asian students.”³⁷ A post-*Grutter* study of the University of Michigan Law School also found that students, including Asian American students, “strongly believe[d] that increased diversity leads to improved learning in the classroom.”³⁸

C. Campus and classroom diversity is important to reduce stereotyping and isolation of minorities.

“[D]iminishing the force of . . . stereotypes is both a crucial part of [an educational institution’s] mission, and one that it cannot accomplish with only token numbers of minority students.” *Grutter*, 539 U.S. at 333. Post-*Grutter* social science research confirms that Asian American students are disadvantaged at institutions in which they are isolated from other racial groups. “[S]everal studies have found that [Asian American and other minority students] typically hold negative perceptions of their campus

³⁶ See Gurin, *supra* note 26, at 360.

³⁷ Saenz, *supra* note 31, at 27.

³⁸ Deo, *supra* note 35, at 97.

racial climates and that these perceptions are associated with lower retention and greater alienation among minority students.”³⁹

Lack of student diversity can result in strained race relations and an unwelcoming environment for minority students, including Asian American students.⁴⁰ Racial harassment, bias-motivated incidents, and hate crimes targeted at minority students,⁴¹ including Asian Americans,⁴² are common throughout

³⁹ Karen Kurotsuchi Inkelas, *Diversity's Missing Minority: Asian Pacific American Undergraduates' Attitudes Toward Affirmative Action*, 74 J. Higher Educ. 601, 628 (2003) (citations omitted).

⁴⁰ See Samuel D. Museus et al., *Racial Differences in the Effects of Campus Racial Climate on Degree Completion: A Structural Equation Model*, 32 Review of Higher Educ. 107, 127 (2008); see also Deo, *supra* note 35, at 79.

⁴¹ See, e.g., Oliver Libaw, *How Are Colleges Handling Hate Crimes?*, ABC News, May 11, 2012 (threatening letters sent to black students saying a black man's body would be found near campus); Liz Camuti, *CUPD Investigating Whether Reported Assault was Hate Crime*, Cornell Daily Sun, June 9, 2011 (Asian student was target of racial epithets and an assault by four men); Elaine Ejigu, *UC Hate Crimes: Where Are We Now?*, City on a Hill Press, Mar. 3, 2011 (UC San Diego students held a party that mocked Black History Month, leading to a series of racial harassment incidents, including the finding of a noose hanging from a building on campus); CNN Wire Staff, *California College's Student President Stabbed: Hate Crime Alleged*, CNN, Apr. 19, 2010 (student body president was called a number of racial slurs, then stabbed four times).

⁴² See, e.g., Associated Press, *Student Quits At U.C.L.A. Over Rant*, N.Y. Times, Mar. 19, 2011 (white student posted an Internet video of her tirade against “these hordes of Asian people that UCLA accepts into our school every single year”);

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college campuses. Studies show that colleges and universities that reach the highest levels of diversity see fewer hate crimes.⁴³

Asian Americans face a unique form of stereotyping: the “model minority” myth portrays Asian Americans as a uniformly successful minority group that has succeeded by dint of its own hard work, which can isolate and pit Asian Americans against other minority groups.⁴⁴ Although Petitioner’s *amici* acknowledge this inaccurate perception of Asian Americans, *see* AALF Br. at 29-31, they nonetheless perpetuate the stereotype by lumping all Asian Americans together as purported victims of race-conscious programs. This ignores the aforementioned examples where Asian Americans have been specifically included in such programs, overlooks demographic realities that help explain the progress made by some sub-groups, and obscures the continuing challenges faced

Nat’l Asian Pac. Am. Legal Consortium, *2000 Audit of Violence Against Asian Pacific Americans: Responding to Hate Crimes: A Special Focus on College Campuses* 22, 27 (2000) (finding that 28% of the 260 Asian American respondents at UC Berkeley had been subjected to racial harassment and describing incidents of hate crimes on campuses, including when 10-15 members of a predominantly white fraternity at UC Davis physically assaulted members of a Pan-Asian American fraternity).

⁴³ Rebecca L. Stotzer & Emily Hossellman, *Hate Crimes on Campus: Racial/Ethnic Diversity and Campus Safety*, 27 J. Interpersonal Violence 644 (2012).

⁴⁴ *See, e.g.,* Ying, *supra* note 31, at 60-61; *Model Minority Myth Revisited: An Interdisciplinary Approach to Demystifying Asian American Educational Experiences* 2 (Guofang Li & Lihshing Wang eds., 2008); Lee, *supra* note 10, at 135.

by other subgroups.⁴⁵ Such reductive depictions of Asian Americans are precisely why admissions programs designed to increase diversity are necessary – to combat stereotyping of Asian Americans or other groups.⁴⁶

Greater opportunity to interact with students of other races is associated with greater overall college satisfaction and preparedness for Asian American college students. Indeed, in a study of students at 28 selective colleges and universities, researchers studying the role of diversity in reducing cross-racial anxiety and increasing interpersonal connections found that Asian American students benefitted particularly from interracial interactions.⁴⁷ In another analysis, Asian American students who interacted more frequently with students of other races exhibited

⁴⁵ In particular, the model minority myth obscures the needs of the Asian American and Pacific Islander ethnic groups – such as the Vietnamese, Laotian, Hmong, Tongan, and Native Hawaiian populations – who tend to be more economically disadvantaged and have less access to educational resources. For a fuller discussion, see AALDEF Br. at Part II (explaining, for example, that unique immigration histories of Asian American and Pacific Islander subgroups help explain socioeconomic differences among them).

⁴⁶ See Gurin, *supra* note 26, at 360 (“Diversity enables students to perceive differences both within groups and between groups and is the primary reason why significant numbers of students of various groups are needed in the classroom.”).

⁴⁷ Nicholas A. Bowman, *The Conditional Effects of Interracial Interactions on College Student Outcomes*, J. of College Student Dev., available at <http://www.bgsu.edu/downloads/edhd/file116272.pdf> (forthcoming).

more positive attitudes toward African American and Latinos in their senior year of college, even when controlling for prior attitudes and experiences.⁴⁸ Conversely, African American and Latino students who interacted with students of different races also had more favorable attitudes toward Asian Americans as college seniors.⁴⁹

Undermining the efforts of universities to achieve critical masses of minority students will retrench racial stereotypes because of the detrimental effects of learning environments in which isolated minorities are viewed as tokens.⁵⁰ Asian Americans are harmed when they are viewed as tokens, and they are harmed when they view members of other groups as tokens, which is why Asian Americans benefit from the reduction of isolation from other racial groups. Indeed, in determining that race-conscious admissions were a necessary supplement to the Top Ten Percent Plan, UT Austin sought to address such harms, relying on student surveys reporting that “[m]inority students reported feeling isolated, and a majority of all students felt there was ‘insufficient minority

⁴⁸ Nicholas A. Bowman & Tiffany M. Griffin, *Secondary Transfer Effects of Interracial Contact: The Moderating Role of Social Status*, 18 *Cultural Diversity & Ethnic Minority Psychol.* 35, 38 (2012).

⁴⁹ *Id.*

⁵⁰ *See, e.g.*, Gurin, *supra* note 26, at 360 (“The worst consequence of the lack of diversity arises when a minority student is a token in a classroom.”).

representation' in classrooms for 'the full benefits of diversity to occur.'" See Pet. for Writ of Cert., App. A at 22a.

III. Contrary to the assertions of *amici* for Petitioner, Asian Americans benefit from UT Austin's holistic admissions program and suffer no harm.

Given how much Asian Americans stand to gain from holistic admissions programs, such as UT Austin's, designed to diversify their campuses and improve access to pathways to leadership, there is no basis to suggest that Asian Americans are harmed by those programs. Yet Petitioner's *amici* contend that "an admissions penalty on Asian Americans equivalent to hundreds of SAT points" is the latest chapter in a continuing legacy of discrimination against Asian Americans. AALF Br. at 2; see also 80-20 Br. at 6. Notably, *amici* repeatedly conflate the constitutionally permitted consideration of race in programs designed to include certain groups for a compelling purpose under *Grutter* with impermissible programs to exclude or otherwise take "negative action" against members of a racial group solely because of their race.⁵¹ The suggestion that all considerations of race

⁵¹ "Affirmative action," by its nature, considers race as a "plus factor" to improve access to underrepresented minorities. Affirmative action should not be confused with "negative action," which has been described in social science literature as *unfavorable* treatment based on race, such as the application of negative

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are uniformly invidious has no basis in the Court's jurisprudence. See *Grutter*, 539 U.S. at 334 (rejecting zero sum arguments that using race as a "plus factor" is "the functional equivalent of a quota"); *Bakke*, 438 U.S. at 317-18 (Powell, J.). Indeed, some of Petitioner's *amici* re-argue claims implicitly rejected by the Court in *Grutter*. Compare, e.g., Amicus Brief filed by AALF in *Grutter* at 8-20 (analogizing University of Michigan Law School's holistic admissions program to

group stereotypes, to reduce admissions of underrepresented minorities. "In functional terms, negative action against Asian Americans is in force if a university denies admission to an Asian American who would have been admitted had that person been White." Jerry Kang, *Negative Action Against Asian Americans: The Internal Instability of Dworkin's Defense of Affirmative Action*, 31 Harv. C.R.-C.L. L. Rev. 1, 3 (1996). And because whites outnumber African Americans and Latinos three-to-one in the applicant pool, "when an [Asian Pacific American] applicant . . . is denied admission because of negative action despite a strong transcript and say a 1510 or 1430 or 1360 on the SAT, it is exceedingly more likely that the student admitted instead was a White applicant with slightly lower academic credentials, not a Black or Latino applicant given an affirmative action plus factor." See William C. Kidder, *Negative Action Versus Affirmative Action: Asian Pacific Americans are Still Caught in the Crossfire*, 11 Mich. J. Race & L. 605, 615-16 (2006). Any suggestion that all race-conscious programs reward other minority groups by "penalizing" Asian Americans is based on a false equivalency that ignores this recognized distinction between "affirmative action" and "negative action" and, worse, incorrectly assumes that only "a finite number of minorities can be admitted" and that "spots for certain minorities must come at the expense of other minorities." Adrian Liu, *Affirmative Action & Negative Action: How Jian Li's Case Can Benefit Asian Americans*, 13 Mich. J. Race & L. 391, 421 (2008). For a more detailed discussion, see AALDEF Br. at Part I.C.1.

historical *exclusion* policies against Asian Americans) *with* AALF Br. in *Fisher* at 13-23 (similar).

These arguments represent an unapologetic attempt to roll back this Court's jurisprudence. *See, e.g.*, 80-20 Br. at 5. Yet the claim that UT Austin's race-conscious admissions program punishes Asian American students, *see, e.g.*, Pet. Br. at 7, assumes a causal relationship between an institution's use of race-conscious admission policies and a subsequent "test score gap" between students of different races in service of a purported quota. The data simply do not support this assumption.

A. Admissions data demonstrate that Asian American students were not harmed by UT Austin's holistic admissions program.

UT Austin uses SAT scores as one of several factors in its holistic admissions process. Other non-racial factors include grades, academic rank, demonstrated leadership qualities, extracurricular activities, awards and honors, work experience, service to the school or community, and special circumstances, such as socioeconomic status, family responsibilities, whether the applicant lives in a single-family home, and whether languages other than English are spoken at home. *See* Pet. for Writ of Cert., App. B at 133a-134a. Admission decisions are not made on the basis of test scores alone. The actual

admissions UT Austin made in its holistic review process indicate no discrimination.

Contrary to the arguments of Petitioner's *amici*, there is no evidence in the record of discrimination against Asian Americans. No overall shortfall exists between Asian American applications on the one hand, and admissions or enrollment under the holistic admissions program on the other hand, that would support a claim of discrimination against Asian Americans. *See* Supplemental Joint Appendix ("SJA") at 43a, 156a. Between 1996 and 2008, Asian American students consistently comprised 14-15% of all freshman applicants at UT Austin. *See id.* Asian American students comprised 14-18% of all freshmen admits, with the highest percentages in that range occurring *after* UT Austin began considering race in 2005 and allegedly began "punishing" Asian Americans. *Id.* During that same period, Asian American students comprised 15-20% of all enrolled freshmen. *Id.* Because admission and enrollment of Asian Americans did not drop after the introduction of UT Austin's race-conscious admissions program in 2005, there is no support for the claim that holistic admissions criteria in particular "disproportionately impact Asian Americans." 80-20 Br. at 13.

Nor is there differential treatment of Asian American students or evidence of a quota. The fact that admission and enrollment rates of Asian Americans, like those of other groups, can fluctuate by several percentage points over time, even after the introduction of UT Austin's race-conscious program,

contravenes any suggestion that the program operates as a rigid numerical quota. *See* SJA at 43a, 156a (demonstrating that percentages of applicants, admits, and enrollees for all groups fluctuate between 1996 and 2008); *see also* *Grutter*, 539 U.S. at 389-90 (Kennedy, J., dissenting (noting “narrow fluctuation band” of 0.3% over four years as suggestive of a quota)).

B. Test score differences do not show that Asian Americans are “penalized” by UT Austin’s holistic admissions programs.

Furthermore, the record demonstrates that any “test score gap” existed well before UT Austin began considering race as one of several factors in 2005, and also has existed in Top Ten Percent admissions, which does not consider race as a factor in admission decisions. *See, e.g.*, SJA at 49a-53a (showing differential test score averages between Asian American, white, Latino, and African American students from 1996 through 2005 in both Top Ten Percent and Non-Top Ten Percent admissions); *see also* AALDEF Br. at Part I.C.2.⁵² If holistic consideration of race required Asian Americans to earn higher test scores than other groups, one would expect this test score gap to be limited to the period after the implementation of the

⁵² *See also* William C. Kidder, *Misshaping the River: Proposition 209 and Lessons for Fisher Case 29-36* (2012), available at <http://ssrn.com/abstract=2123653>.

holistic admissions program and to be limited to admissions in which race was a consideration, the Non-Top Ten Percent admissions. No such limitations exist. *See id.*

This record is consistent with nationwide data, which indicates that Asian American *applicants* as a group generally have higher average SAT scores than applicants from other racial groups.⁵³ Any “test score gap” begins with the starting applicant pool, before any admission decision is made. While the structural forces contributing to differences in the applicant pool are complex, *see* Section III.C *infra*, it cannot be said that “the root cause” of any disparities lies in any subsequent admissions process. *See* 80-20 Br. at 10.

C. Test scores, in any event, are incomplete and inaccurate predictors of academic success.

The focus of Petitioner’s *amici* on a “test score gap” assumes that standardized test scores are race-neutral and the *sine qua non* of merit. Standardized tests like the SAT, however, are not designed to measure innate “mental capacity nor mastery of a specified curriculum.”⁵⁴ Further, SAT scores provide

⁵³ *See* The College Board, *2008 College-Bound Seniors State Profile Report – Texas*, Table 9 (2008), available at http://professionals.collegeboard.com/profdownload/Texas_CBS_08.pdf.

⁵⁴ *Reports Submitted on Behalf of the University of Michigan: The Compelling Need for Diversity in Higher Education*, 5 Mich. J. Race & L. 243, 253 (1999) (citing Expert Report of
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at best an incomplete measure of academic achievement and potential. It is therefore appropriate for UT Austin to utilize a variety of other admissions criteria, of which race is only one of many, in addition to SAT scores.

Studies show that scores on the SAT have low predictive powers beyond first-year college grades.⁵⁵ Some studies have found that SAT test scores' predictive value is limited even for first-year college grades. One study concluded that SAT scores explain less than 3% of the variance in first-year grades, once students' social backgrounds are taken into account.⁵⁶ Were test scores an accurate measure of merit, they would correspond with other measures of achievement. However, the correlation between SAT test scores and high-school grades, both at UT and nationwide, is low.⁵⁷ Students

Claude M. Steele, *Grutter v. Bollinger*, No. 97CV75928, 137 F. Supp. 2d 821 (E.D. Mich. 2001)).

⁵⁵ See Sigal Alon & Marta Tienda, *Diversity, Opportunity and the Shifting Meritocracy in Higher Education*, 72 Am. Soc. Rev. 487, 506 (2007); Marta Tienda & Sunny Xinchun Niu, *Flagships, Feeders, and the Texas Top 10% Law: A Test of the "Brain Drain" Hypothesis*, 77 J. Higher Educ. 712, 732 (2006).

⁵⁶ Jessie M. Rothstein, *College Performance Predictions and the SAT*, 121 J. Econometrics 297 (2004); see also Tienda, *supra* note 55; Alon, *supra* note 55.

⁵⁷ See Mark C. Long & Marta Tienda, *Changes in Texas Universities' Applicant Pools After the Hopwood Decision*, 39 Soc. Sci. Research 48, 55 Figure 1 (2010); Alon, *supra* note 55, at 490, 497 Table 3.

with high test scores but low class rank tend to underperform.⁵⁸

Because test scores can be increased significantly by participation in intensive and expensive test-preparation courses,⁵⁹ they are socioeconomically skewed in favor of wealthier students who have access to test preparation courses.⁶⁰ Social science research demonstrates that enduring gaps in scores on standardized tests, such as the SAT, reflect a combination of complex structural factors that break down along racial (and sometimes ethnic) lines, a fact that is even more apparent in the limited number of studies of standardized test performance providing disaggregated data on the diverse communities under the umbrella category of Asian American and Pacific Islander.⁶¹ African American, Latino, Native American,

⁵⁸ Alon, *supra* note 55. In fact, the impact of a one standard deviation change in high school GPA on the probability of college degree attainment and college GPA was 1.5 to 3 times as large as a one standard deviation change in test scores. See William T. Dickens & Thomas J. Kane, *Racial Test Score Differences as Evidence of Reverse Discrimination: Less than Meets the Eye*, 38 *Indus. Relations* 331, 340 n.11 (1999).

⁵⁹ Jay Rosner, *Disparate Outcomes by Design: University Admissions Tests*, 12 *Berkeley La Raza L.J.* 377, 383-84 (2001).

⁶⁰ See *id.*; Alon, *supra* note 55, at 490-91; see also, e.g., The Princeton Review, *SAT Test Preparation* (2012), available at <http://www.princetonreview.com/college/sat-test-preparation.aspx> (charging from \$1,000 to \$2,000 for an intensive SAT test preparation course and \$600 and up for a non-intensive course).

⁶¹ See, e.g., Valerie Ooka Pang et al., *Asian American and Pacific Islander Students: Equity and the Achievement Gap*, 40

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and certain Asian American ethnic groups are overrepresented among low-income students, and are significantly more likely to attend resource-poor schools and less likely to hold a high-school diploma or graduate from college.⁶² They are also more likely to be unfairly assigned to lower academic tracks throughout their elementary and high-school years, to be taught by less-skilled or less-experienced teachers, and to attend schools in distressed neighborhoods or in suburban areas where they are socially isolated, all factors which contribute to poor test-readiness and lower performance on standardized tests.⁶³ In addition, studies have consistently demonstrated that the standardized test performance of highly motivated and qualified minority students is artificially depressed because of test-taking pressures related to internalized fears based on false and stereotyped

Educ. Researcher 378, 382 Table 2 (2011) (documenting that seventh graders from the following Asian American and Pacific Islander ethnic groups scored lower than white students in both reading and math on California's CAT-6 test: Lao, Cambodian, Native Hawaiian, Guamanian, Samoan, Other Pacific Islander, and Filipino).

⁶² See Barbara Schneider et al., *Barriers to Educational Opportunities for Hispanics in the United States*, in *Hispanics and the Future of America* 179 (Marta Tienda & Faith Mitchell eds., 2006); Robert T. Teranishi, *Asians in the Ivory Tower: Dilemmas of Racial Inequality in American Higher Education* 82-83 (2010).

⁶³ See *Reports Submitted on Behalf of Univ. of Mich.*, *supra* note 54, at 247-48.

perceptions that they are less intellectually capable, an influence known as “stereotype threat.”⁶⁴

Such structural and sociological barriers, while they may result in differences in test scores between racial groups, do not reflect differences in innate abilities or intelligence between racial groups.⁶⁵ Yet those artificial differences are perpetuated over time, because “test-norming” procedures are designed to produce the *same* statistical outcomes as prior results.⁶⁶

Consideration of criteria in addition to SAT scores may be necessary in an admissions process to ensure a “fair appraisal of each individual’s academic promise in the light of some cultural bias or testing procedures.” *Bakke*, 438 U.S. at 306 n.43 (Powell, J.). Indeed, educational institutions have a compelling interest in identifying qualified minority candidates

⁶⁴ For a general discussion of “stereotype threat,” see Claude M. Steele, *Whistling Vivaldi: And Other Clues How Stereotypes Affect Us* (2010).

⁶⁵ See, e.g., William C. Kidder, *Does the LSAT Mirror or Magnify Racial and Ethnic Differences in Educational Attainment?: A Study of Equally Achieving “Elite” College Students*, 89 Cal. L. Rev. 1055, 1076-79 (2001); Tran, *supra* note 6, at 109.

⁶⁶ See Maria Veronica Santelices & Mark Wilson, *Unfair Treatment?: The Case of Freedle, the SAT, and the Standardization Approach to Differential Item Functioning*, 80 Harv. Educ. Rev. 106 (2010); Martin Shapiro, *A Psychometric Model for Preserving Discrimination*, 12 Berkeley La Raza L.J. 387 (2001) (Expert Report, *Grutter v. Bollinger*, No. 97CV75928, 137 F. Supp. 2d 821 (E.D. Mich. 2001)).

who are “likely to have experiences of particular importance” to their academic missions but who may be “less likely to be admitted in meaningful numbers on criteria that ignore those experiences.” *Grutter*, 539 U.S. at 338. Recognizing that test scores are an imperfect measure that often results in generally lower scores correlated to race, a university may appropriately consider race in a holistic review to conduct a fair appraisal of each individual and view these test scores in context. Social science research and this Court’s own jurisprudence, therefore, support UT Austin’s exercise of its First Amendment academic freedom and “complex educational judgments” to rely on admissions criteria in addition to the SAT in its individualized review process for students not admitted through the Top Ten Percent Plan.⁶⁷ See *Grutter*, 539 U.S. at 328-29.

⁶⁷ As recognized by the Fifth Circuit below, students admitted through UT Austin’s holistic admissions program, regardless of race, have tended to have “even higher SAT scores than those granted automatic admission under the Top Ten Percent Law.” Pet. for Writ of Cert., App. A at 59a. Given that SAT scores may receive even more emphasis under the highly competitive holistic admissions program, any biases associated with SAT scores will be more pronounced. Thus, it is important that the holistic admissions program be permitted to situate those SAT scores in the proper context.

CONCLUSION

Amici submitting this brief have a long history of representing the interests of a wide swath of the Asian American community on a variety of issues. That breadth of experience leads to the inescapable conclusion that, despite the progress made by some Asian Americans, there continue to be challenges to equal access and opportunity for all. *Amici* stand by the promise of integrated and equal public education set out in *Brown v. Board of Education*. Race-conscious programs have played an important role in desegregating and diversifying colleges and universities, and *amici* support race-conscious programs for Asian Americans and communities of color, even when Asian Americans are not specifically included.

Therefore, *amici* affirm the importance of race-conscious policies, such as UT Austin's holistic admissions program, that are designed to open doors to underrepresented groups and improve the diversity and quality of experience for all who pass through those doors. And *amici* reject any attempt to use Asian Americans as a wedge group to curtail opportunities for racial minorities, given that all such groups share a history of discrimination and a legacy of working together to overcome those barriers to equality. For the foregoing reasons, *amici* support a renewal of the Court's commitment in *Grutter v.*

Bollinger and an affirmation of the judgment of the Fifth Circuit in favor of Respondents.

Respectfully submitted,

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APPENDIX

List of *Amici Curiae*

American Citizens for Justice, Inc./Asian American Center for Justice (“ACJ”) is devoted to civil rights education and advocacy on behalf of Asian American communities and all people of color in Michigan. ACJ believes that race or ethnicity can be used as a factor in admissions that remediates historical discrimination, but condemns the use of race or ethnicity for any institution’s negative action that disadvantages Asian Americans and Pacific Islanders.

Asian American Bar Association of the Greater Bay Area (“AABA”). From its inception in 1976, AABA, one of the largest minority bar associations in California, has been actively involved in civil rights issues regarding minority communities, diversity, and equal protection. AABA filed an amicus brief in the *Bakke* affirmative action case in the United States Supreme Court in 1977.

Asian American Business Roundtable (“AABR”) has fought all forms of discrimination, overt or disguised, whether in employment, education, and other areas of pursuit where race, gender, religion or national origin plays a role.

Asian-American Resource Center (“AARC”) is a non-profit community-based organization and direct service agency in San Bernardino and Riverside Counties, California, that provides services and programs to improve overall health and educational

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well-being by providing informational and developmental programs to Asian-Americans and other ethnic groups who are low-income, isolated, vulnerable, and underserved.

Asian Law Alliance (“ALA”), founded in 1977, is a non-profit public interest legal organization with the mission of providing equal access to the justice system to the Asian/Pacific Islander and low income communities in Santa Clara County, California. ALA has provided community education and legal services on affirmative action and discrimination issues for over 35 years.

Asian Pacific American Bar Association of Los Angeles County (“APABA”) is an organization comprised of attorneys, judges, and law students that serves as a voice for issues of concern to the Asian Pacific American community and other underrepresented groups in the legal profession. APABA provides legal education and assistance to underserved communities and sponsors programs that promote professional development, community education, and mentorship.

Asian Pacific American Labor Alliance, AFL-CIO (“APALA”), founded in 1992 with the strong support of the AFL-CIO, is the first national organization of Asian Pacific American (APA) union members. With over 600,000 APA union members, APALA has 11 chapters and pre-chapters and a national office in Washington, D.C. APALA is committed to organizing the unorganized, mobilizing the Asian

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American and Pacific Islander community for political action, advocating for workers' rights, civil rights, and immigrant rights, and building alliances between labor and community.

Asian Pacific American Labor Alliance ("APALA") – Los Angeles Chapter works with student and community groups in support of the Dream Act and related outreach initiatives, through media and coalition efforts to educate and mobilize for civic participation to empower API workers and communities.

Asian Pacific American Legal Resource Center ("APALRC"). APALRC's mission is to advocate for equal justice for Asian immigrants with limited English proficiency in Metro-DC through providing linguistically accessible and culturally appropriate legal services that enable these individuals to defend and protect their rights and seek full participation in American society.

Asian Pacific American Women Lawyers Alliance ("APAWLA") is a membership organization comprised of attorneys, judges, and law students throughout California. Since its inception in 1993, APAWLA has been devoted to the inclusion, advancement, and empowerment of Asian Pacific American women by advocating, mentoring, and developing leadership within the legal profession and the larger community.

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Asian Pacific Americans for Progress (“APAP”) is the national network of progressive Asian Americans, Pacific Islanders, and allies. Our programs include town halls, activist trainings, workshops, documentary films, and Dem Sums.

Asian & Pacific Islander American Health Forum (“APIAHF”) has influenced policy, mobilized communities, and strengthened programs and organizations to improve the health of Asian Americans, Native Hawaiians, and Pacific Islanders, since 1986. APIAHF’s national policy work focuses on expanding access to health care, improving the quality of health care through cultural competency and language access, increasing research, and improving the collection, reporting, and analysis of data.

Asian Pacific Islander Equality – Los Angeles (“API Equality – LA”) is a coalition of organizations and individuals who are committed to working in the Asian/Pacific Islander community in the greater Los Angeles area for equal marriage rights and the recognition and fair treatment of LGBT families through community education and advocacy. API Equality-LA advocates for racial justice and supports policies that promote a diverse community.

Asian Pacific Islander Legal Outreach (“API Legal Outreach”) is a community-based, social justice organization serving the Asian and Pacific Islander (API) communities of the Greater Bay Area. Since its founding in 1975, API Legal Outreach has advocated for the rights of API youth and immigrants

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and their equal access to education. API Legal Outreach's work focuses on providing direct legal representation, community outreach and education, and working with the community to create comprehensive, holistic services.

Asian Pacific Policy & Planning Council ("A3PCON") is an association of forty nonprofit, community-based organizations in Los Angeles County, established in 1976. A3PCON serves as a voice, convener, and clearinghouse for Asian American and Pacific Islander communities, with an emphasis on the needs and rights of low income, immigrants, refugees and other disadvantaged populations, including the multiple barriers to accessing higher education faced by Pacific Islanders.

Asian Services in Action, Inc. ("ASIA"). Founded in 1995, the mission of ASIA is to empower and advocate for Asian Americans and Pacific Islanders, and to provide AAPIs access to quality, linguistically and culturally appropriate information and services. Stemming from the Midwest AAPI experience, ASIA believes Asian Americans continue to face barriers, discrimination, and other inequities.

Association of Asian Pacific Community Health Organizations ("AAPCHO") is a national association of community health organizations serving medically underserved Asian Americans, Native Hawaiians, and other Pacific Islanders. AAPCHO is dedicated to promoting advocacy, collaboration, leadership and access to improve the health status of

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these groups. As a unified voice of its membership, AAPCHO shares its collective knowledge and experiences with policy makers at the national, state, and local levels.

Austin Asian American Bar Association (“AAABA”) is the only attorney bar organization devoted to and serving the APA community in the Austin, Texas area. The mission of the AAABA is to support and promote the social, professional, and legal interests of Asian American attorneys in Central Texas. AAABA seeks to accomplish its mission through regular forums, meetings, community service events, seminars, professional development, and social activities with Central Texas attorneys and other bar groups throughout Texas.

The Cambodian Family is a community based nonprofit organization that was founded in 1980 to provide refugee and immigrant families the opportunities to develop their knowledge, skills, and desire for creating health and well-being in their lives. The Cambodian Family promotes equal access to quality health care, civic engagement through leadership training, citizenship workshops and naturalization services, and voter registration and participation.

Council of Korean Americans (“CKA”) is a national, nonpartisan, nonprofit organization of Korean American leaders. Its mission is to assert a strong, clear voice on issues of critical importance to Korean Americans and to support their full participation in all aspects of American life. CKA believes that race-conscious admissions policies are critical to achieving

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a future in which all Americans, regardless of their origin, are well-equipped to serve their country, lead their communities, and work proactively to create a better world.

East Coast Asian American Student Union (“ECAASU”) is a non-profit organization that serves to inspire, educate, and empower those interested in Asian American issues. ECAASU was originally founded after the *Bakke* decision in 1978 by the Supreme Court, as Asian American students recognized the need for an advocacy network capable of fostering mutual support and solidarity. ECAASU works to increase social equality for all minorities and to ensure equal opportunity for these communities.

Empowering Pacific Islander Communities (“EPIC”), a non-profit organization based in Los Angeles, California, strives for the empowerment of Pacific Islander communities. The persistence of institutional discrimination in higher education presents a significant barrier to Native Hawaiians and Pacific Islanders. EPIC’s mission is to mobilize Pacific Islander communities to foster culturally relevant opportunities for achieving social justice through advocacy, research and development.

Filipino Advocates for Justice (“FAJ”) since 1973 has sought to build a strong and empowered Filipino community by organizing constituents, developing leaders, providing services, and advocating for policies that promote social and economic justice and equity. FAJ’s vision is for a Filipino community with

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the power to advance social and economic justice and to realize democratic and human rights for everyone.

Filipino American Service Group, Inc. (“FASGI”) is a non-profit, community-based human service agency founded in 1981 and located in the heart of Filipinotown, Los Angeles, California. FASGI is guided by its value statement of: Service – providing community-based structure that is responsive to constituents; Sensitivity – ensuring our services are consistent with community needs; and Empowerment – bringing the influence of the community to positively impact quality of life. FASGI advocates for the needs of the low-income Filipino American immigrants and others.

Filipino Bar Association of Northern California (“FBANC”). FBANC’s mission is to guard against injustices targeting the Filipino community by supporting, educating, and empowering its members, and providing free legal clinics, scholarships, and other events of interest to the community at large.

Japanese American Bar Association (“JABA”) was founded over 30 years ago in Los Angeles, California. Over the years, JABA has provided a special forum for members of the legal profession with interests and ties to the Japanese American community to discuss issues, network, and serve their community.

Kizuna’s mission is to build a vibrant Nikkei community by creating an empowering culture and environment, igniting the passion of young Japanese Americans, and building collective identity through

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multi-generational and multi-ethnic collaborations. Kizuna, headquartered in Los Angeles, California, is keenly aware that the Japanese American and Asian American community has greatly benefited from race-conscious university admissions programs and that many Native Hawaiian, Pacific Islander, and Southeast Asian students continue to face barriers and unequal access to higher education.

Korean American Bar Association of Southern California ("KABA"), founded in 1981, is an association of attorneys and law students that serves the Korean American community and promotes the interests of Korean-American attorneys throughout Southern California. KABA assists the Korean-American community in gaining access to the legal system through such services as monthly pro bono legal clinics, publicizes issues important to the Korean-American community at large, promotes the advancement of Korean attorneys in the judiciary and the political arena, assists law students through the funding of scholarships and career panels, and promotes networking among Korean-American attorneys and law students.

Korean American Coalition - Los Angeles ("KAC") is a nonprofit, non-partisan organization established in 1983 to promote the civil and civic rights interests of Korean Americans, increasing civic and legislative awareness and the general social consciousness of the Korean American community.

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KAC endeavors to achieve these goals through education, community organizing, leadership development, and coalition-building with diverse communities.

Korean Resource Center ("KRC"), founded in 1983 in Los Angeles, California, empowers the Korean American, low-income, immigrant and people of color communities through social services, education, culture, advocacy, and grassroots organizing. KRC is guided by the principles Live Rightly, Know Our Roots, Empower Ourselves, and Live in Harmony. KRC has organized and successfully advocated on behalf of immigrant students and their families to promote access to education.

Koreatown Immigrant Workers Alliance ("KIWA") is a multiracial worker center, founded in 1992, dedicated to empowering low-wage workers and their families to collectively shape the conditions of their jobs, homes, neighborhoods, and cities. KIWA combines organizing, activism, education, services, and policy advocacy, and engages thousands of individuals and families in Koreatown and throughout Los Angeles County. KIWA's interest in this case is rooted in its two decades of work to overcome racial and other forms of bias and structural inequity.

Koreatown Youth and Community Center ("KYCC"). Founded in 1975, KYCC's mission is to serve the evolving needs of the Korean American population in the greater Los Angeles area as well as the multi-ethnic Koreatown community. KYCC's programs and services are directed toward recently

immigrated, economically disadvantaged youth and families, and promote community socioeconomic empowerment.

K.W. Lee Center for Leadership was founded in 2003, and is a nonprofit organization dedicated to providing youth with the tools and opportunities necessary to become future leaders. Based in the Koreatown area of Los Angeles, the Center offers youth leadership training and educational programs that encourage community organizing. The mission of the Center is to teach and train youth to take proactive steps towards improving and enriching the quality of life in their community. The Center advocates for equal access to educational opportunities for all youth, especially the Asian Pacific American community.

Laotian American National Alliance, Inc. ("LANA"), a 501(c)(3), is the oldest and only national advocacy organization in the United States dedicated to advancing the social and economic well-being of Laotian Americans in the United States through civic participation and public policy advocacy. LANA represents the interests of Southeast Asian American students and stands with the greater AAPI community to support affirmative action in higher education to ensure access and equal opportunity for all students of color.

Leadership Education for Asian Pacifics, Inc. ("LEAP") is a national organization founded in 1982 with a mission to achieve full participation and

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equality for Asians and Pacific Islanders through leadership, empowerment, and policy. With original programs in leadership training, public policy research, and community education, LEAP advocates for diversity and inclusion in all sectors and segments of society.

National Asian Pacific American Law Student Association (“NAPALSA”) represents the interests of Asian Pacific American law students and provides advocacy, support, and career development opportunities for its members throughout the United States. Established in 1981, NAPALSA links affiliated Asian Pacific American law student organizations and law students across the country, and promotes their interests. NAPALSA also serves as an advocate and representative for all Asian Pacific Americans.

National Asian Pacific American Women’s Forum (“NAPAWF”) is a grassroots organization dedicated to forging a progressive movement for social and economic justice and the political empowerment of Asian and Pacific American women and girls. NAPAWF believes that affirmative action programs are necessary to address the myriad educational and economic obstacles facing APA women and girls.

National Coalition for Asian Pacific American Community Development (“National CAPACD”) is an advocacy organization dedicated to addressing the community development needs of lower income Asian Americans, Pacific Islanders, Native Hawaiians,

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refugees, and immigrants. National CAPACD implements programs that address the disproportionate impact of the foreclosure crisis and economic downturn on low-income families and communities of color.

National Council of Asian Pacific Islander Physicians (“NCAPIP”) is a national policy organization that represents physicians committed to the advancement of the health and well-being of Asian American, Native Hawaiian, and Pacific Islander (“AANHPI”) patients. Within AANHPI communities many subgroups continue to be under-represented and NCAPIP aims to expand efforts to develop the health professions pipeline for these subgroups.

National Federation of Filipino American Associations (“NaFFAA”) is a national, nonprofit, non-partisan civil rights organization dedicated to promoting the interests and betterment of Filipinos and Filipino Americans in the United States. Founded in 1997, NaFFAA represents over 300 Filipino American community organizations and institutions. NaFFAA works in coalition with other civil rights organizations to ensure that Asian Pacific Americans enjoy equal opportunities in education, employment, and industry.

National Queer Asian Pacific Islander Alliance (“NQAPIA”) is a federation of Asian American, South Asian, Southeast Asian, and Pacific Islander lesbian, gay, bisexual, and transgender organizations around the country. The communities it serves know the sting of discrimination and exclusion from public

institutions based on both racism and homophobia, and we strongly support measures that increase access for marginalized communities.

Nikkei For Civil Rights & Redress (“NCRR”) is an all-volunteer, grassroots, community organization based in Los Angeles and formed in 1980 to seek individual monetary reparations for Japanese Americans who were forcibly removed from the West Coast and incarcerated in America’s concentration camps during World War II. Dedicated to the principles of educating the broadest community about the issues surrounding this unconstitutional incarceration, NCRR supports other ethnic and religious communities that have been similarly targeted. NCRR strongly supports maintaining racially diverse, multi-cultural college campuses that reflect the diversity of the people that make up this country.

OCA, founded as Organization of Chinese Americans in 1973, is a national pan-Asian social justice organization dedicated to advancing the political, social, and economic well-being of all Asian Pacific Americans. OCA supports race-conscious programs in higher education as well as in the work place. Moreover, diversity – a critical societal and institutional value – promotes our individual as well as collective competitiveness with the rest of the world, within and beyond the bounds of academia.

Orange County Asian and Pacific Islander Community Alliance, Inc. (“OCAPICA”) was established in 1997 with the mission to build a

healthier and stronger community by enhancing the well-being of Asians and Pacific Islanders through inclusive partnerships in the areas of service, education, advocacy, organizing, and research. OCAPICA is a social justice organization focused upon eliminating disparities and improving equity for underserved communities.

Philippine American Bar Association (“PABA”) was formed to address legal issues confronting the Filipino American community as well as to meet the professional concerns of Filipino American lawyers in Southern California. PABA sponsors community legal clinics focusing on various areas of the law and provides pro bono legal services. In addition, PABA provides continuing legal education seminars and professional development opportunities for its members and assists Filipino American law students through its scholarship fund and mentorship program.

Pilipino Workers’ Center (“PWC”) was formed in 1997, to promote safe working conditions, living wages, decent living conditions, access to quality healthcare and basic human dignity. PWC provides services and resources that help meet the immediate needs of Pilipino workers and their families while organizing for long-term change. PWC advocates in the areas of employment, immigration, healthcare, housing and youth empowerment.

Search to Involve Pilipino Americans (“SIPA”) provides health and human services as well as community economic development and arts/cultural programs to the diverse, multi-ethnic youth and families residing in the Filipinotown area as well as Filipino Americans all over Los Angeles County. SIPA advocates on behalf of Filipino Americans and those impacted by policies and legislation that negatively affect recent immigrants and all diverse communities.

Self-Help for the Elderly, established in 1966, is committed to affirmative action, diversity and anti-discrimination programs both in education and other sectors – including employment and public contracting – as a means to ensure a more just and equitable society.

South Asian Americans Leading Together (“SAALT”) is a national non-profit organization whose mission is to elevate the voices and perspectives of South Asian individuals and organizations to build a more just and inclusive society in the United States. SAALT is committed to addressing discrimination and disparities that have affected, both historically and currently, the South Asian community and other communities of color.

South Asian Bar Association of Northern California (“SABA-NC”), founded in 1993, provides a voice to South Asian lawyers and law students and seeks to ensure that they are provided with an avenue to develop professionally. SABA-NC also seeks to protect the rights of South Asians. SABA-NC’s interest

is to ensure that our nation's schools have a diverse student body which results in a diverse workforce benefiting all members of our communities.

South Asian Bar Association of Southern California ("SABA-SC") is a group of over 600 attorneys in Southern California dedicated to the advancement and development of South Asian law students and attorneys and the South Asian community at large. SABA-SC strives to educate its community about relevant legal issues, expand and enhance business and professional opportunities for South Asians, increase the participation of South Asians in civic affairs and government, facilitate the exchange of ideas and information, and foster goodwill, fellowship and unity among its community.

South Asian Network ("SAN") is a grassroots, community based organization dedicated to advancing the health, empowerment and solidarity of persons of South Asian origin in Southern California. SAN's overall goal is to inform and empower South Asian communities by acting as an agent of change in eliminating biases, discrimination and injustices targeted against persons of South Asian origin and by providing linkages amongst communities through shared experiences. SAN strongly supports open pathways to higher education for undocumented youth because access to education is a human right that should be accorded to all individuals, regardless of immigration status.

Southeast Asian Community Alliance (“SEACA”), created in 2002 in response to the lack of resources for Southeast Asians in Los Angeles, works with multi-ethnic teens in Echo Park, Chinatown, and Lincoln Heights. Our mission is to build an empowered Southeast Asian community through leadership development, education, advocacy, and community organizing.

Taiwanese American Citizens League (“TACL”). Founded in 1985, Taiwanese American Citizens League is a 501(c)(3) non-profit, non-partisan organization run completely by volunteers. TACL's mission is to enhance the quality of life for Taiwanese Americans. Our variety of programs for youth and young professionals are devoted to enhancing leadership, identity, networking, and citizenship among Taiwanese Americans. We also strive to build partnerships with the greater Asian Pacific Islander American communities.

Thai Community Development Center was founded in 1994 to address the multifaceted needs of Thai and other disadvantaged individuals. Its mission is to advance the social and economic well-being of low and moderate income individuals in the greater Los Angeles area through advocacy for human rights, affordable housing, access to healthcare, promotion of small businesses, neighborhood empowerment, and social enterprise.

TOFA (To’utupu’o e ‘Otu Felenite Association), Inc. is a non-profit organization founded in 2000

whose mission is to preserve and enhance the overall health and wellness of the Pacific Islander Community in the Greater Sacramento, California area by providing resources that support and promote higher education, community leadership opportunities, civil rights awareness, and cultural arts.

UC Berkeley, Asian American Studies Program of the Ethnic Studies Department. Founded in 1969, the members of the Asian American Studies program and the Ethnic Studies Department at University of California, Berkeley have been dedicated to social justice and racial equality, particularly in education.

UC Berkeley School of Law, Asian American Law Journal (“AALJ”) is one of two law journals in the United States focusing on Asian American communities. AALJ sets a scholarly foundation for exploring the unique legal concerns of Asian Pacific Americans and seeks to open the dialogue between those who study law and those who are affected by it. In pursuit of these goals, AALJ strives to provide a forum for the many voices and opinions of the Asian Pacific American community – particularly those who, because of gender, class, immigration status or sexual orientation, may have less of a platform to do so.

UC Berkeley School of Law, Asian Pacific American Law Student Association (“APALSA”), established in the 1970s, is a political, community service, academic, professional and social law student organization dedicated to serving the Asian and

Pacific Islander American community at Berkeley Law and the APA community at large. APALSA's goal is to promote a greater awareness of the diverse culture, rich history, and current struggle of Asian Pacific Americans.

UC Berkeley School of Law, Pilipino Association of Law Students' purpose is to unite Pilipino students at Berkeley Law so that we can support one another as we go through these challenging and exciting years. We also hope to help each other inform our experience with an understanding and/or remembering of our heritage.

UC Hastings College of the Law, Asian/Pacific American Law Students Association ("APALSA") informs members as well as the general Hastings community about the legal needs and issues confronting Asian/Pacific Americans and other historically disadvantaged communities.

UC Irvine, Asian Pacific Student Association ("APSA") is a progressive network of constituent organizations that empower the Asian American and Pacific Islander community at the University of California, Irvine. Through a commitment to education, advocacy, community outreach, and active political participation, APSA promotes diversity throughout the community at large.

UCLA, Asian American Studies Center ("UCLA AASC"), founded in 1969, is a leading national research center on Asian Americans and Pacific Islanders. Its mission includes multidisciplinary

interpretation and analysis of AAPI historical and contemporary issues. The UCLA AASC has produced over 100 articles, reports, and books examining AAPI topics such as admissions, educational attainment, and access to higher education.

UCLA, Samahang Pilipino. Samahang Pilipino is a progressive student organization that seeks to meet the needs of the Pilipin@ community on UCLA's campus and in the Los Angeles community. As an organization, we believe that the needs of the Pilipin@ community are met with affirmative action programs and the inclusion of race in admissions and in the learning environment on college campus.

UCLA, Vietnamese Student Union ("VSU"), established in 1977, is the official voice of all Vietnamese students at UCLA through its advocacy for the cultural, educational, political, and social welfare of the Vietnamese community at large. With this foundation, VSU seeks to promote cultural awareness in order to bridge the gap between generations that have been influenced by their Southeast Asian experiences.

UCLA School of Law, Asian Pacific Islander Law Students Association ("APILSA") is a Pan-Asian and multi-ethnic student-run organization at the UCLA School of Law dedicated to promoting the study and practice of law by Asian and Pacific Islander students in order to address the legal and political needs of these communities. APILSA was founded in 1969 to advance the need for greater Asian

and Pacific Islander representation in the legal system.

UCLA School of Law, South Asian Law Students Association (“SALSA”) represents the South Asian law students on the campus of the University of California, Los Angeles. In solidarity with other minority communities, we support affirmative action at University of Texas to promote diversity in higher education.

UC San Diego, Kaibigang Pilipino (“KP”). KP is a non-profit student organization at the University of California at San Diego that seeks to educate the UCSD and San Diego communities about the many aspects of Pilipin@ culture, as well as to preserve and promote positive images of Pilipin@s. As a part of the Student Affirmative Action Committee (“SAAC”) at UC San Diego, KP works with our allies to fight for education equality and other issues concerning underrepresented communities.

United Cambodian Community (“UCC”) is a nonprofit organization founded in 1977 to serve Cambodian Americans and other residents of the greater Long Beach area. UCC’s mission is to assist the refugee and immigrant population in making adjustments and to help bridge the gap between cultures. UCC has led a coalition of Cambodian American groups to work with Cambodian residents to address public policy issues affecting the health of the community.

University of Illinois at Chicago, Asian American Studies Program (“ASAM Program at UIC”) promotes engaged scholarship and research that advances social justice and equity for Asian American and other minority communities. Located on one of the most diverse campuses in the nation, ASAM Program at UIC is committed to providing access to higher education for all students, especially those who are the least privileged and have historically been excluded.

University of Southern California, Asian Pacific American Law Students Association (“APALSA”). APALSA is dedicated to promoting the interests of Asian Pacific Americans at the University of Southern California Law School and in the greater legal community. While primarily representing student interests on campus, APALSA advocates and supports greater equality and opportunity in the legal community, particularly equality in education and employment for Asian Americans.

University of Southern California, Asian Pacific American Student Services (“APASS”). APASS has a two-fold mission: to facilitate Asian Pacific American participation, dialogue, community-building, and empowerment, while at the same time, to serve as a source of cross-cultural educational programming for the entire University of Southern California campus. APASS programs include orientation, leadership development, service-learning and community immersion, career and peer mentoring,

cross-cultural and educational programs, academic collaborations, and individual and collective advocacy.

Yale University, Asian American Cultural Center ("AACC") hosts programs that promote Asian American culture and explore the social and political experiences of Asian Americans and Asians living in the U.S. The AACC encourages the student community to explore issues of identity, leadership and community development.

Yale University, Asian American Students Alliance ("AASA"). Founded in 1969, AASA was the first Asian American undergraduate student organization at Yale. It serves to act as the political voice for the Asian Americans on campus and the greater community and facilitate pan-Asian American unity.
