

No. 02-241

IN THE
Supreme Court of the United States

BARBARA GRUTTER,

Petitioner,

v.

LEE BOLLINGER, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

**BRIEF OF 13,922 CURRENT LAW STUDENTS AT
ACCREDITED AMERICAN LAW SCHOOLS AS
AMICI CURIAE IN SUPPORT OF RESPONDENTS**

JULIE R. O'SULLIVAN

Counsel of Record

PETER J. RUBIN

GEORGETOWN UNIVERSITY LAW CENTER

600 New Jersey Avenue, N.W.

Washington, DC 20001

(202) 662-9394

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	1
ARGUMENT	2
PROMOTING DIVERSITY IN HIGHER EDUCATION IS A COMPELLING GOVERNMENTAL INTEREST	
I. Justice Powell's Opinion in <i>Bakke</i>, Holding that Diversity is a Compelling Governmental Interest, is Controlling and Should be Followed....	2
II. A Diverse Student Body Imparts Invaluable Educational and Social Benefits To Law Students	3
A. Diversity Contributes to a Wide, Robust Exchange of Ideas, Essential to the Discovery of Truth and to the Critical Debate Necessary to Legal Education	3
B. Diversity is Essential to Fostering Speculation, Experimentation and Creation in Law School	5
C. Legal Education is Severely Diminished in Isolation from the Individuals and Institutions With Which the Law Interacts....	6
CONCLUSION.....	8

TABLE OF AUTHORITIES

CASES	Page
<i>Keyishian v. Bd. of Regents</i> , 385 U.S. 589 (1967).....	7
<i>Marks v. United States</i> , 430 U.S. 188 (1977).....	2
<i>Regents of the University of California v. Bakke</i> , 438 U.S. 265 (1978).....	2, 4, 5, 7
<i>Sweatt v. Painter</i> , 339 U.S. 629 (1950).....	2, 6
<i>United States v. Associated Press</i> , 52 F. Supp. 362 (S.D.N.Y. 1943).....	4
<i>Virginia v. Black</i> , No. 01-1107	4
<i>Wygant v. Jackson Bd. of Educ.</i> , 476 U.S. 267 (1986).....	2

OTHER SOURCES

Frank Hobbs & Nicole Stoops, Demographic Trends in the 20 th Century (U.S. Census Bureau, Census 2000 Special Reports, U.S. Government Printing Office 2002).....	7
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INTEREST OF *AMICI CURIAE*

A group of 13,922 current law students at ABA-accredited American law schools submits this brief as *amici curiae* in support of Respondents Lee Bollinger, et al., urging the Court to affirm the Sixth Circuit's judgment that the promotion of diversity in higher education is a compelling governmental interest and that the consideration of race as one factor among many in admissions determinations is a permissible means of furthering diversity.¹ As current law students at accredited law schools across the country, *amici* are uniquely positioned to comment on the benefits accrued from diversity in legal education and will be uniquely affected by this decision of the Court. *Amici* believe that a racially diverse student body provides invaluable educational benefits.

Amici organized for the sole purpose of expressing to the Court the educational benefits derived from learning among and from students of varied ethnic and racial backgrounds. Listed among the signatories are White, African-American, Latino, Asian-Pacific-Islander, Native American, and Arab-American law students, men and women, from 143 of the 188 ABA-accredited law schools in this country.²

SUMMARY OF ARGUMENT

The Sixth Circuit was correct in holding that the promotion of diversity in higher education is a compelling

¹ A complete list of *amici*, organized by law school attended, is included as Appendix A at 1a. This brief is submitted with the consent of the parties, who have filed with the Clerk of the Court blanket consents to the submission of *amicus curiae* briefs. Pursuant to Rule 37.6, counsel represent that this brief was not authored in whole or in part by counsel for any party. This brief was prepared and printed with financial assistance from the Student Bar Association and a non-tuition-based fund of the Georgetown University Law Center.

² A description of the method by which the names of *amici curiae* were collected is included as Appendix B at 203a.

governmental interest and that the consideration of race as one factor among many in admissions determinations is a permissible means of furthering diversity. Diversity imparts invaluable educational and social benefits to law students in several ways. First, a diverse student body exposes all law students to a robust exchange of ideas. Second, diversity encourages speculation, experimentation, and creation in law school. Third, a diverse student body insures that law students are not “isolate[ed] from the individuals and institutions with which the law interacts.” *Sweatt v. Painter*, 339 U.S. 629, 634 (1950).

ARGUMENT

PROMOTING DIVERSITY IN HIGHER EDUCATION IS A COMPELLING GOVERNMENTAL INTEREST.

I. Justice Powell’s Opinion in *Bakke*, Holding that Diversity is a Compelling Governmental Interest, is Controlling and Should be Followed.

In *Regents of the University of California v. Bakke*, this Court held that race could be used as a factor in higher education admissions. See 438 U.S. 265, 320 (1978) (opinion of the Court). In the narrowest opinion supporting that judgment, Justice Powell concluded that strict scrutiny should apply to such uses of race and that “the attainment of a diverse student body” was, in the context of “an institution of higher education,” a compelling government interest. *Id.* at 311-314 (opinion of Powell, J.). Justice Powell’s opinion on this matter is controlling. See *Marks v. United States*, 430 U.S. 188, 193 (1977). Thus, as Justice O’Connor explained in *Wygant v. Jackson Board of Education*, “a state interest in the promotion of racial diversity has been found sufficiently ‘compelling,’ at least in the context of higher education, to support the use of racial considerations in furthering that interest.” 476 U.S. 267, 286 (1986) (O’Connor, J., concurring in part and concurring in judgment) (citations omitted).

Bakke's essential holding, that the attainment of diversity in higher education is a compelling governmental interest, is controlling in this case and should be followed.

II. A Diverse Student Body Imparts Invaluable Educational and Social Benefits To Law Students.

A. Diversity Contributes to a Wide, Robust Exchange of Ideas, Essential to the Discovery of Truth and to the Critical Debate Necessary to Legal Education.

The life experiences of individual law students are influenced by many factors. One of the most critical factors in shaping the life experience of many students has been their race. The principle is a familiar one: A student who was raised in South Dakota is likely to have a different life experience than one raised in New York City. While the geography and the consequent environment of one's childhood do not determine one's views, they certainly play a role in shaping an individual's perspective on a range of issues. Similarly, because of the continued salience of race in American society and the unquestionable fact that individual Americans continue to be treated differently in a wide range of circumstances based on their race, those individuals' race is a fundamentally important factor in shaping their life experiences and informing their views.

To acknowledge this reality is not to engage in pernicious stereotyping. To be clear: the Michigan admissions policy does *not* assume that all minority applicants embrace the same ideas or approach problems in the same way. It does *not* presume that common perspectives spring from inherent qualities attributable to one's race or ethnicity. What it *does* assume – with incontestable justification – is that certain applicants will bring to the classroom experiences borne of the social facts that race continues to matter, and that discrimination persists, in America. Equal treatment is the goal of the Equal Protection Clause. That goal cannot be pursued by denying

persons of color the truth of their experiences or other students the benefit of that truth. Rather, the goal of equal justice under law can only be understood and met by permitting minority students' experiences to be aired, examined, and compared with those of other students engaged in the common enterprise of exploring the proper role and content of law. Students may reach differing conclusions about the meaning or application of these experiences, but exposure to them is indispensable to a complete analysis of the types of legal, social, and political questions vetted daily in law school classes.

Only those who have lived these experiences can give authentic voice to them. For example, while Justice Thomas' recent remarks concerning the meaning of cross-burning may not be shared by all African-Americans, they were uniquely powerful because of the fact that he grew up as an African-American in the rural, segregated South. See Transcript of Oral Argument at 23-24 in *Virginia v. Black*, No. 01-1107. In the dynamic learning environment of the law school classroom, there is simply no substitute for the active participation of minority students. A reading assignment may bear witness to the experiences of persons of color, but it cannot apply those experiences to questions and issues that arise in discussion. A text may challenge, it may even enlighten, but it cannot debate.

As Justice Powell noted in *Bakke*, "[t]he Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, [rather] than through any kind of authoritative selection.'" 438 U.S. at 312 (opinion of Powell, J.) (quoting *United States v. Associated-Press*, 52 F. Supp. 362, 372 (S.D.N.Y. 1943) (internal quotation marks in original)). *Amici*, as law students who will be among the nation's future leaders, strongly believe that such exposure to a robust exchange of ideas is not possible without a racially diverse student body.

In a racially homogeneous class of students, significant viewpoints would be missing. Understanding complex legal issues requires probing critical analysis. This analysis is considerably improved by the viewpoints of students who have a particular experience or understanding of laws that treat or affect people differently based on race or ethnicity. In criminal law classes, a discussion of racial profiling is incomplete without the view of someone who has experienced the practice first-hand or even the view of someone who is a member of a racial group disproportionately targeted by law enforcement. In constitutional law, the voice and viewpoint of a student of Japanese descent is invaluable in discussions concerning the effect of our nation's legal internment of Japanese-American citizens. Similarly, the viewpoints of minority students are necessary to fully comprehend and analyze issues concerning hate crimes legislation and anti-discrimination laws, the understanding of which necessarily depends on the interplay of race and society. Students of all races, when challenged with unfamiliar perspectives and ideas, are forced to question their own assumptions and develop a more informed understanding of the law. As race shapes many of our experiences and views, a racially diverse student body is necessary to present students of all races with a robust range of ideas and thus is a critical ingredient in any legal education. The consideration of race as a factor in the admissions process is permissible to achieve this goal.

B. Diversity is Essential to Fostering Speculation, Experimentation and Creation in Law School.

In *Bakke*, Justice Powell stated, "[t]he atmosphere of 'speculation, experiment and creation'— so essential to the quality of higher education — is widely believed to be promoted by a diverse student body." 438 U.S. at 312 (opinion of Powell, J.) (citations omitted). *Amici* wholeheartedly agree. Just as our racial and ethnic backgrounds contribute to our viewpoints and life

experiences, so too do they add to our collective ability to discover and encourage new ideas and approaches to addressing problems and resolving conflicts.

This atmosphere is apparent not only in class, but in activities in which students participate outside of the classroom, such as involvement in clinical programs, student organizations, and other extra-curricular activities including mock trial and law journal. These activities engage students in relationships with their colleagues and encourage students to think creatively with their peers to solve complex problems. Social relationships and the exposure of students to views inconsistent with their own, both inside and outside the classroom, add tremendously to students' ability to think creatively and innovatively. The benefits accrued from these interactions would be drastically limited in a racially homogeneous class of students.

C. Legal Education is Severely Diminished in Isolation from the Individuals and Institutions With Which the Law Interacts.

This Court recognized in *Sweatt v. Painter* that:

[t]he law school, the proving ground for legal learning and practice, cannot be effective in isolation from the individuals and institutions with which the law interacts. Few students and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned.

339 U.S. at 634. Given that our country and legal system are composed of a racially diverse population, education in a homogeneous racial environment would deprive us of the interactions necessary for a successful career in the law.

In America today, our population is more racially diverse than it has ever been before.³ Consequently, our future clients will come from a population more racially diverse than that faced by any previous class of graduating law students. It is not only logical, but it is also paramount, that we be exposed to interactions with individuals representative of our nation's diversity as we shape and develop the skills we will employ as lawyers. Our ability to communicate effectively will require respect, appreciation, and an understanding of our many clients' backgrounds and cultures. Our ability to build trust with clients of races and backgrounds other than our own cannot be fostered in a vacuum. Our interactions in college and law school provide the foundation for developing the skills necessary to successfully represent our clients, many of whom will have views and life experiences shaped by their race and ethnic background. As Justice Powell noted in *Bakke*, "it is not too much to say that the 'nation's future depends upon leaders trained through wide exposure' to the ideas and mores of students as diverse as this Nation of many peoples." 438 U.S. at 313 (quoting *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967)). Because our future clients will undoubtedly include individuals as diverse as our nation, we must develop in law school the necessary skills that only real relationships with individuals of a wide variety of racial backgrounds can provide.

Our nation's judges, lawyers, law enforcement officials, court clerks, and jurors are and will continue to be representative of our country's growing diversity as well. Our ability to function as effective lawyers will not only stem from our ability to reason and articulate fine points of

³ See Frank Hobbs & Nicole Stoops, *Demographic Trends in the 20th Century*, Figure 3-3 at 77 (U.S. Census Bureau, *Census 2000 Special Reports*, U.S. Government Printing Office 2002) (showing white U.S. population shrank to 75.1% while non-white U.S. population grew to 24.8% in 2000), available at: <http://www.census.gov/prod/2002pubs/censr-4.pdf> (last visited February 14, 2003).

law, but will also be founded on our knowledge and understanding of our colleagues and those who are responsible for the functioning of the American legal system. Ensuring that we are exposed to individuals of diverse racial backgrounds and their experiences will have a profound impact on our ability to succeed as lawyers.

CONCLUSION

Amici curiae, 13,922 current law students at accredited American law schools, are convinced that, based on our own individual experiences, a diverse student body imparts invaluable educational benefits to law students. The Sixth Circuit's conclusion that diversity is a compelling governmental interest should be affirmed.

Respectfully submitted,

JULIE R. O'SULLIVAN

Counsel of Record

PETER J. RUBIN

Georgetown Univ. Law Center

600 New Jersey Ave., NW

Washington, DC 20001

(202) 662-9394

*Counsel for Amici Curiae*⁴

February 18, 2003

⁴ This brief was conceived and initially drafted by individual *amici curiae*. The initial drafting was completed by David Fauvre, Teresa Bryan, Daniel Burstein, Dahni-El Giles, Brian Greer, Gretchen Rohr, and Jennifer Ryan, students at the Georgetown University Law Center.

APPENDIX A

LIST OF AMICI CURIAE ORGANIZED BY SCHOOL OF ATTENDANCE

Albany Law School

Soraya Ruiz Abderrashman	Arthur Chen
Lara Abrahao	Jennifer Cheong
Robyn Adair	Young Choi
Vera Ademaj	Tara Cohen
Norine E. Allen	LaVonda Collins*
Forrest Andrews	Danielle Compere
Lorenzo Angelino	Clorisa Cook
Alfredo Argueira	Judith Crelis-Mayle
Abena Asante	Craig Cushing
Jennifer Baldwin	Susan D'Ambrosa
Abisodun Balogun	Jennifer D'Ambrosio
Adam Bear	Amanda Davis
Shanna Bergman	Tamara del Carmen
Albert Berry III	Mia DeLane*
Jordan Black	Jennifer DeStefano
Dana D. Blackmon	Dishpaul Dhuya
Furine Blaise	Rafael Diaz
Brenda I. Blask-Lewis	Paul Dontenville
Marilyn Bleser	Maria L. Dracker
Precious T. Bonaparte	Jennifer Eby Kone*
Edward Breen	Elizabeth Erick
Ian Cammins	Charles Feldman
Allison Carr	William J. Fisk
Susan G. Cartier	Otto Franco
Brian Ceballo	Tanya Gayle
Patrick Champ	John Giuglielmino
Tracey Chaney	Colleen Glavin

* Students who played a particularly important role in the collection of the names of the 13,922 *amici* on whose behalf this brief is submitted are indicated with an asterisk.

Elena Gonzalez
Allison V. Green
Janin Grigory
Carol Hall
Michele V. Handzel
Milena Hanukov
Nadia Havard
Matthew Hawkins
I. Hayat
Christopher Hemstead
Donnial Hinds
Jared Hirt
Robert Hobkirk
Winkle Hong
Ryan P. Hunter*
Jack C. Hyan
Jennifer Ipolite
Courtney Isap
Scott Jacobs
Lorraine Jenkins
Peng Jiang
Leyla X. Jimenez
Isiah Juste
William J. Justyk
Danan Kassim
Janet Kealy
Alanah Keddell
Norman W. Kee
Cassandra Kelleher
Kathleen Kelly
William Kelly
Samuel Kenny
Ann Khanna
Sonja Killebrew
Jessica Knouse
Yat Fai Lau
Jiyoung Lee

Ian C. Lindars
Allen Linken
William Little
Kerri Machado
Barrett Mack
Brian Marshall
Demetrius McCord
Patrick McDonnell
Kate McGuirl
Michael Mele
Autondria Minor*
Christian Moller
Teresa Monroe
Carlos Montilla
Evelyn Munoz
Tara Murphy
Keith A. Muse
Duke Nguyen
Mintil Nguyen
Abigail Nitka
Katina M. Nordloh
Youngmin Oh
Gianni Oppedisano
Katie Opperman
David J. Oritz
Dan Ouyang
Elan Parra
Katy Pency
Christine R. Preta
Andy Proler
F. Qian
James Jay Radez
Sean D. Ragusa
Sarah Reed
Alla Reyfman
John Rhea
Karen A. Rhoades

Addisa Richards
 Jennifer Richardson
 Steve Rossi
 John Salvador
 Jooho Seong
 Sapana Shah*
 Matthew Silverman
 St. John Simms
 Anil Singh
 Robert D. Snouden, Jr.
 Patrick Sorsby
 Cheryl L. Sovern
 Alissa Sugerman
 John D. Svare
 Judy Swierczewski
 Soma S. Syed
 Li Tang
 Mitchell M. Tarighati
 Carla Tesoro
 Asha Thomas
 Alice Tu

Brendan Tully
 Laura Turnblom
 Melissa Ulertel
 Stephanie Valentin
 Jill Van Bortel
 Celeste M. Vergez*
 Allen Vickey
 Mark Viish
 Corinne L. Wainwright
 Steve Wang
 Lovely Warren
 Lynn Welthy*
 Brooke Werner
 Larisa Will
 Eddie L. Williams
 Debbie Williamson
 Kara E. Wilson
 Martin John Wojcik
 Zena Woldegesser
 Jeannie Yi
 Rita Young

American University, Washington College of Law

Ben Allen
 Thomas Appel
 Cameron W. Arnold
 Maria Laura Astrada
 Marium Azhar
 Kristina Badalian
 Paul Balanon
 David Baluarte
 Rolaine S. Bancroft
 Anuradha Banerjee
 Damien Banks
 Theresa Barbadoro
 Jeremy Barber

Kelly Barrett
 Lisa Bass
 Jared Bayer
 Ebise Bayisa
 Gina Beck
 Jonathan Bedi
 Joe Beemsterboer
 Laura Begun*
 Joanna Berlin
 James Bernier, Jr.
 Andrew Bernstein
 Jennifer Birlem
 Griffen Bishop

Duane Blakman
Alain Bonavida
Victor Bonett
Brandon Borkowicz
Jennifer Borra
Kardesha Bradley
Dina Brady
Wendy L. Brasunas
Morgan Browning
Vadim Brusser
Sebrina Bush*
Laella Bussey
Joseph Caleb
Julia Calvo
Rebecca Cambreleng
Jesse Campbell
Christoph Caple
Nicole Carlo
Aaron Cervantes
Courtney Chappell
Erin Chlopak*
Wonsun Choi
Gloria Chon
Jennifer Cisneros
Shannon Coe
Juliet Cohen
Monique T. Cole
Abby Coleman
Mike Collius
Meghan Colloton
Christian Contardo
Carlos Contasti
Meredyth Cooper
James Cowden
Holly Dae
Sam Danai
Shannon Dasplit

Mikiel Davids
Melissa Davis
Gabrielle de la Gueronniere*
Jeremy de Roxas
Katherine DeGovia
Hani Demetrious
Andrea Desoretz
Neha Dewan
Jennifer Dorn
Jeff Eaby
Kristin Edison
Elizabeth Elia
Kate Ellis
Mary F. Ernesti
Roberto Escobar
Lenore L. Espinosa
Lanique Eubanks
Haythan Faraj
Soraya J. Fata
Andrew Fausett
Yousra Y. Fazili
Dagmar Fernandez
John Fieldsend
A.J. Finch
Adam Fine
Whitney Fisler
Scott Flax
Tim Foden
Farrah L. Fontaine
Kat Fotovat
Rebecca Freedna
Cecelia Friedman
Emily Friedman
Tony Frouge
Allison Fultz
Otilia Gabor
Arish Gajjar

Sean Gallanus
 Emily Gallas
 G. Ganzorig
 Sarah R. Garcia*
 Grey Gardner*
 Jefferson Garn
 Robin Gary
 Erika Gaspar
 Angela Gaw
 Judith Gayle
 Caroline Generois
 Dalia Georgi
 Sara Gillis
 Jason C. Gordon
 Stacey Gordon
 Kate Goss
 Julia Graff
 Camilla Grahur
 Maya Grassi
 Mary Pat Gregory
 Sean W. Griffith
 Matthew Gruber
 Anish Gupta
 Daniel Habib
 Megan Hagler
 Traci Hale
 Brett Halloran
 Spencer Hamlin
 Kara Hammond
 Joseph W. Hardee
 Andrea Harrington
 Lei Hart
 Danielle Hayot
 Jeanine Hays
 Astor Heaven
 Livya Heithaus
 Jesse Hoberman-Kelly

Lisa Hodes
 Vincent M. Holloway
 Benjamin Holt
 Warren Hong
 Sara L. Horwitz
 Andrew Hory
 Eric Huang
 Brian Hurh
 Sarah Hymowitz
 Anita Sarah Jackson
 Michael Jacob
 Demille James
 Raymond Janairo
 Daniel Jawor
 Djhenane Jean-Jacques
 Laura Jeltema
 Debbie Jerome
 Tejal Jessani
 Nejib Jibril
 Helen Jimenez
 Amy Jiron*
 Jolsna John
 Alex Johnson
 Laurel A. Johnston
 Marci T. Jones
 Robert M. Kahn
 Dana V. Kaplan
 Josh Kaplan
 Mutsa Karimakwenda
 Kaleb Kasperson
 Caroline Katz
 Synta Keeling
 Catherine Kihara
 Jeffrey Kihien
 Yoonie Kim
 Nathan P. Kirschner
 Diane Kondor

Natalie Koss
Michael Kraft
Permsak Krairiksh
Catherine Krapf
Paige Krause
Josh Krintzman
Chandni Kumar
Renee Kurth*
Ashley Kushner
Robert Lakind
Tanya Lane
Isaac Larbi
David Lee
Michele Lee*
Sunah Lee*
Jeffery Leiol
Nicole Lentin
Eric S. Lerum*
Iris Leung
Bryan Levine*
Christianna Lewis
Eric Liang
Alpha G. Lillstrom
Emily Livingston
Amy Long
Sarah Long
Alain Lopez
Lysandra Lopez
Rosy Lor
Elizabeth Lord
Whitney Louchheim
Amy Lubrano
Scott Lyons
Devin Langdon Mack*
Lynne Madnick
Felix Marquez
Dena Marshall

Laura Martino
Krista Mathews
Megan McAvey
Katherine A. McConnell
Jason McElroy
Kristen McGeeney
Fiona McKenna
Bradley A. Meadow
Pedro Medrano
Pooja Mehta
Marcus Menezes
Yamini Menon
Danielle M. Metzger
Geoffrey Meyer
Carrie Mitchell
Matt Mitro
Leah Montesano
David Moon
Gerald A. Moore
Andrea Moore-Stover
Sheila Moreira
Brian Morrede
Aaron Morris
Janine Moussa
Walid Moustafa
Cara A. Murphy
Nena Nagar*
Miya Nazzaro
Ruthanne Neely
Tali Neuwirth
Anna Nguyen
Chris Niero
Patrick Niterwyk
Lynsey Nix
Ivana Nizich
Gunther H. Oaloe
Jennifer Obe

Elizabeth O'Neill
Melanie Orhant
Sean P. O'Shea
Kevin L. Owen
Lauren J. Pair
Eric Paisner
Sandra Palmer
Sheel Pandya
Gene Park
Sunita Patel
Chris Paulraj
Nathan M. Peak
Beverly E. Perez
Luis R. Perez
Jarrett B. Perlow
Danny Petrella
Robert Pezold
Loan T. Pham
Elizabeth Phifer
Roger Phillips
Elisabeth Piff
Adam Pignatelli
Natalie Potter
Rachel Prouser
Runa Rajagopal
Claire Rajan
Loreena Rajanayakam
Andrew Rapp
Charles S. Ray
Thomas B. Rees
Teresa Young Reeves*
Stephanie Richard*
Abby Richardson
Sarah Riger
Shirley Rivadeneira
Jacob Rolls
Richard Rose

Avery Roselle
Gunnar Rosenquist
Nicole Rothe
Carmen Rottenberg
Vanessa Rownaghi
David Ruddy
Lali Safavi
Jessica Salsbury
Inbal Sansani
Elna Santus
Tim Saunders
Incigul Sayman
Rena Scheinkman
Addy Schmitt*
Lisa Schnall
Andrew Schutz
Batya Schwartz Ehrens
Arshdeep Sekhon
Jonathan Selib
Sarah Seo*
Dipal Shah
Sejal Shak
Chai Shenoy
Michael Shortnavy*
Erin Shoudf
Omar Siddiq
Ashley Sikora
Lara Simon
Felipe Sixto
Jarid Smith
Jessica Smith
Matthew Smith
Robyn Smith
Bethany Smozer
Joy Som
Jane Song
Penelope Spain

Peter Spann	M. Gretchen Ulrich
Debra Spinelli-Hays	Anna Vallie
Jesse Squier	Danielle Verney
Flaurine St. Louis	Nicholas Vitek
Andrew Stawar	R. Michael Waller
Rebecca Stempin	Tian Wang
Mickelson Steve	Glenford Warmington
Amy E. Stewart	Natalie Watson
Sunalei Stewart	Hillary Webber
Debra Sudo	Anna Welch
Deborah Sundquist	Elizabeth Weller
Rachel F. Sussman	Sean V. Werner
Cathy Swallow	Angela White
Eva Swayzee	Adam S. Wilczewski
Kenneth Thompson	Zuberi Williams
Samantha Thompson*	Leslie Wilson
Albert Ting	Natalia Wilson
Akil Tirana	Tammie Wims
Elizabeth Tockman	Samuel Wolfe
Leonor Tomero	Richard Woo
Jaime Tomhave	Jennifer Wurzbacher
Carolin Topelson	David Yee
Simon J. Torree	Dorothy Yee
Guillermo Torres	Megan Yoshimura
Adrienne Tranel	Peter E. Young
Jennifer Travers	Kristina Yu
Claire Trickler-McNulty	Kristy Zedura
Mary Ellen Tsekos	Amy Zoremba

Arizona State University College of Law

Amber Abbas	Hannah Auckland
Samuel Adair	Shea Backus
Michael Aguirre	Rhonda Barnes
Heather Anderson	Raechel Barrios
Higinio Arellano	James E. Barton II*
Deniz Arik	Latonia Becenti

Michelle Begay
Diandra Benally
Arturo Benavidez
Felisa Bermudez
Jeremy Berzan
Jocquese L. Blackwell*
Sanja Bogdanovic*
Andrea Bonilla
Kara Bracken
Lauren Bradley
Jennifer Brockel
Derrick Burbank
David Burkett
David Castillo
Christina Cechanowicz
Elizabeth Cheney
Dongdoo Choi
Christopher L. Clark
Jesse Cooke
Sarah Crotty
Marvin L. Davis
Rosina M. Dee
Kindra Deneau*
Roberta Dickson
Melissa Emmel
Jessica Erickson
Lisette Flores
Sharma Foley
Eugene Folgo
Peter Ford
Tameka C. Fox
Trena Frankos
Daniel Gebremeskral
Jason Gerrol
Andrea Gonzales
Antonio Gonzales
Theresa Gonzales

Hank Gries
Laurence Grimaldi
Kee N. Grinde
Steven Gross
Ashley Haith
Jodi Hammond
T. Harjo
Jeffery Harmon
Danielle Harris
Lisa Hayden
Mischa Hepner
Keith Hilzendeger
Leta Hollon
Edwin Hsu
Alex Hubert
Charles R. Hyde
Norma Izzo
Khaalis Jackson
Andrew Jacob
Bryn Kanter
Kirsten Kelly
David Kephart
Jacqueline Kochis
Caroline Kukla
Nicole Kulhevy
Jenifer Lamb
Kristina Lee
David C. Lieb
Leona Lobban
Christopher Love*
Tonya MacBeth
Gina Nicole Marino
Teri Marscovetra
Aaron Matz
Nicole Miller
Gina Moise
Courtney Monteiro

Alma Montes de Oca
 Amelia Morrow
 Luanne Muller
 Katosha LaDane Nakai
 Tyne Naveor
 Gill Negrete
 Kendra Nielsen
 Michelle Notrica
 Kiyoko Patterson
 George Patton
 Kelly Peralta-Vaughn
 Lucy M. Peterson
 Lisa Pino
 Annmarie Primorac
 Ian Quinn
 Blaire Rempe
 Jen Roach
 Ricardo Rodriguez
 Vicenta Rodriguez
 Todd P. Romero
 David Roscoe
 Jaclyn Rudebeck
 Monica Ryden
 Aaron Saenz
 Gwen Salt
 Kimberly D. Salter
 Delia Salvatierra

Heather Sapp
 George Sarusor
 Melissa Schaffer
 Michael Schar
 Nikolia Schnupp*
 Cheryl Scott
 Monique Simpson
 Kyrsten Sinema*
 Rene Siqueiros
 Michelle Speck
 Cheryl Srnka
 Adam Stafford
 Chris Suffecool
 Amanda Taylor
 Elizabeth Townsend
 Wilton Tran
 Maria Regina Tsichlis
 Jesse Turner
 Magdalena Valenzuela
 Michael D. Volh
 Cara Walsh
 Kira Weiss*
 Ryan Wells
 Jodie Wertheim
 Cathryn Whalen
 Claudette C. White
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Anna Rich
Marie Rivera

Limor Robinson
Eric Rosenstock
Lisa Rubin
Magda Ruiz
Andrew Sackett
Cluadio Salas*
Gabe Sanchez
LaQuesha S. Sanders
Eric Sapp
Joanne Savage
Aaron Schlaphoff
Vanessa Schlueter
David Schorr
Jessica Sebeok
Malcolm Seymour
David M. Shapiro
Scott Shuchart
Lara Slachta
Charisa Smith
Phillip Smith
Jennifer Soble
Adam A. Sofen*
Jennifer Sperling
Ankur Srivastava
Heidee Stoller
Debra Stump
Jacob J. Sullivan
Jennifer Sung
Bart Szewezgh
Holly A. Thomas
Jawetz Tom-Tsvi
Shirley Udekwu*
Deepa Varaderajan
Sarah R. Veret
Erica Villanueva
Schlomit Wagman
Daniel Walfish

202a

Clarence Webster
Max Weinstein
Brent Wible
Kevin Woodson
Marcia Yablon

Sofia Yakren
Alexandra Yates
Jonathan Young
Kimberly Zelnick
Alexandros Zerros

APPENDIX B

Note on the method by which the names of *amici curiae* were collected:

The students who conceived this brief and organized *amici curiae* circulated to interested students at ABA-accredited law schools copies of a draft of the brief, along with sheets for the collection of signatures of current law students interested in being represented as *amici*. A copy of the signature sheet is reproduced on the next page.

Students wishing to be represented as *amici* were required to attest by their signature that they are currently enrolled as students at an ABA-accredited law school, and to assert that they have read the brief, support its arguments, and wish to be included among those on whose behalf the brief is submitted to this Court. Students collecting signatures were required to attest by their signature that they had witnessed the signatures on the sheet and that each signatory displayed a school-issued photo I.D. which verified his or her identity and enrollment in an ABA-accredited law school. Copies of the original signature sheets are on file with counsel for *amici curiae*. Every effort has been made accurately to transcribe the name of each *amicus* on whose behalf this brief is submitted.

