

No. 14-981

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*

AMICI CURIAE

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preferences in undergraduate admissions decisions
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interpreting the Equal Protection Clause of the
Fourteenth Amendment, including *Fisher v.*
University of Texas at Austin, 133 S. Ct. 2411 (2013).

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In The

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school boards. Through its members, NSBA represents approximately 13,800 school districts across the United States that serve more than 50 million public school children. NSBA and its members are committed to ensuring that all children receive a high-quality education that fully prepares them to succeed in the 21st century. NSBA and its members recognize the vital role of diversity in ensuring that high-quality education, and have relied on longstanding principles of this Court to inform their diversity-related efforts to foster success for all

administrators responsible for carrying out education policies adopted by their local boards of trustees. CSA consists of attorneys who represent more than 90% of the public school districts in Texas.

The American Association of School Administrators is a professional organization for more than 13,000 educational leaders in the United States and throughout the world. AASA members range from chief executive officers, superintendents and senior level school administrators to cabinet members, professors and aspiring school system leaders. AASA members are the chief education advocates for children. AASA members advance the goals of public education and champion children's education in school districts and nationwide. As school system leaders, AASA members set the pace for academic achievement. They help shape policy, oversee its implementation, and represent school districts to the public at large.

American School Counselors Association is a nonprofit, 501(c)(3) professional organization that helps students focus on academic, personal/social, and career development. ASCA provides professional development, publications, and other resources, research, and advocacy to nearly 30,000 school counselors around the globe.

Founded in 1910, the Association of School Business Professionals is a national organization that supports school business professionals who are passionate about quality education. ASBO

pursuit of diversity in higher education does not operate in a vacuum; the diversity efforts of colleges and universities affect school districts, and *vice versa*.

admissions plans like the Texas Top Ten Percent plan negate the constitutionality of holistic review thus affects not only diversity in higher education, but also vitally important interests in diversity elementary, middle, and high schools. For this reason, *amici* urge this Court to permit colleges the flexibility to adopt admissions plans that work synergistically with diversity efforts that promote educational goals in K-12 public schools.

Colleges and secondary schools alike realize educational benefits from diverse student populations, including higher student achievement, the development of critical thinking and interpersonal skills necessary to thrive in the twenty-first century economy, and increased civic engagement in our ever-more-diverse and pluralistic society. Increasing residential segregation heightens the need for schools to provide opportunities for students to engage with others from diverse backgrounds and perspectives, and at the same time increases the challenges for school districts trying to avoid the educational problems that accompany racial isolation and to achieve diverse learning environments.

University programs that move beyond mechanical percentage plans to seek qualitative diversity through holistic review support and reinforce permit universities to acknowledge the valuable and unique contributions that students educated in

integrated elementary and secondary environments can make to the college community, reinforcing the values school districts are attempting to inculcate in all students. By increasing college opportunities for such students, the programs encourage high levels of high school achievement, which in turn results in greater college access and diversity in the collegiate applicant pool. College-level holistic review and secondary school diversity efforts thus work together to further opportunities and achievement for all students.

While mechanical class-rank-based admissions programs may yield some numerical diversity on college campuses, they may work at cross purposes to the benefits of diverse schools. Both secondary and post-secondary diversity are compelling interests recognized by this Court. This Court should not interpret the Equal Protection Clause to restrict securing college-level diversity to means predicated on continued segregation in secondary education.

As the Court observed in *Fisher v. University of Texas at Austin* (*Fisher I*), there is a compelling

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 (citing *Regents of Univ. of California v. Bakke*, 438
 U.S. 265, 307-309 (1978) (opinion of Powell, J.)). A
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 including enhanced classroom dialogue and the
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That interest is equally compelling in elementary
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 to teach that our strength comes from people of
 different races, creeds, and cultures uniting in
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in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701,
 782 (2007) (Kennedy, J., concurring in part and
 concurring in the judgment). School districts need not
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 created by residential segregation. *Id.* at 788. Rather,
 D compelling interest exists in avoiding racial
 isolation, an interest that a school district, in its
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 interest to achieve a diverse student popu ODWLRQ μ RI
 which race is but one component among many,
 including economic background, special needs, and
 special talents. *Id.* at 797-98; see also *id.* at 865
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 education was deemed compelling ***, diversity in
 public primary and secondary schools ³ where there is
 even more to gain ³ must be, *a fortiori*, a compelling
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 communities do not reflect the diversity of our Nation

thinking and improved social learning skills.² In addition, students who attend racially diverse schools achieve higher test scores and better grades, are more likely to graduate from high school, and are more likely to attend and graduate from college than their

Pluralistic education provides the type of learning experiences that aid student success in a labor market that demands early and continuing exposure to diversity.

Moreover, because H VFKRROV DUH WKH 'YHU\

effect tends to decrease residential segregation over time, resulting in a virtuous cycle.⁶

In sum, as with colleges, see *Grutter*, 539 U.S. at 330-332, the educational benefits of diversity in elementary and secondary schools stretch across many

of an Integrated Society: A 21st Century Challenge 12 (2009).

This resegregation is not limited to a handful of areas; it spans the nation.⁷ It creates both a heightened need for, and challenge to, the ability of school districts to create diverse learning environments. Where neighborhoods are less diverse, the education system may become a critical forum for providing students the opportunity to interact with others from different backgrounds and perspectives from an early age. Yet that same neighborhood segregation makes it more difficult for school districts to provide that opportunity. Notwithstanding that challenge, and although much work remains to be done, school districts across the country³ like many colleges and universities³ are engaged in an intensive effort to secure the educational benefits of diversity for their students.

These efforts include drawing attendance boundaries to achieve a socioeconomic balance in each school, multi-district initiatives whereby multiple neighboring districts create a metropolitan-wide learning community with the goal of improving

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diversity, and assignment plans that consider parental choice and individual student characteristics. See Coleman, *Achieving Educational Excellence for All*, at 33-35 (giving examples from different school districts); *Parents Involved*, 551 U.S. at 789 (Kennedy, J., concurring in part and concurring in the judgment) (describing measures available to school districts, LQFOXGLQJ EXW QRW OLPLWHG WR ´ VWUDWHJLF V new schools; drawing attendance zones with general recognition of the demographics of neighborhoods; allocating resources for special programs; [and] UHFUXLWLQJ VWXGHQWV DQG IDFXOW\ LQ D WDUJH

The pursuit of qualitative diversity, including consideration of race where necessary, is a critical part of the effort to achieve diversity in education. The efforts of school districts and universities in that regard go hand in hand, because elementary and secondary schools are part of a continuum of student learning and development with colleges and universities. Diversity in secondary schools helps secure the educational benefits of diversity in college, and *vice versa*. Students who are educated prior to college in diverse learning environments bring their educational and social experiences and competencies to their post-secondary communities; colleges seeking highly diverse admissions pools find such students when K-12 schools have successfully fostered diverse student bodies. Accordingly, the benefits of

educational diversity can be fully realized only if the pathways to diversity remain open at all levels of education. And it is vital that the means to achieve diversity at the post-secondary level do not discourage limit racially isolated schooling caused by *de facto* segregation.

Yet that is exactly what a mechanical numbers-based process standing alone does: trade diversity in one setting for diversity in the other. Such plans yield numerical racial diversity in college only so long as secondary schools lack such diversity. As the Fifth Circuit found, such percentage plans are not by themselves adequate race-neutral alternatives to a holistic review process that permits colleges to achieve qualitative diversity that takes into account a broad array of qualifications and characteristics across all racial groups.

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2QH RI WKH YDOXHV RI WKH 8QLYHUVLW\ RI T holistic review process is that it permits the University to consider the many ways an individual might contribute to the rich and challenging educational environment of the university. *See Fisher I*, 133 S. Ct. at 2418 7KH ´GLYHUVLW\ WKDW IXUWKHUV I compelling state interest encompasses a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important HOHPHQW μ *Bakke*, 438 U.S. at 315 (opinion of Powell, J.)).

That includes the ability to ensure a diversity of backgrounds within³ as well as among³ racial groups, and specifically the ability to consider, *inter alia*, whether a minority student brings to college the experience of learning and succ

minority students often better qualified than the non-

Mechanical class-rank-based programs like the Texas Top Ten Percent plan admit students based on a single characteristic; they do not permit colleges the flexibility to make educational judgments about the value of the unique perspectives and contributions of minority students from integrated schools in the way

W K D W D K R O L V W L F U H Y L H Z S U R F H V V G R H V 6 X F K
 preclude the university from conducting the individualized assessments necessary to assemble a student body that is not just racially diverse, but diverse along all the qualities valued by the X Q L Y H U O L W K, 569 U.S. at 340. But that is not their only flaw. Restricting universities to such mechanical alternatives would put universities at F U R V V S X U S R V H V Z L W K V F K R R O G L V W U L F W V · H I I R
 the educational benefits of diversity for elementary and secondary school students.

Although they are facially race-neutral, there is no doubt that programs like the Texas Top Ten Percent plan are race-conscious in design. While the intent of the Texas law may have been well-meaning, it was adopted with segregated secondary education as its premise. See House Research Organization, Bill Analysis, HB 588, pp. 4-5 (Apr. 15, 1997) ' 0 D Q \ regions of the state, school districts, and high schools in Texas are still predominantly composed of people from a single racial or ethnic group. Because of the persistence of this segregation, admitting the top 10 percent of all high schools would provide a diverse

population and ensure that a large, well qualified pool of minority students was admitted to Texas

XQLYHUVLWLHV μ \$V WKH)LIWK &LUFXLW IR numerical diversity gained from the Top Ten Percent plan stems 'IURP D IXQGDPHQWDO ZHDNQHVV LQ WK 7H[DV VHFRQGDU\ HGXFDWLRQ V\ VWHP μ ZKLFK LV IDFWR VHJUHJDWLRQ RI VFKRROV LQ 7H[DV μ 3HV D ,W 'GHSHQG>V@ XSRQ VHJUHJDWHG VFKRROV PLQRULW\ HQURDNLHQW μ

School districts are striving where possible, however, to reverse the headwinds of residential segregation, and achieve more diverse educational experiences for their students. If mechanical top-percent plans become the only constitutionally permissible way for colleges to achieve diversity, then LQ PDQ\ LQVWDQFHV VFKRRO GLVWULFWV VX achieving diversity will come at the expense of diversity at the college level, and

