No. 12-682

IN THE

Supreme Court of the United States

BILL SCHUETTE, MICHIGAN ATTORNEY GENERAL,
Petitioner,

v.

COALITION TO DEFEND AFFIRMATIVE ACTION, INTEGRATION AND IMMIGRANT RIGHTS AND FIGHT FOR EQUALITY BY ANY MEANS NECESSARY (BAMN), *et al.*,

Respondents.

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

BRIEF OF THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS AND THE LEADERSHIP CONFERENCE EDUCATION FUND *ET AL.* AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS CHASE CANTRELL *ET AL.*

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INTEREST OF *AMICI CURIAE*[1]

The Leadership Conference on Civil and Human Rights is a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States.[2] It is the Nation's premier civil and human rights coalition working to build an America that is as good as its ideals. The Leadership Conference was founded in 1950 by A. Philip Randolph, head of the Brotherhood of Sleeping Car Porters; Roy Wilkins of the NAACP; and Arnold Aronson, a leader of the National Jewish Community Relations Advisory Council. For more than half a century, The Leadership Conference has led the fight for civil and human rights by advocating for federal legislation and policy, securing passage of the Civil Rights Acts of 1957, 1960, and 1964; the Voting Rights Act of 1965; the Fair Housing Act of 1968; and the Americans With Disabilities Act of 1990.

The Leadership Conference has long been involved in achieving and promoting diversity in higher education throughout the country. In Michigan, the Leadership Conference, and its sister organization The Leadership Conference Education Fund, has partnered with grassroots organizations to enhance diversity in education and inform Michigan residents

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[1] The parties have consented to the filing of this brief in letters on file with the Clerk. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amici*, their members, or their counsel made a monetary contribution to its preparation or submission.

[2] *See* Appendix A for a list of The Leadership Conference's member organizations.

about the adverse impact that the ballot initiative at issue in this case would have if enacted.

The Education Fund builds public will for federal policies that promote and protect the civil and human rights of all persons in the United States. The Education Fund's campaigns empower and mobilize advocates around the country to push for progressive change in the United States. The Education Fund has published fact sheets and reports on many subjects, including on the role and benefits of diversity in higher education.

Several other organizations interested in promoting diversity in higher education, many of which are members of The Leadership Conference, also join as signatories of this brief. They include:

- 9to5
- American Association for Affirmative Action
- American Association of University Women
- American Citizens for Justice/Asian American Center for Justice
- Asian Americans Advancing Justice-AAJC (Advancing Justice-AAJC)
- Asian Americans Advancing Justice - Los Angeles (Advancing Justice - LA)
- The Asian American Legal Defense and Education Fund (AALDEF)
- American Federation of State, County and Municipal Employees (AFSCME)
- Chinese for Affirmative Action (CAA)
- Chicago Lawyers' Committee for Civil Rights Under Law

- Dēmos
- Disability Rights Legal Center (DRLC)
- The Equal Justice Society (EJS)
- Equal Rights Advocates (ERA)
- Haas Institute for a Fair and Inclusive Society
- Lambda Legal
- LatinoJustice PRLDEF
- Lawyers' Committee for Civil Rights of the San Francisco Bay Area
- Legal Momentum
- Mexican American Legal Defense and Educational Fund (MALDEF)
- National Association for Equal Opportunity in Higher Education (NAFEO)
- National Association of Latino Elected and Appointed Officials (NALEO)
- The National Black Law Students Association (NBLSA)
- National Council of Jewish Women (NCJW)
- National Council of La Raza (NCLR)
- National Urban League
- National Women's Law Center
- National Organization for Women (NOW)
- UNC Center for Civil Rights
- Union for Reform Judaism, Central Conference of American Rabbis and Women of Reform Judaism

- YWCA USA

These organizations' interests are set forth in more detail in Appendix B.

Education has long been recognized as a foundation for creating and promoting democratic values and participation, and diversity in education is, and has long been, recognized as a compelling state interest that benefits a student body, a community, and the Nation as a whole. *Amici* have a vital interest in ensuring that the normal political channels for influencing state education policy—including advocating for the use of holistic, race-sensitive admissions practices to promote diversity—remain open to *Amici* and their constituencies.

Amici do not contend that race-sensitive diversity measures are constitutionally *required*. Rather, *Amici* strongly believe that educational institutions do, and should continue to, have discretion in how they implement their academic missions. Proposal 2, however, is not merely a repeal of race-sensitive diversity measures. Rather, it amends the state constitution as to one racially-focused issue, to eliminate the existing political channels in which advocates like *Amici* have been particularly successful in achieving diversity goals.

For that reason, *Amici* write to emphasize that the political restructuring doctrine—embodied in *Washington* v. *Seattle School District No. 1*, 458 U.S. 457, 467 (1982), and *Hunter* v. *Erickson*, 393 U.S. 385, 393 (1969), and applied by the Sixth Circuit below—is an appropriate tool for applying heightened judicial scrutiny to the racially-focused ballot measure at issue here. In connection with this point, *Amici* also seek to dispel pernicious falsehoods and misconceptions perpetuated by proponents of

Proposal 2 and Petitioner's briefs about how holistic diversity considerations work in universities and what makes for a "meritorious" application for admission.

SUMMARY OF ARGUMENT

The political restructuring doctrine, also known as the *Hunter/Seattle* doctrine, is well-grounded in constitutional history, equal protection doctrine, and political theory. The architects of the Constitution recognized that "factions" inherently pose risks to the effective functioning of a democratic government. The political restructuring doctrine recognizes not merely that a majority can impose tyranny on the minority, but that a factional interest acting through *one channel* of governmental power at one particular time can entrench itself by foreclosing *other channels of democratic influence*, enacting measures that have systemic and self-perpetuating effects that insulate the preferences of that faction from future democratic change.

The *Hunter/Seattle* doctrine thus compels heightened judicial scrutiny when laws threaten to "subtly distort[ ] governmental processes" so as to place special burdens on minority groups' "entering into the political process in a reliable and meaningful manner." *Seattle*, 458 U.S. at 467; see also *Hunter*, 393 U.S. at 393. As the Court recognized in *Romer* v. *Evans*, 517 U.S. 620 (1996), in similarly striking down a popularly passed initiative amending the state constitution to prohibit perceived special treatment for a certain group: "A law declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from the government is itself a denial of equal protection of the laws in the most literal sense." *Id.* at 633.

The doctrine plainly applies in assessing Proposal 2, as the Sixth Circuit recognized. While Petitioner and his supporters argue that the Sixth Circuit's decision contravenes the "democratic will" of the people of Michigan, that decision is actually focused on *preserving* the operation of democratic institutions, not thwarting it. Nearly half a century of grassroots political organizing and advocacy, bolstered by robust social science, has fostered an extensive coalition in support of diversity measures. This coalition, which actively participated in the briefing before this Court last Term in *Fisher* v. *University of Texas*, 133 S. Ct. 2411 (2013) (No. 11-345), includes university administrators and on-campus associations, elected leaders, former military leaders, corporations, social scientists, and a wide array of national, regional, and local community organizations representing people of diverse racial, ethnic, and religious backgrounds.

In Michigan, however, a special interest group—one that has largely failed to persuade decision-makers within existing political processes about the pursuit of diversity in university admissions—instigated an initiative process to amend the state constitution and change the rules. Proposal 2 eliminates the normal channels of democratic influence for a racially-focused issue, and thereby reduces minority access to the very educational institutions that provide the basis for future democratic participation.

Amici agree with the Sixth Circuit and Respondents that the *Hunter/Seattle* doctrine properly applies in this case. *Amici* write separately to emphasize two points.

First, heightened judicial scrutiny under the political restructuring doctrine is particularly appropriate for race-focused constitutional amend-

ments passed by ballot initiative. Popular initiatives, by their nature, bypass the normal checks and balances and deliberative processes associated with a republican form of government. That is their intended purpose. But a ballot initiative also poses an inherent danger—evident in the circumstances surrounding the ballot initiative here—of takeover by "factions" seeking to entrench themselves at the expense of alternative democratic processes. Heightened judicial scrutiny remains an important, and likely the only viable, check for such measures.

Second, heightened judicial scrutiny under the political restructuring doctrine is particularly appropriate in what the Sixth Circuit below aptly described as the "high-stakes context of education." Pet. App. 7a-12a. Education is critical both to the vitality of an individual's future civic engagement and participation in self-governance; each of these interests implicates special First Amendment and Equal Protection concerns. By misconstruing how holistic diversity measures operate, and by banning *any consideration* of race, ethnic heritage, or sex—even when it may be important to a candidate's personal life-story or necessary to promote a diversity student body across fields of study—Proposal 2 grossly and unfairly intrudes into and distorts university decision-making processes, to the detriment not only of minority applicants, but to the student body and community as a whole.

For these reasons, in addition to those set forth in Respondents' brief and by the Sixth Circuit below, *Amici* urge the Court to affirm the decision invalidating Proposal 2.

ARGUMENT

I. THE POLITICAL RESTRUCTURING DOCTRINE IS THE APPROPRIATE APPROACH TO SCRUTINIZE BALLOT INITIATIVES, LIKE THE ONE HERE, THAT FOCUS ON RACE.

The political restructuring doctrine is founded on the principle that Equal Protection guarantees "the right to full participation in the political life of the community." *Seattle*, 458 U.S. at 467. The doctrine thus requires heightened judicial scrutiny when race is "the predominant factor" motivating the political process. *Bush* v. *Vera*, 517 U.S. 952, 959 (1996) (plurality). As explained below, the use of heightened judicial scrutiny in this context is well-founded in Equal Protection doctrine and is particularly appropriate in the case of race-focused ballot initiatives which amend a state's constitution.

A. Heightened Judicial Scrutiny Is Appropriate For Race-Based Ballot Initiatives That Amend A State's Constitution.

Ballot initiatives play an important role in a number of states and are premised on the people's right to engage in "direct democracy." See*, e.g.,* *Hollingsworth* v. *Perry*, 133 S. Ct. 2652, 2675 (2013) (Kennedy, J., dissenting); Kenneth P. Miller, *Direct Democracy and the Courts* (2009). But the very reason that popular initiatives are appealing—they bypass checks and balances and normal, deliberative political processes—make them ripe for abuse and make heightened judicial scrutiny particularly warranted when they target "discrete and insular minorities."

The Framers of our Constitution were acutely aware that "pure" democracy would be subject to the "mischiefs of faction"—*i.e.*, the risk that a group, united by a "common passion or interest," may seek to "sacrifice the weaker party" and promote its own interests at the expense of the common good. The Federalist No. 10 (James Madison). For that reason, the Framers adopted a republican form of government derived from the concept of "filtered majoritarianism," in which numerous checks and balances are designed to promote deliberation and guard against abuse—and required the states to do the same.[3]

State ballot initiatives and referenda—which trace their roots to the Progressive Movement in the early 1900s—are intended to remove or break through that filter and have been used with increasing frequency in recent decades.[4] Ideally, such initiatives reflect the virtues of popular sovereignty and spur legislative processes into action.

Yet the recent surge of initiative measures "has produced fresh evidence of direct democracy's structural shortcomings and potential abuses," with studies highlighting ways in which "the initiative process in practice violates many basic democratic norms, such as refinement of proposals, informed deliberation, consensus-building, compromise, and

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[3] *See, e.g.*, Miller, *supra*, at 19-20; Mihui Pak, *The Counter-Majoritarian Difficulty in Focus: Judicial Review of Initiatives*, 32 Colum. J.L. & Soc. Probs. 237, 252 (1999); Julian N. Eule, *Judicial Review of Direct Democracy*, 99 Yale L.J. 1503, 1532 (1990) [hereinafter "Eule, *Direct Democracy*"].

[4] *See* Miller, *supra*, at 41-71.

accountability."[5] Unlike representative government, the initiative process does not allow for the creation of the same legislative record as that of the representative government process, making it more difficult to discern the intent of the voters.[6] Many scholars have observed the growth of an "initiative industry" run by sophisticated professional networks and repeat players,[7] often making the initiative process itself "the tool of special interests rather than the common citizen."[8]

Thus, while the initiative process offers many potential benefits, its potential abuses counsel in favor of an important role for judicial scrutiny. For at least two reasons, the need for judicial scrutiny is

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[5] *Id.* at 71 & n.95 (collecting cites); *see also* Julian N. Eule, *Checking California's Plebiscite*, 17 Hastings Const. L.Q. 151, 155 (1989) [hereinafter "Eule, *Checking Plebiscite*"] ("The initiative process in practice confirms the prescience of the Framers' fears. Special-interest groups, aided by one-sided spending and voter ignorance, enjoy the very position of power that a representative government with its checks and balances is designed to prevent. The problem is exacerbated by deceptive wording, practices, and sloganeering, as well as by the large number and complexity of ballot measures. In addition, lack of deliberative mediation, debate, or individual commitment to a consistent or fair course of conduct further taints the republican ideal.").

[6] Eule, *Direct Democracy*, *supra*, at 1556.

[7] Miller, *supra*, at 51-55.

[8] Pak, *supra*, at 247; *see also* Eule, *Checking Plebiscite*, *supra*, at 155; John Diaz, sfgate.com, *A Long Way from the Grassroots* (Oct. 12, 2008), www.sfgate.com/opinion/article/A-long-way-from-the-grassroots-3190565.php ("Today, the initiative process is no longer the antidote to special interests and the moneyed class; it is their vehicle of choice to attempt to get their way without having to endure the scrutiny and compromise of the legislative process.").

particularly acute where the initiative process targets historically recognized racial, ethnic, religious, or other minorities.[9] *First*, ballot initiative campaigns, by their nature, "appeal to passions and prejudices" and are divorced from any deliberative or ongoing coalition-building process.[10] *Second*, popular initiatives operate against the backdrop of historical and current barriers to minorities' participation in the political process, including the current iteration of voter registration restrictions, reductions in the availability of early voting, and voter identification requirements.[11]

This Court, in tacit recognition of such concerns, has long applied heightened judicial scrutiny to

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[9] *See* Robin Charlow, *Judicial Review, Equal Protection and the Problem with Plebiscites*, 79 Cornell L. Rev. 527, 560-61, 578-80 (1994); *id.* at 541 n.48 ("'Direct democracy bypasses internal safeguards designed to filter out or negate factionalism, prejudice, tyranny, and self-interest,' thus requiring special judicial oversight to serve as a defense for minority interests."); David B. Magleby, *Let the Voters Decide? An Assessment of the Initiative and Referendum Process*, 66 U. Colo. L. Rev. 13, 40-41 (1995) (noting that "[t]he only institutional checks on the excesses of direct legislation are the courts," and that the "issue of checks and balances on direct democracy is most relevant when initiatives target racial or other minorities"); Eule, *Direct Democracy*, *supra*, at 1549.

[10] Magleby, *supra*, at 44; *see also, e.g.,* Derrick A. Bell, Jr., *The Referendum: Democracy's Barrier to Racial Equality*, 54 Wash. L. Rev. 1, 11 (1978).

[11] *See New State Voting Laws: Barriers to the Ballot?: Hearing Before the S. Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. On the Judiciary*, 112th Cong. 16 (Sept. 8, 2011) (statement of Judith A. Browne-Dianis, Co-Director of the Advancement Project); *see also* Stephen Ansolabehere, *Effects of Identification Requirements on Voting: Evidence from the Experiences of Voters on Election Day,* 42 Pol. Sci. & Pol. 127 (2009).

initiatives that impair minority rights. It has done so for nearly a century, from *Pierce* v. *Society of Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510 (1925),[12] to *Lucas* v. *Forty-Fourth General Assembly*, 377 U.S. 713 (1964), to *Romer* v. *Evans*, 517 U.S. 620, 633 (1996). The Court trenchantly explained the rationale for "searching judicial inquiry" in an oft-cited footnote to an early Equal Protection decision. *United States* v. *Carolene Prods. Co.*, 304 U.S. 144, 152 n.4 (1938) (observing that "prejudice against discrete and insular minorities ... which tends seriously to curtail the operation of those political process ordinarily to be relied upon to protect minorities ... may call for a correspondingly more searching judicial inquiry"). The *Hunter/Seattle* political restructuring doctrine—as reflected in those cases and applied by the Sixth Circuit below—falls well within this framework and reflects the modest but critically important role of judicial review under the Equal Protection Clause.

As applied here, for example, the doctrine does not require that any university or other institution adopt or continue to apply any particular race-sensitive diversity measure. Rather, the *Hunter/Seattle* doctrine operates solely as a tool to reinforce and preserve democratic checks and balances. In this vital respect, the *Hunter/Seattle* doctrine functions in a manner similar to the line of cases that enforces norms of equal participation in voting.[13]

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[12] *Pierce* involved an initiative that was facially neutral—it required all children to attend public school—but was largely seen as an attack on Catholic schools and was invalidated as an infringement on the liberty of parents to choose the schooling for their children. 268 U.S. 510.

[13] *See, e.g., League of United Latin Am. Citizens* v. *Perry*, 548 U.S. 399 (2006); *Thornburg* v. *Gingles*, 478 U.S. 30 (1986).

This application of *Hunter/Seattle* is particularly appropriate in the context of state constitutional amendments that target race. By requiring heightened scrutiny for racially-focused initiatives that reallocate political power *away from* deliberative democratic processes in which minority groups have had success—leaving them only with more remote and difficult avenues for change, ones in which factional interests and passions are most likely to block their efforts—*Hunter/Seattle* acts as a check on structural change that deprives minority groups of an equal opportunity to participate in self-government. See *Seattle*, 458 U.S. at 474 n.17; *Hunter*, 393 U.S. at 390-92. In the Sixth Circuit's words, the doctrine requires heightened scrutiny in situations where "the majority has not only won, but has rigged the game to reproduce its success indefinitely." Pet. App. 7a-12a.

To be clear, *Amici* do not contend that normal legislative processes or university political policies are always ideal or immune from faction. Democratic processes are inherently messy and flawed and regularly produce winners and losers. That is precisely why we have a constitutional system with robust judicial review. Nor do *Amici* posit that all ballot initiatives implicate the political restructuring doctrine. But within this system of checks and balances, heightened scrutiny is appropriate for initiatives that restructure the political process by singling out racial issues. The specific circumstances of this case, as described below, confirm this point.

B. The Initiative Process Here Confirms The Risk Of Faction At The Expense Of Existing Democratic Processes.

As the district court below observed, "the governance of a university, including the regulation of admissions criteria, is part of the political process."

Supp. App. 327a. Michigan's universities derive their power from Article VIII, § 5, of the Michigan Constitution, which provides for a popularly elected board to supervise each university. University policies, including admissions policies, are thus subject to influence by, and are accountable to, numerous constituencies, including university administrators, faculty, students, alumni, the legislature which controls the purse strings, the board, and ultimately the general populace that elects the board members.

Before Proposal 2 was enacted, this political process functioned as intended. As the district court observed, in the 1960s, racial minority groups in Michigan began advocating that the University of Michigan Board of Regents take minority status into account as a positive factor in admissions decisions. Supp. App. 270a.[14] These lobbying efforts helped lead to the widespread adoption of diversity measures which functioned to lessen the segregation of Michigan's educational institutions. At the same time, affirmative action policies have been subject to vigorous debate, including at the level of the boards.[15]

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[14] *See generally* Lisa M. Stulberg & Anthony S. Chen, *Beyond Disruption, The Forgotten Origins of Affirmative Action in College and University Admission, 1961-1969*, at 32-36, 52-53 (May 5, 2008) (describing political and social mobilization as key factors in advent of affirmative action in Michigan and elsewhere).

[15] *See* Pet. App. 7a-12a, 22a-40a (citing evidence that board members have run on pro- and anti-affirmative action platforms); Aaron Guggenheim, The Michigan Daily, *Candidates Vie for Empty Regents Seats* (Feb. 2, 2012) (noting that Democratic regents have been staunch supporters of affirmative action, which Republican opponents have opposed).

Proposal 2 removed the affirmative action debate from that process and the groups closest to, and most directly affected by, the issue. The initiative was sponsored, in substantial part, by one of the most recognizable members of the "initiative industry"—former University of California Regent Ward Connerly, who has been going state-to-state to put anti-affirmative action measures on the ballot.[16]

As the courts below and in pre-election challenges observed, "the solicitation and procurement of signatures in support of placing Proposal 2 on the general election ballot was rife with fraud and deception .... By all accounts, Proposal 2 found its way on the ballot through methods that undermine the integrity and fairness of our democratic processes." Supp. App. 272a (quoting *Operation King's Dream* v. *Connerly*, 501 F.3d 584, 591 (6th Cir. 2007)). Specifically, there were findings that initiative proponents, "by disguising their proposal as a ban on 'preferences' and 'discrimination,' without ever fulfilling their responsibility to forthrightly clarify what these terms were supposed to mean," engaged in "the use of deception and connivance" leading many voters into believing that the petition supported affirmative action. *Operation King's Dream* v. *Connerly*, No. 06-12773, 2006 U.S. Dist. LEXIS 61323, at *33-35 (E.D. Mich., Aug. 29, 2006); see also Mich. Civil Rights Comm'n, *Report Regarding the Use of Fraud and Deception in the Collection of Signatures for the Michigan Civil Rights Initiative Ballot Petition* (June 7, 2006).

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[16] *See* Supp. App. 271a (noting Connerly's role in Michigan's Proposal 2); Miller, *supra*, at 51 (identifying Connerly as a "repeat player" in the initiative business).

Moreover, it is clear that the initiative had a "racial focus." While couched in terms of appeals to "fairness" and meritocracy in the admissions process, the manifest intent of the provision was to exclude from admissions minority candidates who, in the view of Proposal 2's proponents, did not deserve admission and would not be admitted but for "preferential treatment." The appeal to racial resentment of whites against the perceived injustice of "reverse discrimination" often was explicit, as for example in one supporting website, which proclaimed: "**[F]or every black student who gets admitted due to affirmative action, a higher achieving white student is typically rejected from admission.**"[17] Using rhetoric typical of anti-civil rights groups in the 1960s, the same website labeled affirmative action supporters as "Communist-like radical groups" and blamed them for "foster[ing] continued animosity, jealously, and hatred between the races," and "indirectly play[ing] a role in precipitating race-motivated hate crimes."

Even when using less heated rhetoric, appeals to "fairness" and "meritocracy" in admissions can still carry racial undertones. For example, a recent study found that white respondents generally favored admissions policies that emphasize grades and test scores, but when prompted to think about Asian American enrollment, their views shifted: white respondents assigned less weight to grades and test scores, in favor of subjective qualities such as "leadership."[18] For similar reasons, decrials of the

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[17] *See* Proposal 2, web.archive.org/web/20071027043354/http://www.michiganproposal2.org/.

[18] Scott Jaschik, Inside Higher Educ., *Meritocracy or Bias?* (Aug. 13, 2013).

injustice of minority candidates gaining admission over hard-working, higher-achieving whites reflect stereotypes about both what constitutes "achievement" and the presumed work ethic (or lack thereof) of different groups. Implicit biases are also reflected in the fact that people denied admission to the university of their choice target their blame on minorities and diversity considerations—as opposed to forms of "preferential treatment" for legacies, children of donors or prominent leaders, athletes, and people from different geographic areas or who have other unusual talents or experiences.

Ultimately, Proposal 2 passed with a racially polarized vote.[19] Although Petitioner speculates as to certain non-discriminatory reasons why voters could have supported Proposal 2's rejection of race-based affirmative action, it is notable that Petitioner cites materials published long after the Proposal's passage, as opposed to ballot measures themselves. See Pet'r Br. 15-16, 30-31. In any event, such arguments—to which we respond in more detail below—are the very arguments that did not persuade the stakeholders directly involved in the political process to which university admissions policies have long been accountable. Moreover, as with any ballot initiative that lacks either a legislative record or adopted findings, it can be challenging to discern what voters understood the initiative to mean.

The plain language of the ballot measure, moreover, is not an adequate surrogate for divining the intent of the voters. The principle of holding

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[19] According to CNN's exit poll, 64% of whites supported Proposal 2, while 86% of African-Americans voted against it. CNN.com, *America Votes* 2006, www.cnn.com/ELECTION/2006/pages/results/states/MI/I/01/epolls.0.html.

elected legislators accountable for the plain language of the laws they pass is understandable because the responsibility of legislators is to write law. The average voter, by contrast, plays no role in drafting or amending the language of a ballot initiative, and has no expertise in predicting how courts will interpret the initiative's language that others have drafted. Ballot initiatives are thus particularly susceptible to manipulation and misrepresentation in a way that counsels against any presumption, analogous to what courts may accord a statute, that the intent of a voter fairly may be discerned from the plain language of the initiative itself. For this reason, the political restructuring doctrine properly focuses not on speculation about what voters intended, but on the process-oriented effects and disparate impact of the initiative itself.

Here, the effects are clear. Proposal 2 limits, along race lines, the authority to address a racial problem "in such a way as to burden minority interests." *Seattle*, 458 U.S. at 474. It does so by foreclosing grassroots and ground-level democratic efforts within the deliberative bodies closest to and with the greatest expertise on the issue, leaving the only recourse to "an extraordinarily expensive process and the most arduous of all the possible channels for change," Pet. App. 22a-40a,[20] and one in which the

[20] Board elections cost a tiny fraction of a statewide race compared to the expense of putting an initiative on the ballot. *See, e.g.*, Steven Pepple, MLive.com, *Ilitch Is Top Spender In University Of Michigan Regents Race* (Oct. 17, 2008) (top spender in 2008 Regents election spent $34,990 on her campaign); Andy Marso, Topeka Capital-Journal, *Cost Of Constitutional Amendments Examined* (Feb. 1, 2013); Daniel Wood, Christian Science Monitor, *Is California's Ballot Initiative Process Broken? Lawmakers Think So* (July 28, 2011)

threat of factional "passion" regarding racial issues looms largest.[21]

Given these dangers, heightened judicial scrutiny over Proposal 2 is warranted. Because its proponents have not identified any compelling state interest in eliminating a university's ability to consider and adopt race-sensitive diversity measures—which they are specifically permitted to do, and which itself furthers a compelling state interest—Proposal 2 was properly invalidated.

II. THE POLITICAL RESTRUCTURING DOCTRINE IS APPROPRIATE IN THE CONTEXT OF EDUCATION.

Heightened judicial scrutiny is particularly warranted in the context of education because policies affecting educational access and universities' ability to implement their academic missions have self-perpetuating effects for future democratic participation and democratic values. This case does not call for a relitigation of the settled issue, addressed in *Fisher*, that universities may adopt holistic, race-sensitive diversity measures. Nonetheless, it is worth reiterating the benefits such measures provide and how diversity considerations actually operate in practice, to counter various of the arguments raised by Petitioner and the defenders of

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("Special interests spent over $1.3 billion on proposition battles between 2000 and 2006").

[21] *See, e.g.*, *Diversity In Democracy: Minority Representation in the United States* 173 (Gary M. Segura & Shaun Bowler eds., 2005) (a comprehensive study of California ballot initiatives over 18 years "found that racial and ethnic minorities—and Latinos in particular—lose regularly on a number of racially targeted propositions," and produce "[r]acial cleavages ... even [for] ostensibly 'race-neutral' policies").

Proposal 2. Responding to these misconceptions also demonstrates why removing race-sensitive educational policies from any ground-level, deliberative political process and putting them to an "up or down" popular vote is inherently flawed and unlikely to produce truly democratic results.

A. Holistic Diversity Initiatives Offer Equal Access To Educational Institutions And Are Critical For Full Democratic Participation.

1. Educational Institutions Are Central To Democratic Participation.

A core premise of this Court's jurisprudence on equal protection and education is that educational institutions do not merely provide tools for learning—they promote social integration, provide the basis for equal opportunity, and forge paths toward fuller participation in our democratic system.

As this Court stressed in *Brown* v. *Board of Education*, 347 U.S. 483 (1954), "education is perhaps the most important function of state and local governments." *Id.* at 493. It "is required in the performance of our most basic public responsibilities, even service in the armed forces," and it "is the very foundation of good citizenship." *Id.* Education is a "principal instrument" in preparing students "for later professional training," "helping [them] to adjust normally to [their] environment," and in providing a reasonable chance "to succeed in life." *Id.* The very act of attending a university, in and of itself, can give students access to professional and social networks and channels of power, and can allow students to wear as a badge the prestige of the institution itself. See *United States* v. *Virginia*, 518 U.S. 515, 557 (1996); *Sweatt* v. *Painter*, 339 U.S. 629, 634 (1950)

(examining "those qualities which are incapable of objective measurement but which make for greatness in a ... school," including "position and influence of the alumni, standing in the community, traditions and prestige").

Access to higher education generates positively reinforcing effects. Graduates are more inclined and able to participate and lead political processes and, in turn, expand access and participation for others. As this Court noted in *Grutter* v. *Bollinger*, 539 U.S. 306 (2003), a strikingly large number of leaders in all branches of government are graduates of a select number of higher educational institutions. *Id.* at 332. "[U]niversities, and in particular, law schools, represent the training ground for a large number of our nation's leaders." *Id.*; see also *Sweatt*, 339 U.S. at 634. Conversely, limiting access to higher education "remove[s] [individuals] from the interplay of ideas and the exchange of views," *Sweatt*, 339 U.S. at 634, and may limit their access to future channels of economic and civic influence.

2. Diversity Initiatives Promote Democratic Values And Participation.

As this Court has repeatedly recognized over the last three decades, "the interest in the educational benefits that flow from a diverse student body" is a compelling state interest that allows race to be considered in the admissions process. *Fisher*, 133 S. Ct. at 2417 (citing *Univ. of Cal. Regents* v. *Bakke*, 438 U.S. 265, 315 (1978) (opinion of Powell, J.)); see also *Grutter*, 539 U.S. at 325 (endorsing "Justice Powell's view that student body diversity is a compelling state interest that can justify the use of race in university admissions"). Universities have long relied on those decisions in shaping their admissions policies.

In *Fisher*, this Court was presented with a great deal of support for holistic diversity measures from virtually every corner of public life. University administrators and student groups emphasized the importance of diversity and the ability to consider race and ethnic background as part of a holistic admissions process.[22] Military members and government leaders emphasized the value that a diverse student body brings to supporting our Nation's defense and other government functions.[23] Business leaders debunked the notion that minority candidates who benefit from diversity measures are somehow "less qualified" or less productive when entering the workforce.[24] Women's groups outlined the critical role diverse student bodies play in undermining the pernicious stereotypical views that continue to affect the fields of study selected by women of color, and how individualized admissions consideration is necessary to promote diversity specifically in traditionally male-dominated fields, such as math, science, and engineering.[25]

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[22] *See, e.g.*, Amicus Br. of Dean Robert Post & Dean Martha Minow, *Fisher*, No. 11-345 (Aug 13, 2012) [hereinafter "*Fisher* Post & Minow Br."]; Amicus Br. of Law School Admission Council, *Fisher*, No. 11-345 (Aug 13, 2012); Amicus Br. of 28 Student Organizations Within the Univ. of Cal., *Fisher*, No. 11-345 (Aug 13, 2012) [hereinafter "*Fisher* Student Org. Br."]; Amicus Br. of Cal. Inst. of Tech., *Fisher*, No. 11-345 (Aug 13, 2012).

[23] *See* Amicus Br. of Lt. Gen. Julius W. Becton, Jr., *Fisher*, No. 11-345 (Aug 13, 2012).

[24] *See* Amicus Br. of Fortune-100 and Other Leading American Businesses, *Fisher*, No. 11-345 (Aug 13, 2012); Amicus Br. of Small Business Owners and Associations, *Fisher*, No. 11-345 (Aug 13, 2012).

[25] *See* Amicus Br. of National Women's Law Center, *Fisher*, No. 11-345 (Aug 13, 2012).

Likewise, briefs from the Asian American community debunked the argument—raised in this case and by Proposal 2 supporters—that diversity measures operate to the detriment of Asian Americans. As those briefs showed, the myth that Asians writ large are a monolithic "model minority" masks significant variance in the educational backgrounds, test scores, socio-economic status, and immigration histories of different Asian American and Pacific-Islander communities. Thus, certain Asian American individuals and sub-groups benefit directly from diversity considerations, while Asian Americans generally, like all students, benefit from a diverse learning environment that helps to promote cross-cultural understanding, break down stereotypes, and further expand equal opportunity for all.[26]

As the *Fisher amicus* briefs also reflect, a substantial body of social science has developed, demonstrating the benefits of diversity initiatives for the student body and community as a whole, in addition to advancing minority interests.[27] Among other benefits, increased classroom diversity has been shown to lead to: (i) improvements in intergroup contact and increased cross-racial interaction among students; (ii) reductions in prejudice; (iii) improvements in cognitive abilities, critical thinking skills,

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[26] *See* Amicus Br. of Asian American Legal Defense & Education Fund, *Fisher*, No. 11-345 (Aug 13, 2012); Amicus Br. of Members of Asian American Center for Advancing Justice, *Fisher*, No. 11-345 (Aug 13, 2012).

[27] *See* Amicus Br. of American Social Science Researchers, *Fisher*, No. 11-345 (Aug. 9, 2012) [hereinafter "*Fisher* Social Science Researchers Br."]. *See generally* The Civil Rights Project, *Research Basis for Affirmative Action: A Statement by Leading Researchers* (July 11, 2013), *available at* http://civilrightsproject.ucla.edu/.

and self-confidence; (iv) greater civic engagement; (v) enhancement of professional development and leadership skills; and (vi) improved classroom environments. These benefits are not unique to students of any race; all students benefit from greater exposure to and interaction with more diverse arrays of classmates and experiences. See Civil Rights Project, *supra*, at 2.

A recent report on diversity from the University of Michigan confirms these points, finding, based on surveys of student class cohorts from 1990-1994 and 2000-2004, support for three core rationales of diversity initiatives: (a) the creation of a stimulating and challenging environment that benefits all students irrespective of racial background; (b) the preparation of Michigan students for participation as citizens and leaders in our increasingly diverse nation and interconnected world; and (c) the fostering of preparation for citizenship in American society. Office of Academic Multicultural Affairs, Univ. of Mich., *Michigan Diversity Report* 5-6, www.oami.umich.edu/images/MSS%20DIVERSITY%20REPORT.pdf (last visited Aug. 28, 2013). Notably, Michigan students disagreed with views critiquing affirmative action on the basis that such programs stigmatize minority students or promote racial disunity. *Id.* at 23-32. Although there was varying support for affirmative action programs across racial groups, support for these programs among white students *increased* during their time at the University. *Id.*

Ensuring minority access to selective universities thus benefits American society as a whole. Scholars have demonstrated that students of all races at more selective institutions, and particularly African-American students, are more engaged in civic

activities, more engaged in leadership roles, and more politically active than their counterparts at less-selective schools. See generally William G. Bowen & Derek Bok, *The Shape of the River* 158-73 (1998). This translates to increased alumni involvement, and emphasizes the value of diversity measures to the success of the political process in the United States. See Nicholas A. Bowman, *Promoting Participation in a Diverse Democracy: A Meta-Analysis of College Diversity Experiences and Civic Engagement*, 81 Rev. Educ. Res. 29 (Mar. 2011). This Court acknowledged as much in *Grutter*, citing to evidence showing that students who are exposed to "widely diverse people, cultures, ideas, and viewpoints" are "better prepare[d] ... for an increasingly diverse workforce and society." 539 U.S. at 330. This will only become more true as the United States becomes increasingly racially and ethnically diverse.[28]

Diversity initiatives are also important in light of ongoing educational disparities, in particular, disparities in primary education. Notwithstanding real progress on various fronts, achievement gaps among white and African-American and Hispanic students remain "wide and pervasive."[29] These disparities are particularly acute in primary school educational attainment, where, for instance, in mathematics the average African-American eighth

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[28] *See* Karen R. Humes et al., U.S. Dep't of Commerce, *Overview of Race and Hispanic Origin: 2010*, at 22 (Mar. 2011), *available at* http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf.

[29] *See* Robert Rothman, et al., The Leadership Conference Education Fund, *Reversing the Rising Tide of Inequality: Achieving Educational Equity for Each and Every Child* 11 (Apr. 2013), *available at* civilrightsdocs.info/pdf/reports/Education-Equity-Report-webversion.pdf.

grader performs at the 19th percentile of white students and the average Hispanic student performs at the 26th percentile. Rothman et al., *supra*, at 11. These racial disparities continue through high school. *Id.* As a result, an estimated "[t]en million students ... are having their lives unjustly and irredeemably blighted by a system that consigns them to the lowest-performing teachers, the most run-down facilities, and academic expectations and opportunities considerably lower than what we expect of other students." U.S. Dep't of Educ., *For Each and Every Child: A Strategy for Education Equity and Excellence* 14 (2013).

Ultimately, holistic, individualized diversity initiatives are essential for maximizing educational attainment for all students, while breaking down stereotypes and promoting future democratic participation for minority leaders and the community as a whole. Removing any consideration of race—or sex or ethnic heritage—from the admissions context will have the effect of reducing these benefits associated with diversity in educational institutions, with negative effects for the future functioning of civic and democratic processes both for minority students and for the community as a whole.[30]

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[30] *See., e.g.,* Deirdre M. Bowen, *Brilliant Disguise: An Empirical Analysis of a Social Experiment Banning Affirmative Action*, 85 Ind. L.J. 1197, 1198-99 (2010) (finding that bans on affirmative action result in minority students encountering increased hostility and internal and external stigma compared with peers attending schools with intact affirmative action programs).

B. Proposal 2 Intrudes Upon A University's Implementation Of Its Academic Mission Without Any Well-Grounded Or Compelling Basis.

This Court has repeatedly recognized that a university's academic mission, including its right to decide who may be admitted, is a "special concern of the First Amendment." *Fisher*, 133 S. Ct. at 2418; see also *Bakke*, 438 U.S. at 312 (opinion of Powell, J.) (describing academic freedom as of "transcendent value"). That includes the discretion, exercised through normal university governance practices and political processes, to determine that raw test scores alone are not a complete indicator of who is a meritorious candidate, who is likely to contribute most to the overall student body, or who is inclined to be a leader in the future.[31] For years, there has been significant variation in how schools choose to construct their admissions criteria and weigh various elements such as essays, extra-curricular activities, and personal qualities—as well as in whether and how they consider race as one factor among many. Such variation reflects the freedom historically accorded to universities to make decisions critical to the creation of an academic community.

What is so striking about Proposal 2, as the court below observed, is that it intrudes into the normal processes for university governance, which in Michigan consist of elected, independent boards for the three main state universities. Petitioner has

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[31] *See Fisher* Post & Minow Br. 11. Indeed, for example, the American Bar Association's accreditation standards explicitly state that schools should "not use the LSAT score as a sole criterion for admission." Am. Bar Ass'n, *2011-2012 Standards and Rules of Procedure for Approval of Law Schools* 169 (2011).

never purported to identify a compelling state interest to justify this intrusion and re-ordering of the political process. Instead, Petitioner and the defenders of Proposal 2 present two main arguments: (i) use of race-sensitive diversity considerations in admissions degrades the value of the individual; and (ii) abandoning race-sensitive admissions practices will not harm, and may actually benefit, minorities. Neither of these is well-founded or sufficient to survive any level of heightened scrutiny.

1. Holistic Diversity Initiatives Promote Selection Of Meritorious Candidates By Valuing Individual Experiences; Proposal 2 Precludes Such Consideration.

Consistent with this Court's precepts, permissible diversity initiatives do not—*and cannot*—assume that diversity equates to admitting a pre-determined percentage of students from a given demographic or that every person with a common heritage must share the same viewpoint. *Fisher*, 133 S. Ct. at 2418; *Grutter*, 539 U.S. at 337. Indeed, those sorts of quotas and set-asides have been widely recognized as plainly impermissible by universities for more than three decades.[32] While Petitioner makes a passing

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[32] *See Gratz* v. *Bollinger*, 539 U.S. 244, 293 (2003) (Souter, J., dissenting) ("Justice Powell's opinion in [*Bakke*] rules out a racial quota or set-aside, in which race is the sole fact of eligibility for certain places in a class."); *Fisher*, 133 S. Ct. at 2418 ("'To be narrowly tailored, a race-conscious admissions program cannot use a quota system,' but instead must 'remain flexible enough to ensure that each applicant is evaluated as an individual and not in a way that makes an applicant's race or ethnicity the defining feature of his or her application.'") (citation omitted); *see also* Am. Ass'n for the Advancement of Science, *Handbook on Diversity and the Law* 56 (2010) ("the

assertion that Michigan universities, since *Grutter*, have been more reliant on race, Petitioner cites *nothing* for that assertion.

Contrary to Petitioner's assertions, diversity initiatives that include race-conscious considerations do not devalue the individual. Rather, it is quite the opposite. "The whole point of an individualized application process is to use essays, references and test scores to understand fully each applicant in his or her own particularity .... It does not 'demean[ ] the dignity and worth of an applicant, to listen to what he has to say when he believes that race is an important aspect of his own personal experience." *Fisher* Post & Minow Br. 21-22, 24-27 (citation omitted), *cited in Fisher*, 133 S. Ct. at 2433 n.1 (Ginsburg, J., dissenting). This Court has long recognized that intangible, individual considerations are essential to educational success, such as a student's "ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession." *Brown*, 347 U.S. at 493-94 (quoting *McLaurin* v. *Okla. State Regents*, 339 U.S. 637 (1950)).

In marked contrast with this tradition of individualized admissions processes, Proposal 2 bans *any consideration* of race whatsoever, no matter what an individual applicant wishes to share in his or her application or essay. See Supp. App. 284a ("It is the undisputed testimony of university officials that Proposal 2 prohibits them from considering race to any degree."); Pet. App. 7a-12a, 22a-40a (noting that Proposal 2 "remov[es] the power of university officials to even *consider* using race as a factor in admissions

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Supreme Court has made clear may not employ quotas or other exclusive approaches").

decisions—something they are specifically allowed to do under *Grutter*"). Were Proposal 2 to stand, this interpretation would foreclose even the most individualized of admission processes, effectively requiring universities to ignore, redact, or delete application essays that even mention race.

This extreme ban on *any* consideration or mention of race, as well as sex, ethnicity, or national origin, demeans individual applicants for whom their race, sex, or heritage may play an important role in their identity, personal stories, or record of achievement. See *Fisher* Post & Minow Br. 22-23. "We accord dignity to persons when we listen to what they have to say," and it "belittles applicants to invite their self-presentations and then deliberately ignore their personal accounts of their own lives." *Id.* "It is incompatible with the respect we owe our applicants to demand they comply with the preconception that race ought not matter to them." *Id.*

Such misconceptions about how holistic diversity consideration works are also evident in the dissenting opinions below. For example, Judge Boggs hypothesized about an applicant who is "one-half Chinese, one-fourth Eastern-European Jewish, one-eighth Hispanic (Cuban), and one-eighth general North European, mostly Scots-Irish." Pet. App. 54a-55a. Judge Boggs presumed that diversity initiatives would somehow work against that applicant. To the contrary, universities permissibly could (and might well) find that person's unique background and multi-ethnic heritage to be a valuable addition to the academic environment, especially if the student expressed how it was important to him or her.

By contrast, it is Proposal 2 that would require admissions directors to ignore such an individual's unique story and the benefits that a multi-racial and

multi-cultural student might bring to the university as a whole. At the same time, Proposal 2 leaves completely unaffected various other forms of "preferential treatment," particularly those that tend to perpetuate preferences that favor historically privileged groups.

Such popular misconceptions about how university admissions processes work only confirm why it is inherently unreliable and suspect to (a) remove decision-making authority from those bodies who are closest to, and most experienced in, the issue and actually accountable to a university's constituencies; and (b) instead make the decision about a racial issue subject exclusively to a non-deliberative, one-time popular vote.

2. Contrary To What Petitioner Contends, Proposal 2 Will Have A Disparate Impact Upon Minority Candidates' Access To Educational Institutions.

Petitioner also argues that Proposal 2 will not harm, and may actually help, minority students because other kinds of race-neutral programs will mitigate a decline in minority enrollment or because race-sensitive diversity initiatives produce a "mismatch" that results in lower achievement by the assumed minority beneficiaries. As indicated above, to the extent those arguments have merit, they can and should be raised within the political and deliberative processes responsible for setting university policy. But they have largely failed to persuade decision-makers at that level, and for good reason. Petitioner's arguments in support of Proposal 2 likewise cannot survive any form of heightened scrutiny, based on the circumstances described above.

First, the contention that Proposal 2 will not harm minority enrollment is belied by the record evidence and historical experience. The district court itself found it likely that Proposal 2 will have a disparate and negative impact on admission of minority candidates. "It is difficult to see how Proposal 2 could *not* have a disparate impact on minorities." Supp. App. 316a; see also Supp. App. 284a-285a. For example, a leading Proposal 2 advocate, Ward Connerly, admitted that, following the amendment, "the University of Michigan would be **virtually resegregated** as the University of California Berkeley and UCLA have." Supp. App. 285a (emphasis added); see also *Fisher* Student Org. Br. 6.

In particular, the notion that other forms of race-neutral measures—such as socio-economic affirmative action or "Top Ten Percent" plans—can serve as adequate replacements has also been debunked. Rigorous research, including as presented in the *Fisher amicus* briefs, demonstrates why, in general, such class-based programs are not sufficient substitutes for individualized consideration of race-related diversity concerns.[33] And, as the evidence in the district court below showed, there are a number of reasons specific to Michigan—including based on its composition and geographical factors involved in its admissions process—for why such programs would not be effective in promoting racial diversity. Supp. App. 287a-288a. Socio-economic affirmative action or "Top Ten Percent" plans also do little to promote diversity in race or sex within particular programs. Petitioner's argument—and the sources on which it relies—presents a false choice between race and class

[33] *See Fisher* Social Science Researchers Br.; *see also* Sherrilyn Ifill, N.Y. Times, *Race vs. Class: The False Dichotomy* (June 14, 2013).

consideration. In reality, racial and socio-economic equality are *both* worthy goals and universities should pursue each of them as they see fit.

Second, Petitioner and its supporters rely on the "mismatch theory" in arguing that Proposal 2 will benefit minority students. "Mismatch theory" posits that, when less-prepared minority students are admitted to exclusive institutions based in part on affirmative action policies, they tend to do poorly, to the detriment of themselves and cross-racial perceptions. Notably, the seminal article on this theory, from 2004 by Richard Sander, was not subject to the peer-review standards of social science journals and has been debunked by the weight of empirical evidence.[34] Current scholarship indicates that "race conscious admissions policies are associated with net positive outcomes for underrepresented minority students at highly selective U.S. institutions, including better college and university graduation rates, higher rates of enrollment at graduate and professional school programs, higher leadership contributions, and better prospects in the labor market."[35] For example, graduation rates—one

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[34] David L. Chambers, et al., *The Real Impact of Eliminating Affirmative Action in American Law Schools: An Empirical Critique of Richard Sander's Study*, 57 Stan. L. Rev. 1855 (2005); *see also* Katherine Y. Barnes, *Is Affirmative Action Responsible for the Achievement Gap between Black and White Law Students? A Correction, a Lesson, and an Update Clarification*, 105 Nw. U. L. Rev. 791 (2011).

[35] William Kidder, *Pursuing Diversity in U.S. Higher Education: Empirical Evidence and the 'Mismatch' Hypothesis* (Sept. 2012), *available at* www.civilrightsdocs.info/pdf/equal-opportunity/fisher/brookings-handout-final.pdf; *see also* Amicus Br. of Teach for America, *Fisher*, No. 11-345 (Aug. 13, 2013); Amicus Br. of National Education Ass'n, *Fisher*, No. 11-345

quantitative metric that may be used to evaluate a student's "match" with a particular institution—among minority students are *higher* than rates at more selective institutions, even when controlling for secondary school grade point averages or SAT scores.[36] Moreover, "mismatch theory" has not been borne out in first-year grades or drop-out rates, or in the law school context.[37]

Mechanical class-based admissions policies and "mismatch" theory also overlook the problems caused by racial isolation and insufficiently supportive educational climates in higher education. That is precisely why race-sensitive admissions policies recognize the importance of having a "critical mass" of underrepresented minorities, and why such policies look to how each individual applicants can contribute to the class as a whole.

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In sum, elimination of holistic diversity considerations, in favor of forms of "preferential treatment" that advantage children of privilege or non-minority groups, is likely to harm educational institutions and the ability of minority candidates, not merely to gain access to those institutions, but

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(Aug. 13, 2013); Amicus Br. of American Council on Education, *Fisher*, No. 11-345 (Aug. 13, 2013).

[36] *See, e.g.*, William G. Bowen, Matthew W. Chingos & Michael S. McPherson, *Crossing the Finish Line: Completing College at America's Public Universities* 209 (2009); Sigal Alon & Marta Tienda, *Assessing the Mismatch Hypothesis: Differences in College Graduation Rates by Institutional Selectivity*, 78 Soc. Educ. 294, 309 (2005).

[37] *See* Mary J. Fischer & Douglas S. Massey, *The Effects of Affirmative Action in Higher Education*, 36 Soc. Sci. Res. 531 (2007); Barnes, *supra*; Chambers et al., *supra*.

also to participate equally in the full scope of economic, civic, and political life. It also negatively impacts society as a whole. *Amici* do not contend that racially-sensitive diversity measures are required. *Amici* do submit, however, that the decision about how best to set admissions policy and promote educational goals is best left to the political and university governance processes created specifically for those institutions. For a political faction to rig that political process properly triggers heightened judicial scrutiny and, on the record presented in this case, violates Equal Protection.

CONCLUSION

For the foregoing reasons, this Court should affirm.

Respectfully submitted,

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August 30, 2013

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APPENDICES

APPENDIX A

MEMBER ORGANIZATIONS OF THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS

- 9to5, National Association of Working Women
- A. Philip Randolph Institute (APRI)
- AARP
- AAUW (formerly known as the American Association of University Women)
- Advancement Project
- African Methodist Episcopal Church (AME Church)
- Alaska Federation of Natives (AFN)
- Alliance for Retired Americans
- Alpha Kappa Alpha Sorority, Inc.
- Alpha Phi Alpha Fraternity, Inc.
- American-Arab Anti-Discrimination Committee (ADC)
- American Association for Affirmative Action
- American Association of Colleges for Teacher Education
- American Association of People with Disabilities (AAPD)
- American Baptist Home Mission Societies, American Baptist Churches USA
- American Civil Liberties Union (ACLU)

- American Council of the Blind (ACB)
- American Ethical Union (AEU)
- American Federation of Government Employees, AFL-CIO (AFGE)
- American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
- American Federation of State, County & Municipal Employees, AFL-CIO (AFSCME)
- American Federation of Teachers, AFL-CIO (AFT)
- American Friends Service Committee (AFSC)
- American Islamic Congress (AIC)
- American Jewish Committee (AJC)
- American Nurses Association (ANA)
- American Society for Public Administration (ASPA)
- American Speech-Language-Hearing Association (ASHA)
- Americans for Democratic Action (ADA)
- Amnesty International USA
- Anti-Defamation League (ADL)
- Appleseed
- The Arc
- Asian Americans Advancing Justice | AAJC
- Asian Pacific American Labor Alliance, AFL-CIO (APALA)
- Association for Education and Rehabilitation of the Blind and Visually Impaired (AER)

- The Association of Junior Leagues International Inc. (AJLI)
- The Association of University Centers on Disabilities (AUCD)
- B'nai B'rith International (BBI)
- Brennan Center for Justice at New York University School of Law
- Building & Construction Trades Department, AFL-CIO (BCTD)
- Center for Community Change (CCC)
- Center for Responsible Lending (CRL)
- Center for Women Policy Studies
- Children's Defense Fund (CDF)
- Church of the Brethren - World Ministries Commission
- Church Women United (CWU)
- Coalition of Black Trade Unionists (CBTU)
- Coalition on Human Needs
- Common Cause
- Communications Workers of America, AFL-CIO, CLC (CWA)
- Community Action Partnership
- Community Transportation Association of America (CTAA)
- Compassion & Choices
- DC Vote
- Delta Sigma Theta Sorority, Inc.
- DEMOS: A Network for Ideas & Action

- Disability Rights Education and Defense Fund (DREDF)
- Disability Rights Legal Center
- Division of Homeland Ministries - Christian Church (Disciples of Christ)
- Epilepsy Foundation of America
- Episcopal Church - Public Affairs Office
- Equal Justice Society
- Evangelical Lutheran Church in America (ELCA)
- FairVote
- Families USA
- Federally Employed Women (FEW)
- Feminist Majority
- Friends Committee on National Legislation (FCNL)
- Gay, Lesbian and Straight Education Network (GLSEN)
- Global Rights
- Glass, Molders, Pottery, Plastics & Allied Workers International Union (GMP)
- Hip Hop Caucus
- Human Rights Campaign (HRC)
- Human Rights First (HRF)
- Immigration Equality
- Improved Benevolent and Protective Order of Elks of the World
- International Association of Machinists and Aerospace Workers (IAM)

- International Association of Official Human Rights Agencies (IAOHRA)
- International Brotherhood of Teamsters
- International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)
- Iota Phi Lambda Sorority, Inc.
- Japanese American Citizens League (JACL)
- Jewish Council for Public Affairs (JCPA)
- Jewish Labor Committee (JLC)
- Jewish Women International (JWI)
- Judge David L. Bazelon Center for Mental Health Law (Bazelon Center)
- Kappa Alpha Psi Fraternity, Inc.
- Labor Council for Latin American Advancement (LCLAA)
- Laborers' International Union of North America (LIUNA)
- Lambda Legal
- LatinoJustice PRLDEF
- Lawyers' Committee for Civil Rights Under Law
- League of United Latin American Citizens (LULAC)
- League of Women Voters of The United States (LWV)
- Legal Aid Society—Employment Law Center (LAS-ELC)
- Legal Momentum
- Mashantucket Pequot Tribal Nation

- Matthew Shepard Foundation
- Mexican American Legal Defense and Educational Fund (MALDEF)
- NA'AMAT USA
- NAACP Legal Defense and Educational Fund, Inc. (LDF)
- NALEO Educational Fund
- National Alliance of Postal & Federal Employees (NAPFE)
- National Association for Equal Opportunity in Higher Education (NAFEO)
- National Association for the Advancement of Colored People (NAACP)
- The National Association of Colored Women's Clubs, Inc. (NACWC)
- National Association of Community Health Centers (NACHC)
- National Association of Consumer Advocates (NACA)
- National Association of Human Rights Workers (NAHRW)
- National Association of Latino Elected and Appointed Officials (NALEO)
- National Association of Negro Business & Professional Women's Clubs, Inc. (NANBPWC)
- National Association of Neighborhoods (NAN)
- National Association of Social Workers (NASW)
- National Bar Association (NBA)
- National Black Caucus of State Legislators (NBCSL)

- National Black Justice Coalition (NBJC)
- National Center for Lesbian Rights
- National Center for Transgender Equality (NCTE)
- The National Center on Time & Learning
- National Coalition for Asian Pacific American Community Development (National CAPACD)
- National Coalition for the Homeless (NCH)
- National Coalition on Black Civic Participation (NCBCP)
- National Coalition to Abolish the Death Penalty (NCADP)
- National Committee on Pay Equity (NCPE)
- National Committee to Preserve Social Security & Medicare
- National Community Reinvestment Coalition (NCRC)
- The National Conference for Community and Justice
- National Conference of Black Mayors, Inc. (NCBM)
- National Congress for Puerto Rican Rights (NCPRR)
- National Congress of American Indians (NCAI)
- National Consumer Law Center (NCLC)
- National Council of Churches of Christ in the U.S. (NCC)
- National Council of Jewish Women (NCJW)
- National Council of La Raza (NCLR)
- National Council of Negro Women (NCNW)

- National Council on Independent Living (NCIL)
- National Disability Rights Network (NDRN)
- National Education Association (NEA)
- National Employment Lawyers Association (NELA)
- National Fair Housing Alliance (NFHA)
- National Farmers Union (NFU)
- National Federation of Filipino American Associations (NaFFAA)
- National Gay and Lesbian Task Force
- National Health Law Program (NHeLP)
- National Hispanic Media Coalition (NHMC)
- National Immigration Forum
- National Immigration Law Center (NILC)
- National Korean American Service and Education Consortium (NAKASEC)
- National Latina Institute for Reproductive Health
- National Lawyers Guild (NLG)
- National Legal Aid & Defender Association (NLADA)
- National Low Income Housing Coalition (NLIHC)
- National Organization for Women (NOW)
- National Partnership for Women & Families
- National Parent Teacher Association (PTA)
- National Senior Citizens Law Center
- National Sorority of Phi Delta Kappa, Inc.
- National Urban League (NUL)

- National Women's Law Center (NWLC)
- National Women's Political Caucus (NWPC)
- Native American Rights Fund (NARF)
- Newspaper Guild
- OCA (formerly known as Organization of Chinese Americans)
- ORT America
- Office of Communication of the United Church of Christ, Inc. (OC Inc.)
- Omega Psi Phi Fraternity, Inc.
- Open Society Policy Center (OSPC)
- Outserve-SLDN
- Paralyzed Veterans of America (PVA)
- Parents, Families and Friends of Lesbians and Gays (PFLAG)
- People For the American Way (PFAW)
- Phi Beta Sigma Fraternity, Inc.
- Planned Parenthood Federation of America, Inc. (PPFA)
- PolicyLink
- Poverty & Race Research Action Council (PRRAC)
- Presbyterian Church (U.S.A.)
- Pride At Work
- Prison Policy Initiative
- Progressive National Baptist Convention (PNBC)
- Project Vote
- Public Advocates Inc.

- Religious Action Center of Reform Judaism (RAC)
- Retail, Wholesale and Department Store Union (RWDSU)
- Secular Coalition for America
- Service Employees International Union (SEIU)
- The Sierra Club
- Sigma Gamma Rho Sorority, Inc.
- Sikh American Legal Defense and Education Fund (SALDEF)
- Sikh Coalition
- South Asian Americans Leading Together (SAALT)
- Southeast Asia Resource Action Center (SEARAC)
- Southern Christian Leadership Conference (SCLC)
- Southern Poverty Law Center (SPLC)
- Teach for America
- TransAfrica Forum
- Union for Reform Judaism (URJ)
- Unitarian Universalist Association (UUA)
- UNITE HERE!
- United Brotherhood of Carpenters and Joiners of America (UBC)
- United Church of Christ Justice and Witness Ministries (JWM)
- United Farm Workers of America, AFL-CIO (UFW)

- United Food and Commercial Workers International Union (UFCW)
- United Methodist Church-General Board of Church & Society
- United Mine Workers of America, AFL-CIO (UMWA)
- United States International Council on Disabilities (USICD)
- United States Students Association (USSA)
- United Steelworkers of America (USW)
- United Synagogue of Conservative Judaism (USCJ)
- Workers Defense League
- Workmen's Circle
- YMCA USA
- YWCA USA
- Zeta Phi Beta Sorority, Inc.

APPENDIX B

INTERESTS OF ORGANIZATIONS JOINING AS SIGNATORIES

9to5. 9to5 is a multi-racial national membership organization of women in low-wage jobs working to achieve economic justice and end discrimination. 9to5's members and constituents are directly affected by sex and other forms of discrimination. Our 40 year-old organization has a long-standing commitment and history of work to promote equal opportunity in employment, education and business. The issues of this case are directly related to 9to5's work to end discrimination, promote equal opportunity, and strengthen women's ability to achieve economic security. The outcome of this case will directly affect our members' and constituents' access to equal opportunity, as well as their long-term economic well-being and that of their families.

American Association for Affirmative Action. Founded in 1974, AAAA is a national nonprofit association of professionals managing affirmative action, equal opportunity, diversity, and other human resource programs. AAAA has approximately 1,000 organizational and individual members throughout the United States including members employed in higher education, the private sector, federal, state, and local government, business, social services, the legal profession, and human resources. Approximately one-half of the current membership works for institutions of higher education. AAAA is dedicated to the promotion of affirmative action as an instrument to fulfill the nation's promise of equal opportunity. Its mission is to nurture understanding

of and offer advice on affirmative action to enhance access, equity, and diversity in employment, economic, and educational opportunities. AAAA is, therefore, uniquely suited to opine on the importance of diversity programs and, given its mission and the composition of its membership, has an exceptional understanding of both (1) the need for diversity on campus in order to ensure that students receive the best possible education and graduate with the skills and experiences necessary to succeed as citizens, workers, and leaders and (2) the importance of diversity on campus to employers who, in order to remain competitive, must hire qualified workers reflecting the increasingly diverse communities and markets in which their businesses now operate.

American Association of University Women. In 1881, the American Association of University Women was founded by like-minded women who had defied society's conventions by earning college degrees. Since then, AAUW has worked to increase women's access to higher education through research, advocacy, and philanthropy of over $90 million supporting thousands of women scholars. Today, AAUW has approximately 165,000 bipartisan members and supporters, approximately 1000 branches, and approximately 800 college and university partners nationwide. AAUW plays a major role in mobilizing advocates nationwide on AAUW's priority issues, and chief among them is increased access to higher education. In adherence to our member-adopted Public Policy Program, AAUW supports affirmative action programs that establish equal opportunity for women and minorities and improve gender, racial, and ethnic diversity in educational institutions.

American Citizens for Justice/Asian American Center for Justice. American Citizens for Justice/Asian American Center for Justice is a nonprofit organization dedicated to the education, protection, and advocacy of the civil, political, economic and religious rights of Asian Americans and all Americans. It was founded in 1983 after the racially-motivated baseball bat beating death of Vincent Chin and the lenient punishment the perpetrators of that crime received. Throughout its history, American Citizens for Justice has sought to promote diversity in the legal profession as a means of providing Asian Americans access to legal professionals who would help protect and enforce those rights.

Asian Americans Advancing Justice-AAJC (Advancing Justice-AAJC). Advancing Justice-AAJC is a national, non-profit, non-partisan organization based in Washington, D.C., whose mission is to advance civil and human rights for Asian Americans and to build and promote a fair and equitable society for all. Founded in 1991, Advancing Justice-AAJC uses litigation, public policy advocacy, community education, and community mobilization to address a range of issues of importance to Asian Americans, including equal access to the political process. Advancing Justice-AAJC has also filed amicus curiae briefs underscoring the benefits of policies that promote racial diversity in education, most recently in *Fisher* v. *University of Texas*.

Asian Americans Advancing Justice - Los Angeles (Advancing Justice - LA). Advancing Justice - LA is the nation's largest legal and civil rights organization for Asian Americans, Native Hawaiians, and Pacific Islanders (NHPI). Advancing Justice-LA has filed amicus curiae briefs in cases in

this Court and other courts supporting race-conscious programs, including an amicus curiae brief in *Fisher* v. *University of Texas*. Advancing Justice- LA is committed to supporting the use of admissions policies by educational institutions that ensure equal opportunities for women and minorities and diversity in education.

The Asian American Legal Defense and Education Fund (AALDEF). AALDEF, headquartered in New York City and founded in 1974, is a national organization that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF's Educational Equity Program promotes the rights of Asian American students in K-12 and higher education. AALDEF has an interest in this litigation because its work with community-based youth advocates across the country reveals that Asian American students benefit from individualized race-conscious admissions policies, as well as diverse educational settings. Furthermore, AALDEF worked with a coalition of Michigan-based Asian American community groups in Michigan to fight the passage of Proposal 2 in 2006 and conduct educational outreach on the initiative's detrimental impact on Asian Americans in Michigan.

American Federation of State, County and Municipal Employees (AFSCME). AFSCME is a labor organization with 1.6 million members in hundreds of occupations who provide vital public services in 46 states, including Michigan, and the District of Columbia and Puerto Rico. AFSCME has a long history of advocating for minority rights.

Chinese for Affirmative Action (CAA). Chinese for Affirmative Action was founded in 1969 to protect the civil and political rights of Chinese Americans

and to advance multiracial democracy in the United States. Today, CAA is a progressive voice in and on behalf of the broader Asian and Pacific American community. We advocate for systemic change that protects immigrant rights, promotes language diversity, and remedies racial injustice. CAA combats multiple forms of racism and racial hierarchy. This includes speaking out against harmful stereotypes, identifying and addressing discrimination, and advancing policies that promote racial and ethnic inclusion and equity.

Chicago Lawyers' Committee for Civil Rights Under Law. The Chicago Lawyers' Committee for Civil Rights Under Law, Inc. is the public interest law consortium of Chicago's leading law firms. The Committee is operated to bring the prestige and resources of the private bar to bear on the problems of poverty and discrimination, including in particular issues involving civil rights. Each year, over 15,000 hours of donated professional legal services, with a value of over $6 million, are directed to challenge discrimination and other violations of civil rights in both the public and private sectors.

Dēmos. Dēmos is a national, non-partisan public policy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy. Increasing diversity in public and private institutions is critical to Dēmos' mission. We acknowledge the role that public policy has played in fostering racial disparities, and therefore support robust policies, from diversity considerations in admissions to debt-free college, to ensure that higher education remains a pathway to a diverse middle class in America.

Disability Rights Legal Center (DRLC). The DRLC is a non-profit legal organization that was

founded in 1975 to represent and serve people with disabilities. Individuals with disabilities continue to struggle against ignorance, prejudice, insensitivity, and lack of legal protection in their endeavors to achieve fundamental dignity and respect. The DRLC assists people with disabilities in attaining the benefits, protections and equal opportunities guaranteed to them under the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA), Individual with Disabilities Education Improvement Act (IDEA), and other federal and state laws. The DRLC is now recognized as an expert in the field of disability rights.

The Equal Justice Society (EJS). EJS is a national legal organization that promotes equality and an end to all manifestations of invidious discrimination and second-class citizenship. Using a three-pronged strategy of law and public policy advocacy, building effective progressive alliances, and strategic public communications, EJS's principal objective is to combat discrimination and inequality in America.

Equal Rights Advocates (ERA). ERA is a national civil rights advocacy organization dedicated to protecting and expanding educational access and economic opportunity for women and girls. Since its inception in 1974, ERA has litigated high-impact cases, engaged in policy and legislative advocacy, conducted public education and community outreach, and provided advice and counseling to thousands of women and girls concerning their legal rights at work and in school. ERA has filed hundreds of suits and appeared as amicus curiae in numerous cases to enforce civil rights in state and federal courts, including the United States Supreme Court. ERA is committed to ensuring equal access to the political

process and to education, including institutions of higher learning, and has worked to promote affirmative action as a means of ensuring equal opportunity for all.

Haas Institute for a Fair and Inclusive Society. The Haas Institute for a Fair and Inclusive Society at UC Berkeley supports the use of race-conscious admissions policies that are designed to promote a more diverse and inclusive student body and enriching educational environment.

Lambda Legal. Lambda Legal is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people, and those with HIV through impact litigation, education, and public policy work. The minority groups Lambda Legal represents have been the frequent targets of voter initiatives seeking to impair their rights and curtail their participation in the political process. Lambda Legal has participated as counsel or amicus in a number of cases involving issues relevant to this case, including *Romer* v. *Evans*, 517 U.S. 620 (1996).

LatinoJustice PRLDEF. LatinoJustice PRLDEF (formerly known as the Puerto Rican Legal Defense and Education Fund) was founded in New York City in 1972. Our continuing mission is to protect the civil rights of all Latinos in the United States and Puerto Rico. Since our founding over forty years ago, our precedent setting impact litigation has profoundly improved the lives of the greater pan-Latino community. In our first lawsuit, *Aspira* v. *New York City Board of Education*, we helped establish the right to bilingual education in New York, and have since then combated the forced segregation of Latino children in Connecticut, Delaware, Pennsylvania and Massachusetts. In addition to creating pathways for

success for Spanish-speaking children in public schools, our Education Division has over thirty years thirty years of experience increasing the cadre of Latinos entering law school and the legal profession through our innovative pipeline pre-law programming including LSAT test preparation, LAW Day and LAWBound, in addition to providing one-on-one pre-law counseling and mentoring.

Lawyers' Committee for Civil Rights of the San Francisco Bay Area. The Lawyers' Committee for Civil Rights of the San Francisco Bay Area ("Lawyers' Committee") is a civil rights and legal services organization, established in 1968 by leading members of the private bar in San Francisco, and dedicated to advancing, protecting and promoting the rights of communities of color, immigrants and refugees, and other underrepresented persons. The Lawyers' Committee works to protect communities of color from discrimination and to enforce the guarantees of Equal Protection.

Legal Momentum. Legal Momentum, the Women's Legal Defense and Education Fund, is a leading national nonprofit civil-rights organization that has used the power of the law to define and defend women's rights for over forty years. It has participated as counsel and as amicus curiae in numerous cases in support of affirmative action. Legal Momentum is interested in these cases because of the positive impact affirmative-action programs have in promoting equality and eliminating barriers for women, particularly for women of color, and for racial minorities.

Mexican American Legal Defense and Educational Fund (MALDEF). MALDEF is a national civil rights organization established in 1968. Its principal objective is to secure, through litigation,

advocacy, and education, the civil rights of Latinos living in the United States.

National Association for Equal Opportunity in Higher Education (NAFEO). NAFEO is the 501(c)(3), tax-exempt, not-for-profit membership association of the presidents and chancellors of the nation's black colleges and universities: public and private, two-year, four-year, graduate and professional, Historically Black Colleges and Universities (HBCUs) and Predominately Black Institutions (PBIs). NAFEO was founded in 1969 at a time when the nation had before it overwhelming evidence that educational inequality in higher education remained manifest. NAFEO was founded to provide an international voice for the nation's HBCUs; to place and maintain the issue of equal opportunity in higher education on the national agenda; to advocate policies, programs and practices designed to preserve and enhance HBCUs and the communities they serve; and to increase the active participation of blacks and other low-income students and families and those of least advantage at every level in the education pipeline. As "the voice for blacks in higher education," NAFEO has served as amici in every higher education affirmative action case. The voice of NAFEO is especially important because of the leading role the association and its president and CEO have played in national and state policy debates and in litigation involving affirmative action for the past three decades, and because of the successes member institutions have had in attaining and sustaining student and faculty diversity, including at the graduate and professional schools.

National Association of Latino Elected and Appointed Officials (NALEO). NALEO Educational Fund is the leading nonprofit

organization that facilitates full Latino participation in the American political process, from citizenship to public service. Its constituents include more than 6,000 Latino elected and appointed officials nationwide—Republicans, Democrats, and Independents—who serve at every level of government. The NALEO Educational Fund is committed to strengthening the vitality and responsiveness of our democracy by ensuring that all of our nation's residents can become active contributors to our civic life. Equal access to quality education is the foundation of broad civic engagement, and attaining it often requires proactive recruitment and training efforts directed at those historically denied opportunity.

The National Black Law Students Association (NBLSA). NBLSA is a membership organization formed in 1968 to promote the educational, professional, political, and social objectives of Black law students. Today, NBLSA is the largest student-run organization in the United States, with nearly 6,000 members, over 200 chapters in our nation's law schools, a growing pre- law division, and 6 international chapters or affiliates. NBLSA has an interest in this case because one of the purposes of NBLSA is to utilize the collective resources of the member chapters to influence the legal community by bringing about meaningful legal and political change that addresses the needs and concerns of the Black community. Michigan's Proposal 2 rigged the political process against students and universities that support diversity. All law students benefit from attending school in a more diverse environment. Our nation is a better place when the doors of opportunity are open to all. NBLSA urges the Supreme Court to uphold the judgment of the Second Circuit Court of

Appeals and find that Proposal 2 violates the Constitution's equal protection guarantees.

National Council of Jewish Women (NCJW). NCJW is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. NCJW's Principles state that "a democratic society and its people must value diversity and promote mutual understanding and respect for all." Further, NCJW's Resolutions state that we endorse and resolve to work for "equal opportunity for all in the public and private sectors through programs such as affirmative action."

National Council of La Raza (NCLR). NCLR—the largest national Hispanic civil rights and advocacy organization in the United States - works to improve opportunities for Hispanic Americans. Through its network of nearly 300 affiliated community-based organizations (CBO's), NCLR reaches millions of Hispanics each year in 41 states, Puerto Rico, and the District of Columbia. NCLR works through two primary, complementary approaches: (1) Capacity-building assistance to support and strengthen Hispanic CBO's—especially those that serve low-income and disadvantaged Latinos; and (2) Applied research, policy analysis, and advocacy to encourage adoption of programs and policies that equitably serve Hispanics. For nearly 50 years, a corner stone of its work has centered on education, which it thinks is one of the best ways to create opportunities for people to succeed in this country. NCLR strongly believes that providing equal opportunities in higher education is critical for preparing students to work in an increasingly

multicultural society, enhancing our country's ability to economically compete in global markets, and preparing young people to thrive in a country made up of people from all walks of life. Its work in Michigan through Affiliates reflects that belief. If the ban is upheld could hinder all the benefits that flow from diversity in higher education in that state.

National Urban League. Established in 1910, the National Urban League is the nation's oldest and largest community-based movement devoted to empowering African-Americans and other disadvantaged people to enter the economic and social mainstream. The mission of the National Urban League movement is to enable African-Americans and other disadvantaged people to secure economic self-reliance, parity, power, and civil rights. Today, the National Urban League, headquartered in New York City, spearheads the non-partisan efforts of 95 local affiliates in 36 states to deliver services and resources in underserved communities. The organization has long recognized that education is the key pipeline opportunity to full economic participation by its disadvantaged constituents. In identifying the underlying causes of economic disparity, the National Urban League finds that there is unequal access to quality education for communities of color. Affirmative action policies such as those adopted by Michigan universities in the wake of *Grutter* v. *Bollinger* have been crucial to reducing gaps in educational attainment over the past 50 years. Thus, the National Urban League believes that the Court's decision in this matter will directly affect the ability of African-Americans to participate fully in our nation's economic life without facing the invidious barriers of discrimination.

National Women's Law Center. The National Women's Law Center is a nonprofit legal organization that is dedicated to the advancement and protection of women's legal rights and the expansion of women's opportunities. Since 1972, the Center has worked to secure equal opportunity in education for girls and women through full enforcement of the Constitution and laws prohibiting discrimination. The Center has participated in numerous cases involving race and sex discrimination before this Court and the federal courts of appeals.

National Organization for Women (NOW). The National Organization for Women (NOW) Foundation is a 501 (C) (3) entity, founded in 1987, to further the rights of women through education and litigation. It is affiliated with the National Organization for Women which is the nation's largest feminist activist organization, with chapters in every major city and in all 50 states and in Washington, D.C. Since its founding in 1966, NOW and later NOW Foundation have been committed to promoting diversity in higher education and to the use of Affirmative Action initiatives to assure a strong diverse representation of women and communities of color in our nation's colleges and universities .

UNC Center for Civil Rights. The UNC Center for Civil Rights is committed to assisting excluded communities transcend institutionalized boundaries of race, class and place. Through legal representation, outreach, research, and litigation, the Center has implemented strategies to address the discrimination that limits opportunities for African Americans and low wealth individuals, families, and communities. While the Center's work is primarily directed toward providing legal support for grassroots advocacy, it is also designed to achieve broad impact by

concentrating on the connections between these critical issues at the local, state, and national levels. The Center is recognized nationally as one of the principal, university-based hubs of civil rights advocacy in the South, and has long advocated for increasing racial diversity in education and against measures that would lead to segregation and resegregation of students.

Union for Reform Judaism, Central Conference of American Rabbis and Women of Reform Judaism. The Union for Reform Judaism, whose 900 congregations across North America include 1.3 million Reform Jews, the Central Conference of American Rabbis (CCAR), whose membership includes more than 2,000 Reform rabbis, and the Women of Reform Judaism which represents more than 65,000 women in nearly 500 women's groups in North America and around the world share a deep commitment to the prophetic imperatives of our tradition and the creation of justice for all the people of our country. We are particularly sensitive to the dangers that we face in a society where inequity, including racial inequity, is allowed to persist. The long-range interests of all Americans are best served by the creation of a society that is truly just.

YWCA USA. The YWCA USA is a national organization dedicated to eliminating racism, empowering women and promoting peace, justice, freedom and dignity for all. In over 1300 locations nationwide, YWCA's offer women job training, housing, anti-violence and recovery programs, and more. Our clients are women of all ages and backgrounds, including the elderly, survivors of domestic and sexual violence, military veterans and low-income and homeless women and their families. The YWCA is committed to promoting equal

opportunity in housing, employment, and education and seeks to uphold laws to protect people from discrimination on the basis of race and gender. The issues of this case are directly related to the YWCA's advocacy to support policies of college affordability, equal access to services and opportunities, and inclusivity of women and communities of color in all aspects of life.