No. 14-981

In The

Supreme Court of the United States

ABIGAIL NOEL FISHER,

Petitioner,

v.

UNIVERSITY OF TEXAS AT AUSTIN, *et al.*,

Respondents.

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

AMICI CURIAE

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

QUESTION PRESENTED i

INTEREST OF *AMICI CURIAE* 1

INTRODUCTION AND SUMMARY OF THE ARGUMENT 4

ARGUMENT 6

I. THE INTEREST IN DIVERSITY IS COMPELLING THROUGHOUT THE EDUCATION SYSTEM, INCLUDING FOR ELEMENTARY AND SECONDARY SCHOOLS. 6

A. Preventing Racial Isolation and Creating a Diverse Student Population Are Compelling Interests. 6

B. Education Within a Diverse Student Body Provides Lifelong Benefits to All Students. 8

C. Stubborn and Growing Residential Segregation Heightens the Need for Diversity in Education. 11

II. WHEN COLLEGES PURSUE QUALITATIVE DIVERSITY THROUGH A HOLISTIC REVIEW PROCESS, IT FURTHERS THE COMPELLING INTEREST IN DIVERSITY ACROSS THE EDUCATION SPECTRUM 13

A. Qualitative Diversity Programs at the University Level Reinforce School 'LVWULFWV· (IIRUWV WR $FKLHYH ,QWHJUDWH Elementary and Secondary Education. 14

B. Restricting Universities to Mechanical Race-Neutral Alternatives Would Undermine Diversity Programs in Elementary and Secondary Schools. 17

CONCLUSION 19

Kathleen M. Brown, *The Educational Benefits of Diversity*, 5 LEADERSHIP & POL Y IN SCHS. 325 (2006) 9

Arthur L. Coleman et al., *Achieving Educational Excellence for All: A Guide to Diversity-Related Policy Strategies for School Districts* (2011) 8, 9, 11, 13

Conference Bd. et al., *Are They Really Ready to :RUN" (PSOR\HUV· 3HUVSHFWLYHV RQ WKH %DVL Knowledge and Applied Skills of New Entrants to the 21st Century U.S. Workforce* (2006) 9-10

Thurston Domina & Erik Ruzek, *Paving the Way: K-16 Partnerships for Higher Education Diversity and High School Reform*, 26 ED. POL Y 243 (2012)..... 16

Susan Eaton & Gina Chirichigno, *The Impact of Racially Diverse Schools in a Democratic Society*, National Coalition on School Diversity Research Brief No. 3, Mar. 2011 ... 10, 11

Greg Flaxman et al., *A Status Quo of Segregation: Racial and Economic Imbalance in New Jersey Schools, 1989-2010* (2013) 12

Robert A. Garda, *The White Interest in School Integration*, 63 FLA. L. REV. 599 (2011)..... 10

In The

No. 14-981

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school boards. Through its members, NSBA represents approximately 13,800 school districts across the United States that serve more than 50 million public VFKRRO VWXGHQWV 16%$·V PHPEHUV VKDUH D commitment to ensuring that all children receive a high-quality education that fully prepares them to VXFFHHG DV SURGXFWLYH FLWL]HQV LQ RXU VRFL members recognize the vital role of diversity in ensuring that high-quality education, and have relied on longstanding principles of this Court to inform their diversity-related efforts to foster success for all

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

The American Association of School $GPLQLVWUDWRUV ´$$6$µ IRXQGHG LQ LV professional organization for more than 13,000 educational leaders in the United States and throughout the world. AASA members range from chief executive officers, superintendents and senior level school administrators to cabinet members, professors and aspiring school system leaders. AASA members are the chief education advocates for children. AASA members advance the goals of public education and champion chil GUHQ·V FDXVHV LQ WKHLU districts and nationwide. As school system leaders, AASA members set the pace for academic achievement. They help shape policy, oversee its implementation, and represent school districts to the public at large.

American School Counselors Association ´$6&$µis a nonprofit, 501(c)(3) professional RUJDQL]DWLRQ WKDW VXSSRUWV VFKRRO FRXQVH help students focus on academic, personal/social, and career development. ASCA provides professional development, publications, and other resources, research, and advocacy to nearly 30,000 school counselors around the globe.

Founded in 1910, the Association of School %XVLQHVV 2IILFLDOV ,QWHUQDWLRQDO ´ ,QWHUQDWLRQDOµ LV DQ HGXFDWLRQDO DVVRF supports school business professionals who are passionate about quality education. ASBO

pursuit of diversity in higher education does not operate in a vacuum; the diversity efforts of colleges and universities affect school districts, and *vice versa*. 7KLV &RXUW·V FRQVLGHUDWLRQ RI ZKHWKHU PH admissions plans like the Texas Top Ten Percent plan negate the constitutionality of holistic review thus affects not only diversity in higher education, but also vitally important interests in diversity LQ WKH QDWLRQ·V elementary, middle, and high schools. For this reason, *amici* urge this Court to permit colleges the flexibility to adopt admissions plans that work synergistically with diversity efforts that promote educational goals in K-12 public schools.

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

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

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

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

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

LQWHUHVW ´LQ WKH HGXFDWLRQDO EHQHILWV WK
GLYHUVH VWXGHQW ERG\ µ 6&W
(citing *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 307-309 (1978) (opinion of Powell, J.)). A GLYHUVH VWXGHQW ERG\ ´VHUYHV YDOXHV EH\RQG including enhanced classroom dialogue and the OHVVHQLQJ RI UDFLDO LVRODWLRQ DQG VWHUHR *Dowell* 2418.

That interest is equally compelling in elementary DQG VHFRQGDU\ HGXFDWLRQ 7KH ´1DWLRQ·V VFK to teach that our strength comes from people of different races, creeds, and cultures uniting in FRPPLWPHQW WR WKH *Parents Involved* RI DOO µ *in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 782 (2007) (Kennedy, J., concurring in part and concurring in the judgment). School districts need not ´DFFHSW WKH VWDWXV TXR RI UDFLDO LVRODWL created by residential segregation. *Id.* at 788. Rather, D cómpelling interest exists in avoiding racial isolation, an interest that a school district, in its GLVFUHWLRQ DQG H[SHUWLVH *Id.* at D\ FKRRVH WR SXU /LNHZLVH ´D GLVWULFW PD\ FRQVLGHU LW D interest to achieve a diverse student popu ODWLRQ µ RI which race is but one component among many, including economic background, special needs, and special talents. *Id.* at 797-98; *see also id.* at 865 %UH\HU - GLVVHQWLQJ ´-XVW DV GLYHUVLW\ education was deemed compelling ***, diversity in public primary and secondary schools ³ where there is even more to gain ³ must be, *a fortiori*, a compelling VWDWH LQWHUHVW µ

%HFDXVH VRPHWLPHV ´QHLJKERUKRRGV LQ communities do not reflect the diversity of our Nation

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

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

Moreover, becaus H V F K R R O V D U H W K H ´ Y H U \

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

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

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

This resegregation is not limited to a handful of areas; it spans the nation.[7] It creates both a heightened need for, and challenge to, the ability of school districts to create diverse learning environments. Where neighborhoods are less diverse, the education system may become a critical forum for providing students the opportunity to interact with others from different backgrounds and perspectives from an early age. Yet that same neighborhood segregation makes it more difficult for school districts to provide that opportunity. Notwithstanding that challenge, and although much work remains to be done, school districts across the country[3] like many colleges and universities[3] are engaged in an intensive effort to secure the educational benefits of diversity for their students.

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

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7

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

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

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

That includes the ability to ensure a diversity of backgrounds within [3] as well as among [3] racial groups, and specifically the ability to consider, *inter alia*, whether a minority student brings to college the experience of learning and succ

minority students often better qualified than the non-

Mechanical class-rank-based programs like the Texas Top Ten Percent plan admit students based on a single characteristic; they do not permit colleges the flexibility to make educational judgments about the value of the unique perspectives and contributions of minority students from integrated schools in the way WKDW D KROLVWLF UHYLHZ SURFHVV GRHV 6XFK preclude the university from conducting the individualized assessments necessary to assemble a student body that is not just racially diverse, but diverse along all the qualities valued by the XQLYHUVLW\ *Grutter*, 539 U.S. at 340. But that is not their only flaw. Restricting universities to such mechanical alternatives would put universities at FURVV SXUSRVHV ZLWK VFKRRO GLVWULFWV· HIIR the educational benefits of diversity for elementary and secondary school students.

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

population and ensure that a large, well qualified pool of minority students was admitted to Texas XQLYHUVLWLHV µ $V WKH)LIWK &LUFXLW IR numerical diversity gained from the Top Ten Percent plan stems ´IURP D IXQGDPHQWDO ZHDNQHVV LQ WK 7H[DV VHFRQGDU\ HGXFDWLRQ V\VWHP µ ZKLFK LV IDFWR VHJUHJDWLRQ RI VFKRROV LQ 7H[DV µ 3HV D ,W ´GHSHQG>V@ XSRQ VHJUHJDWHG VFKRROV PLQRULW\ HQUROOPHQW µ *Id.* at 512.

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