

No. 11-345

IN THE
Supreme Court of the United States

ABIGAIL NOEL FISHER,
Petitioner,

v.

UNIVERSITY OF TEXAS AT AUSTIN, ET AL.,
Respondents.

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

**BRIEF OF DISTINGUISHED ALUMNI OF
THE UNIVERSITY OF TEXAS AT AUSTIN
AS *AMICI CURIAE*
IN SUPPORT OF RESPONDENTS**

DAVID C. FREDERICK
Counsel of Record
DEREK T. HO
CHRISTOPHER J. WALKER
KELLOGG, HUBER, HANSEN,
TODD, EVANS & FIGEL,
P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900
(dfrederick@khhte.com)

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INTEREST OF *AMICI CURIAE*¹

Amici consist of prominent leaders in business, industry, and government – all of whom graduated from the University of Texas at Austin (“UT-Austin”) between 1948 and 1986. A short biography of each of the *Amici* is attached as an Appendix to this brief.

As distinguished UT-Austin alumni and recruiters of UT-Austin graduates, *Amici* have a vital interest in ensuring that UT-Austin continues to cultivate students who are fit to be future leaders of the community – both within and without the State of Texas. Based on their years of practical experience in their respective fields, *Amici* emphatically agree with this Court’s statement that “it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity.” *Grutter v. Bollinger*, 539 U.S. 306, 332 (2003).

Amici have experienced firsthand the critical importance of ensuring diversity in the path to leadership and appreciate the benefits of being part of a diverse educational setting and workplace. Moreover, *Amici* live or have lived in Texas. As current or former Texans, they have an interest in highlighting the need for UT-Austin to continue to produce both culturally competent leaders and minority leaders – especially in a State that faces unique leadership challenges as Texas’ population becomes increasingly diverse.

¹ Pursuant to Supreme Court Rule 37.6, counsel for *Amici* represents that it authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *Amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Written consents of the parties to allow all interested *Amici* to file briefs in this case are on file with the Court.

SUMMARY OF ARGUMENT

UT-Austin is Texas' flagship university. It is highly selective and ranks among the Nation's top educational institutions, public or private. UT-Austin historically has played a vital role in developing Texas' leaders in business, education, government, the military, and the community at large. It is thus a critical institution on the pathway to leadership in Texas.

Texas faces unique challenges due to its demographic dynamics and its shared border with Mexico. As the enormous growth in the population of Latinos and other minorities in Texas continues, UT-Austin will play an even more important role – and bear an increasing responsibility – to bring about diversity in its student body and, in turn, to ensure that Texas' leaders reflect the State's unique racial and ethnic diversity.

The importance of diversity in the path to leadership, however, extends beyond simply developing minority leaders. As *Amici* have experienced first-hand, a diverse student body helps to create culturally competent leaders of all backgrounds, who are then able to facilitate unique and creative approaches to problem-solving through the integration of different perspectives and cultural mindsets. By ensuring diversity in its student body, UT-Austin provides an invaluable state resource that is critical to nurture future leaders in government, business, industry, public education, and other organizations that serve the State and its residents.

Amici respectfully submit that the Equal Protection Clause should not be interpreted to impede UT-Austin from adopting admissions policies that are necessary to realize its critical mission of ensur-

ing diversity in its path to leadership. UT-Austin’s current admissions policies are the product of careful consideration by educators closest to the needs of the University and the broader community, and they are carefully designed to ensure that the “path to leadership” in Texas is “visibly open to talented and qualified individuals of every race and ethnicity.” *Grutter v. Bollinger*, 539 U.S. 306, 332 (2003). Consistent with this Court’s decision in *Grutter*, UT-Austin should be permitted to continue to pursue its critical mission of fostering future leaders that reflect the unique racial and ethnic diversity in the State of Texas.

ARGUMENT

I. UT-AUSTIN HAS A CRITICAL NEED TO ENSURE DIVERSITY AMONG TEXAS’ FUTURE LEADERS

A. UT-Austin Is A Key Gateway To Leadership In Texas

As the State’s flagship university, UT-Austin historically has been a gateway to positions of leadership within the State of Texas and beyond. See Gerald Torres, *Grutter v. Bollinger/Gratz v. Bollinger: View from a Limestone Ledge*, 103 COLUM. L. REV. 1596, 1608 (2003) (discussing UT-Austin’s mission “to serve every geographic region of the state of Texas, along with every community, every school district, and every socioeconomic level”). As a selective institution, UT-Austin attracts many of the brightest students from across the State. UT-Austin’s graduation efficiency is among the best at more than 80%.²

² See Marc Musick, *Analysis of Efficiency and Graduation Rates at The University of Texas at Austin and Other Public Research Universities in the United States* 8 (Univ. of Texas at

Roughly 8,000 students graduate each year – including 6,000 undergraduates – and they leave well-equipped to become Texas’ next generation of innovators, problem solvers, educators, and leaders in a variety of professions.

For instance, in 2012 more than 350 students graduated from the highly ranked College of Education, including nearly 70 new math and science secondary school teachers from the nationally recognized UTeach program. Similarly, more than 1,800 students graduated with bachelor’s degrees in the sciences, technology, engineering, and mathematics – many of whom will go on to become leaders in these fields in Texas and the world. UT-Austin sends more students to Texas medical schools than any other undergraduate institution, and in 2012 more than 35 undergraduates earned highly competitive National Science Foundation Graduate Research Fellowships.³

UT-Austin alumni have gone on to become formidable leaders in almost every aspect of society. Fourteen graduates are serving in the U.S. Congress.⁴ In the Texas State Legislature, there are 39 UT-Austin graduates, as well as two non-legislative but state-wide elected officials – the attorney general and state

Austin Sept. 2011), *available at* http://www.utexas.edu/news/attach/2011/campus/analysis_efficiency.pdf.

³ See UT-Austin, What Starts Here Changes the World, <http://www.utexas.edu/what-starts-here/preparing-leaders/8000-reasons-world-changing-better> (last visited Aug. 9, 2012); National Science Found., Award Offers and Honorable Mentions List, <https://www.fastlane.nsf.gov/grfp/AwardeeList.do?method=loadAwardeeList> (last visited Aug. 9, 2012).

⁴ See CRiSP360, Where Did Congress Go To College?, <http://www.crisp360.com/hosted-infographic/where-did-congress-go-college-full> (last visited Aug. 9, 2012).

comptroller. Additionally, more than 195 alumni presently serve on city councils in Texas. UT-Austin alumni also hold leadership positions throughout the country. For example, UT-Austin alumni serve in the legislatures of 13 States.

UT-Austin alumni serve in leadership positions in a wide range of fields. To take but a few examples, UT-Austin alumni have co-founded and serve as CEOs in renowned, innovative companies such as ExxonMobil, National Instruments, Clear Channel Communications, Barnes & Noble, and Southwest Airlines.⁵ UT-Austin graduates include 19 Pulitzer Prize winners,⁶ and winners of the Nobel Prize, the National Medal of Science, and the Wolf Prize – among others.

This is not mere coincidence. UT-Austin's core mission is to train future leaders, with a specific emphasis on the State of which it serves as the flagship university. In addition to extracurricular activities and informal leadership training, leadership courses can be found throughout the various departments, schools, and research centers on campus. And it has been a central curricular focus of the administration. For instance, UT-Austin assembled the Commission of 125 in the early 2000s, which consisted of a group of more than 200 citizens chosen for occupational, ethnic, and geographic diversity. The Commission did a comprehensive review of UT-

⁵ See, e.g., National Instruments, Community, <https://decibel.ni.com/content/docs/DOC-5130> (last visited Aug. 9, 2012); UT-Austin, TxTell UT Stories, <http://txtell.lib.utexas.edu/stories/m0001-full.html> (last visited Aug. 9, 2012).

⁶ See College of Communication, UT-Austin, Pulitzer Prize Winners, <http://communication.utexas.edu/alumni/pulitzers/> (last visited Aug. 9, 2012).

Austin to provide recommendations to the University on how UT-Austin could best serve Texas and society for the next 25 years. The Commission delivered its report to the University in 2004, and one of the two strategic initiatives recommended was to establish a more demanding standard for leadership of academic departments and research centers. Since the report issued, the Commission and the University administration have worked tirelessly to develop further the path to leadership for its students.⁷

In sum, UT-Austin has served as the training ground for thousands of graduates who have gone on to leadership positions at the global, national, state-wide, and local levels. *Amici* proudly consider themselves among these graduates. UT-Austin has been and continues to be a critical part of the infrastructure for developing Texas' future leaders in government, industry, business, and public education – among other fields.

B. A Diverse Student Body Is Necessary For UT-Austin To Develop Effective Leaders For The State

As the Court has noted, because “universities . . . represent the training ground for a large number of our Nation’s leaders,” “it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity.” *Grutter v. Bollinger*, 539 U.S. 306, 332 (2003). *Grutter*’s holding is especially salient for Texas and UT-Austin. In the professional experience of *Amici*, the dramatic increase of racial and ethnic diversity, and the rise of

⁷ See UT-Austin, The Commission of 125, <http://www.utexas.edu/com125/> (last visited Aug. 10, 2012) (including various reports and other information on leadership initiative).

globalization in the economy and society more generally, require the talent and creativity of a workforce that is as diverse as the world around it. Simply put, our increasingly diverse and cross-cultural society needs more racially and culturally diverse leaders, as well as leaders who have been exposed to a diverse community. Justice Powell's statement more than 34 years ago in *Regents of University of California v. Bakke*, 438 U.S. 265 (1978), is all the more true today: "[T]he 'nation's future depends upon leaders trained through wide exposure' to the ideas and mores of students as diverse as this Nation of many peoples." *Id.* at 313 (opinion of Powell, J.) (quoting *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967)).

Racial and ethnic diversity at UT-Austin does not just benefit Texas and society more generally; it also benefits its students. In *Grutter*, the Court correctly underscored the educational benefits of student body diversity, noting that "numerous studies show that student body diversity promotes learning outcomes, and better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals." 539 U.S. at 330 (internal quotation marks omitted). "These benefits are not theoretical but real, as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints." *Id.*; see also Douglas Laycock, *The Broader Case for Affirmative Action: Desegregation, Academic Excellence, and Future Leadership*, 78 TUL. L. REV. 1767, 1769-76 (2004) (explaining how *Grutter* extended the importance of diversity in education to the development of leaders).

The Court's findings in *Bakke* and *Grutter* are confirmed by the practical experience of *Amici* – both while leaders-in-training at UT-Austin and now as leaders of their respective organizations. In the experience of *Amici*, individuals educated in a racially and ethnically heterogeneous university setting are better equipped to become future leaders. *Amici* have experienced this to be true in a number of concrete ways.

First, leaders educated in cross-cultural environments have a better ability to facilitate unique and creative approaches to problem-solving and to integrate different approaches. As scholars have noted, “much of the point of education is to teach students how others think and to help them understand different points of view – to teach students how to be sovereign, responsible, and informed citizens in a heterogeneous democracy.” Akhil Reed Amar & Neal Kumar Katyal, *Bakke's Fate*, 43 UCLA L. REV. 1745, 1774 (1996); see also Chris Chambers Goodman, *Retaining Diversity in the Classroom: Strategies for Maximizing the Benefits that Flow from a Diverse Student Body*, 35 PEPP. L. REV. 663, 667-72 (2008) (discussing various benefits of diversity in the educational context).

Second, in the experience of *Amici*, leaders educated in a racially and ethnically heterogeneous environment are more likely to contribute to a positive environment for the organizations they lead, by decreasing incidents of discrimination and stereotyping. In so doing, not only do they recognize and integrate distinct approaches to solving problems, but they also create a safe environment for others to express ideas and offer unique solutions. Learning in a diverse environment helps leaders develop greater

self-awareness and facilitates cooperation and communication. See, e.g., Alexander W. Astin, *Diversity and Multiculturalism on the Campus: How Are Students Affected?*, 25 *CHANGE* 44, 44-49 (Mar./Apr. 1993); Walter G. Stephan & Cookie White Stephan, *The Role of Ignorance in Intergroup Relations*, in *GROUPS IN CONTACT: THE PSYCHOLOGY OF DESEGREGATION* 229, 243-49 (Norman N. Miller & Marilyn B. Brewer eds., 1984).

Third, leaders trained in a diverse educational setting are better able to develop products and services that appeal to a variety of consumers and to market offerings in ways that appeal to those consumers. This ability is directly related to their exposure to diverse needs, preferences, and perspectives on their path to leadership. For this reason, among others, leaders trained in a diverse university environment contribute to more productive organizations. See, e.g., Jean-Marie Martino, *Diversity: An Imperative For Business Success* (The Conference Board 1999); TREVOR WILSON, *DIVERSITY AT WORK: THE BUSINESS CASE FOR EQUITY* (1996); Quentin Reade, *Diversity Helps To Deliver Better Business Benefits*, *PERSONNEL TODAY*, June 18, 2002 (reporting that 80% of organizations surveyed “believe there is a direct link between diversity and improved business performance”); *Research Makes a Business Case for Diversity*, *FED. HUM. RESOURCES WEEK*, Sept. 24, 2001 (“[r]esearch by the National Academy of Public Administration shows that diverse workforces are more productive”).

Fourth, because our economy is becoming more diverse and global, exposure to diverse people, cultures, ideas, and viewpoints is imperative. In the experience of *Amici*, leaders trained in a diverse

educational context are better able to manage and work with employees, business partners, and clientele in the United States and around the world.

Fifth, academic excellence as a secondary student, or even a university student, does not always translate into an effective and successful leadership quality. As *Amici* can attest, dynamic leaders in business, law, and government have emerged from UT-Austin even when they have not necessarily excelled as students. But their exposure to a first-class learning environment, and to each other as students, can have a profound effect on their future leadership potential.

Finally, diversity in the leadership ranks profoundly improves overall diversity within an organization. See, e.g., Rebecca K. Lee, *Implementing Grutter's Diversity Rationale: Diversity and Empathy in Leadership*, 19 DUKE J. GENDER L. & POL'Y 133, 134 (2011) ("Leadership is key to promoting meaningful diversity, as well as full equality, raising questions about which groups tend to occupy leadership positions and how the work of leading might be done differently to create the type of institutional cultures needed to support a deeper understanding of diversity."). Such increased diversity, in turn, creates a more fertile ground for training future leaders – thus reinforcing the leadership benefits discussed above.

In sum, as *Amici* have observed through their own experiences, both as students and now as leaders, an educational environment that ensures participation by diverse people, viewpoints, and ideas helps to produce more effective leaders in government, business, public education, and society at large. UT-Austin's current admissions policies ensure that such diversity is present in the educational opportunities afforded to the State's future leaders.

II. TEXAS FACES UNIQUE LEADERSHIP CHALLENGES DUE TO GEOGRAPHY AND SHIFTING DEMOGRAPHICS

In the experience of *Amici*, the need for culturally competent leaders (as well as more minority leaders) is particularly acute in Texas. That is due both to the State's shifting demographics and to its shared border with Mexico.

A. It Is Critical That Texas' Educational Infrastructure Support Texas' Minority Population, Especially Its Rapidly Expanding Latino Population

Texas is the second largest State in the United States, in terms of both population and size. According to U.S. Census data, the 2011 population of Texas was estimated at about 25.7 million.⁸ Texas had the highest growth rate of any State, expanding by 529,000 people in 2011.⁹ By comparison, the entire United States grew by only 2.8 million over the same period.

Texas' population is extraordinarily diverse. According to U.S. Census data, as of 2011 approximately 9.8 million Latinos, 3.1 million African-Americans, and 1 million Asian-Americans resided in Texas.¹⁰ In May 2012, the U.S. Census reported that Texas is

⁸ See U.S. Census Bureau, State & County QuickFacts, <http://quickfacts.census.gov/qfd/states/48000.html> (last visited Aug. 9, 2012).

⁹ See Press Release, U.S. Census Bureau, *Texas Gains the Most in Population Since the Census* (Dec. 21, 2011), available at <http://www.census.gov/newsroom/releases/archives/population/cb11-215.html>.

¹⁰ See U.S. Census Bureau, State & County QuickFacts, <http://quickfacts.census.gov/qfd/states/48000.html> (last visited Aug. 9, 2012).

one of only five majority-minority States with 55.2% of its population not being single-race non-Latino white.¹¹ Indeed, by as early as 2000, minorities had already outnumbered the majority in Texas' college-age population. See Laycock, 78 TUL. L. REV. at 1800-01.

Moreover, Texas' minority population is growing rapidly. In 2000, 43% of Texans younger than 18 were non-Latino white. In 2010, that number dropped to 34%. The data for 2011 show that percentage continuing to drop, as only 30% of Texas children under age five are non-Latino white.¹² One Texas demographer estimates that, between 2000 and 2040, the State's public school enrollment will see a 213% increase in Latino children.¹³ The rapid increase in the Latino population will have a profound effect on the demographic makeup of the State's future labor force. In 2000, Latinos made up 27.5% of the State's labor force. But, in 2040, Latinos are projected to compose 58.7% of the State's labor force.¹⁴

¹¹ See Press Release, U.S. Census Bureau, *Most Children Younger Than Age 1 are Minorities, Census Bureau Reports* (May 17, 2012), available at <http://www.census.gov/newsroom/releases/archives/population/cb12-90.html>.

¹² See Becca Aaronson, *On the Records: Texas 1 of 5 "Minority-Majority" States*, TEXAS TRIB., May 17, 2012, available at <http://www.texastribune.org/texas-counties-and-demographics/census/on-the-records-majority-texas-minority-races/print/>.

¹³ See Gary Scharrer, *Texas Demographer: "It's Basically over for Anglos"*, *chron.com*, Feb. 24, 2011, available at <http://blog.chron.com/texaspolitics/2011/02/texas-demographer-its-basically-over-for-anglos/>.

¹⁴ See Texas Comptroller of Public Accounts, *Texas Works: Training and Education for All Texans* 14 (Dec. 2008), available

Because the importance of higher education to economic success is now well-established,¹⁵ the State has a compelling interest in ensuring that its educational infrastructure keeps pace with these seismic demographic shifts. In this respect, Texas has a long way to go. Texas has the lowest percentage of Latinos with high school degrees or higher among the States with the largest Latino populations.¹⁶ As of March 2006, no more than 56% of the State's Latino population aged 21 or higher had attained an educational certification or degree more advanced than a high school degree.¹⁷

The State thus has an urgent need to take special care to see that talented and qualified Latino students are given an opportunity to succeed. As a 2004 Governor's Business Council report stated, "[t]oo few of [Texas'] students, particularly among

at <http://www.window.state.tx.us/specialrpt/workforce/PDF/WorkForceFullReport.pdf>.

¹⁵ See Lisa R. Barrow & Cecilia Elena Rouse, *Does College Still Pay?*, THE ECONOMISTS' VOICE, Vol. 2, Issue 4, Art. 3 (2005), available at <http://www.transad.pop.upenn.edu/downloads/barrow-rouse.pdf>; Eric L. Dey et al., *Long-Term Effect of College Quality on the Occupational Status of Students* (Nat'l Ctr. for Post-secondary Improvement 1999), available at http://www.stanford.edu/group/ncpi/documents/pdfs/5-06_collegequality.pdf; ERNEST T. PASCARELLA & PATRICK T. TERENCEZINI, HOW COLLEGE AFFECTS STUDENTS: A THIRD DECADE OF RESEARCH (2005).

¹⁶ See Lina M. Rombalsky, *Leadership and Diversity: A Snapshot of Hispanic Representation in State Government throughout the United States* at 10, Presented at Workshop 2: Diverse Leaders and Leading a Diverse Workforce (Leading the Future of the Public Sector: The Third Transatlantic Dialogue, University of Delaware, Newark, Delaware, USA, May 31 – June 2, 2007), available at <http://www.ipa.udel.edu/3tad/papers/workshop2/Rombalsky.pdf>.

¹⁷ See *id.*

[its] minority populations, are graduating from high school and college. Texas is a rapidly growing, diverse state with unique demographic challenges and we must close the gap with other competitor states in college participation and success.”¹⁸

B. Texas Has A Unique Need For Culturally Competent Leaders In Light Of Its Shared Border With Mexico

Texas faces an additional unique leadership challenge due to its shared border with Mexico. As a border State, Texas plays an important role in shaping and protecting America’s foreign policy and economic interests with respect to Mexico. The United States-Mexico border is the most frequently crossed international border in the world and provides a critical trade route between the countries.¹⁹ In 2010, Texas was the first State with more than \$100 billion in surface trade with Mexico in a calendar year.²⁰

Trans-border concerns run the gamut of important issues for U.S.-Mexican relations. As the State with the largest border with Mexico, governmental and business leaders in Texas border communities play a

¹⁸ Governor’s Business Council, *From Good to Great: The Next Phase in Improving Texas Public Schools* 1, 3 (Nov. 2004), available at http://texasgbc.org/GBC__From%20Good%20to%20Great.pdf.

¹⁹ See Edwin Mora, *Senate Democratic Whip Compares Sealing the Mexican Border to Trying to Keep Drugs Off of I-95*, CNSNews.com, May 19, 2010, available at <http://www.cnsnews.com/node/66271>.

²⁰ See David Hendricks, *Volume of Texas-Mexico Freight Presses Higher: Texas in Driver’s Seat as Border Trade Soars*, *chron.com*, June 1, 2011, available at <http://www.chron.com/business/article/Volume-of-Texas-Mexico-freight-presses-higher-1688787.php>.

critical role in the ongoing struggles to ensure proper adherence to the Nation's immigration policies. Their actions, in turn, have foreign policy effects with Mexico. Such leaders also perform a profound role in the inculcation of critical democratic values, from adherence to the rule of law to the protection of life, liberty, and property.

Members of Texas law enforcement serve courageously on the frontline of America's war on drugs. Law enforcement agencies such as the U.S. Border Patrol are responsible for employing leaders who will need to deal with the fast evolving and socially complex environment in which they find themselves. To lead effectively in such circumstances requires education, judgment, and cultural sensitivity. Many of those leaders have been and will be educated at UT-Austin, as well as other state institutions in Texas.

The border town of El Paso serves as an example of how community leadership and education can effectively prevent the spread of crime and improve social cohesion. Despite its proximity to one of the most dangerous cities in Mexico, and perhaps the world, El Paso has maintained its reputation as one of the safest cities in America.²¹ El Paso's officials credit active citizenry and community leadership for the city's low crime statistics.²² Also relevant is the student makeup of the University of Texas, El Paso ("UTEP"), which mirrors the broader ethnic makeup of El Paso.²³ UTEP has 21,000 students, of which

²¹ See Duncan Currie, *The War Next Door*, NAT'L REVIEW, July 19, 2010, at 25.

²² See *id.* at 26.

²³ See *id.*

the large majority is Mexican American.²⁴ Additionally, roughly 1,400 students travel from Mexico every day to attend classes.²⁵ This diversity and inclusiveness in education have helped to develop leaders who are able to tackle the most problematic social issues in one of the most diverse cities in the State.

Given the intensity of the myriad relationships necessary to sustain productive dealings with Mexico, it is important not only to the State but to the Nation that Texas develops culturally competent leaders, including those with fluency in Spanish and knowledge of Mexican culture. UT-Austin's admissions policies are aimed at addressing this critical leadership need.

So is its curriculum. For instance, UT-Austin's McCombs School of Business hosts an annual Hispanic Leadership Summit at which leaders from all over the United States gather to collaborate and discuss important issues in Texas and across the Nation, and the key role Latino-Americans share in addressing these issues.²⁶ Such efforts illustrate UT-Austin's commitment to use creative educational methods to solve leadership issues that are critical to the State of Texas, as well as the Nation as a whole.

²⁴ *See id.*

²⁵ *See id.*

²⁶ *See* McCombs School of Business, UT-Austin, Hispanic Leadership Summit, <http://www.mcombs.utexas.edu/HLI/summit.aspx> (last visited Aug. 9, 2012).

III. THE EQUAL PROTECTION CLAUSE SHOULD NOT BE INTERPRETED TO PROHIBIT UT-AUSTIN'S ADMISSIONS POLICIES, WHICH ARE NECESSARY TO ITS CRITICAL MISSION

In interpreting the Equal Protection Clause to permit UT-Austin to include racial considerations as part of its admissions process, the Fifth Circuit applied this Court's holding in *Grutter* that enrolling a critical mass of minority students achieves the compelling public interest "in obtaining the educational benefits that flow from a diverse student body." 539 U.S. at 343. *Grutter* also recognized that "[e]ffective participation by members of all racial and ethnic groups in the civic life of our Nation is essential if the dream of one Nation, indivisible, is to be realized." *Id.* at 332.

For the reasons set forth in Respondents' brief on the merits, the Fifth Circuit's decision should be affirmed. Based on their personal and professional experience, *Amici* would add two additional reasons for upholding UT-Austin's admissions policies.

A. The Constitution Should Not Be Interpreted To Prohibit A Public University From Ensuring Diversity In Its Path To State Leadership

UT-Austin's admissions policies are necessary for the realization of the University's critical mission of providing a path to state leadership and training culturally competent leaders. As discussed above, Texas has a compelling need to ensure diversity in this essential leadership training ground, and UT-Austin's carefully designed admissions policies implement that critical educational mission.

This Court has long recognized the wisdom of deferring to the informed and independent decisions of educators. *See, e.g., Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 16 (1971) (“[s]chool authorities are traditionally charged with broad power to formulate and implement educational policy”); *Regents of Univ. of Michigan v. Ewing*, 474 U.S. 214, 225 (1985) (“When judges are asked to review the substance of a genuinely academic decision, . . . they should show great respect for the faculty’s professional judgment.”). The Court should adhere to that principle here.

B. The Court Should Be Reluctant To Interpret The Equal Protection Clause So As To Impair A State’s Ability To Address Critical, State-Specific Challenges

The demographic trends discussed above underscore Texas’ unique need to educate a greater number of minority leaders and culturally competent leaders so that they may go on to serve in roles of leadership throughout the State. Texas has never had a greater need for diversity in leadership than it does today. That need will increase as population growth and demographic trends continue as projected. The Equal Protection Clause does not bar UT-Austin from adopting admissions policies that serve the critical and evolving needs of the State and its residents.

To be sure, considering demographics in determining whether the “path to leadership” is visibly open at a flagship university like UT-Austin is a great deal different than “racial balancing.” A flagship university cannot pick a demographic target and work towards it in its admissions process. That is not what UT-Austin does. But such a university can consider the racial and ethnic diversity of its student

body, identify blatant racial disparities (like there are for Latinos at UT-Austin), and adopt limited measures to address such disparities – and open the path to leadership. These policies, which allow UT-Austin to assemble a diverse student body that is reflective of the surrounding community, utilize modest and individualized considerations of race that are consistent with the policies permitted under *Grutter* and *Bakke*.

That UT-Austin’s admissions policies have been designed to address state-specific leadership needs is important for an additional reason. Just as the Court has long recognized the wisdom of deferring to educators’ professional judgment, the Court traditionally has also shown great respect to States’ right to address state-specific challenges. *See, e.g., United States v. Lopez*, 514 U.S. 549, 581 (1995) (“If a State or municipality determines that harsh criminal sanctions are necessary and wise to deter students from carrying guns on school premises, the reserved powers of the States are sufficient to enact those measures.”) (Kennedy, J., concurring); *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 546 (1985) (“States cannot serve as laboratories for social and economic experiment if they must pay an added price when they meet the changing needs of their citizenry”) (citation omitted). Respect for federalism in this case militates strongly in favor of deference to the State’s carefully considered effort to address a critical state need.²⁷

²⁷ It must also be noted that UT-Austin has a long history of exclusion that continues to cast a shadow over the recruitment of African-Americans. *See, e.g., Sweatt v. Painter*, 339 U.S. 629, 633 (1950) (striking down UT-Austin’s policy of excluding African-Americans from its law school). In addition to advancing its

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

DAVID C. FREDERICK

Counsel of Record

DEREK T. HO

CHRISTOPHER J. WALKER

KELLOGG, HUBER, HANSEN,

TODD, EVANS & FIGEL,

P.L.L.C.

1615 M Street, N.W.

Suite 400

Washington, D.C. 20036

(202) 326-7900

(dfrederick@khhte.com)

August 13, 2012

critical leadership objectives, UT-Austin's current admissions policies are a subtle, constitutionally permissible way for UT-Austin to show that it now regards a student's background as a potential asset, rather than a quality once treated as a disqualifying deficiency.

APPENDIX

***List of Amici – Distinguished Alumni
(titles and institutional affiliations are
provided for identification purposes only)***

- Linda L. Addison, BA '73, JD '76
Partner-in-Charge, New York, Fulbright
& Jaworski, L.L.P.
Federal Judicial Evaluation Committee of
United States
Center for Women in Law – Founder, President,
Executive Committee
ABA Margaret Brent Women Lawyers of
Achievement Award 2009
<http://www.fulbright.com/laddison>
- R. Gordon Appleman, BA '59
Senior Counsel, Thompson & Knight L.L.P.
Davey O'Brien Educational and Charitable Trust
– Trustee, Secretary and Treasurer
Philosophical Society of Texas
[http://www.tklaw.com/attorneys.cfm?u=Appleman
RGordon&action=view&id=242](http://www.tklaw.com/attorneys.cfm?u=ApplemanRGordon&action=view&id=242)
- The Honorable Ben F. Barnes, LLB '57
Founder and Principal, Ben Barnes Group
Lieutenant Governor of Texas, 1969-1973
Speaker of the Texas House of Representatives,
1965-1969
[http://www.benbarnesgroup.com/resume/Ben_digital
Resume.pdf](http://www.benbarnesgroup.com/resume/Ben_digitalResume.pdf)

David J. Beck, LLB '65

Founding Partner, Beck, Redden & Secrest, L.L.P.

Chair, Board of Trustees, The Center for

American and International Law

Member, Judicial Conference Standing

Committee on Rules of Practice and

Procedure, 2004-2010

Board, The University of Texas Law School

Foundation

http://brsfirm.com/attorneys/?p=4&/david_beck

R. D. (Dan) Burck, BBA '56

Chairman of the Board, American Campus

Communities, Inc.

Chancellor, The University of Texas System,

2000-2002

Manager, Worldwide Holdings, Getty Oil

Company, 1956-1988

<http://m.americancampus.com/Leadership-Team>

H. Scott Caven, Jr., BBA '64, JD '67

Managing Director, Atlantic Trust

Chairman, The University of Texas System Board

of Regents, 2007-2009

Member, The University of Texas System Board

of Regents, 2003-2009

Goldman, Sachs & Company, 1978-2001

<http://www.atlantictrust.com/houston/>

Barbara Smith Conrad, BM '59

Mezzo-Soprano, New York Metropolitan Opera,

1982-1989

When I Rise Documentary Film –

<http://www.whenirisefilm.com/>

Co-Founder and Director, Wagner Theater

Program, Manhattan School of Music

http://www.cah.utexas.edu/projects/when_i_rise/

[barbara_conrad_bio.php](http://www.cah.utexas.edu/projects/when_i_rise/barbara_conrad_bio.php)

Franklin W. Denius, LLB '49

Businessman, Attorney, and Philanthropist

<http://www.texassports.com/sports/m-footbl/spec-rel/052807aaa.html>

Dr. Edwin Dorn, BA '67

Professor, LBJ School of Public Affairs

Member, Board of Trustees, Institute of Defense
Analysis

Member, Board of Directors, Kettering
Foundation

Dean, LBJ School of Public Affairs, 1997-2004

United States Under Secretary of Defense for
Personnel and Readiness, 1994-1997

<http://www.utexas.edu/lbj/directory/faculty/edwin-dorn>

John W. Fainter, Jr., BA '62, LLB '63

President, Association of Electric Companies of
Texas, Inc.

Chief of Staff to Governor of Texas, 1993-1994

Secretary of State for the State of Texas,
1983-1984

[https://www.utexas.edu/law/alumni/association/
executive_committee/2010-2011/fainter.php](https://www.utexas.edu/law/alumni/association/executive_committee/2010-2011/fainter.php)

Dr. Larry R. Faulkner, PhD '69

Emeritus President and Professor of Chemistry,
The University of Texas at Austin

President, Houston Endowment, 2006-2012

President, The University of Texas at Austin,
1998-2006

Former Board Member, National Mathematics
Advisory Panel

[http://www.utexas.edu/president/past/faulkner/index/
html](http://www.utexas.edu/president/past/faulkner/index.html)

Dr. Juliet V. Garcia, PhD '76
President, The University of Texas at Brownsville,
1992-present
President, Texas Southmost College, 1986-1992
Board, Ford Foundation
Board, Robert Wood Johnson Foundation
Texas Women's Hall of Fame
<http://www.utb.edu/president/Pages/Biography.aspx>

Julius Glickman, BA, '62, LLB '66
Founding Partner, Glickman Carter & Bachynsky
(Retired)
Former Chair, The University of Texas at Austin
Development Board
Former Chair, The University of Texas System
Chancellor's Council
Former Chair and Board Member, Humanities
Texas
<http://www.texasexes.org/involved/daa-current-recipients.aspx>

James R. Huffines, BBA '73
President & Chief Operating Officer,
PlainsCapital Corporation
Chairman, UT System Board of Regents,
2004-2007, 2009-2010
Member, The University of Texas System Board
of Regents, 2003-2010
http://www.utsystem.edu/bor/former_regents/regents/Huffines/biosketch.htm

Joseph D. Jamail, Jr., BA '50, JD '53
Founding Partner, Jamail & Kolius
Board, The University of Texas Law School
Foundation
<http://www.joejamail.com/Biographical.htm>

Kenneth M. Jastrow, II, BBA '69, MBA '71
Chairman and CEO, Temple-Inland Inc.,
2000-2007
Chair, UT Commission of 125
Former Chair, The University of Texas at
Austin Development Board
[http://www.today.mcombs.utexas.edu/people/
kenneth-jastrow](http://www.today.mcombs.utexas.edu/people/kenneth-jastrow)

Jodie L. Jiles, MPA '79
Director, Business Development, Transwestern
Managing Director, Fixed Income Banking U.S.
Debt Markets – RBC Capital Markets,
2006-2012
Board of Directors, Baylor College of Medicine
Former Member, Texas Higher Education
Coordinating Board
[http://www.transwestern.net/About/Pages/Bio.
aspx?email=Jodie.Jiles@transwestern.net](http://www.transwestern.net/About/Pages/Bio.aspx?email=Jodie.Jiles@transwestern.net)

Joe Long, BA '51, LLB '58
Board of Trustees, The University of Texas Law
School Foundation
Chairman and CEO of First National Bank,
1989-1998
Joe R. and Teresa Lozano Long Foundation
Advisory Council, Teresa Lozano Long Institute of
Latin American Studies
Texas Medal of Arts Award
[http://www.utexas.edu/law/about/foundation/trustees/
long.html](http://www.utexas.edu/law/about/foundation/trustees/long.html)

Dr. Teresa Lozano Long, BS '48, MED '51, EDD '65
Joe R. and Teresa Lozano Long Foundation
Advisory Council, Teresa Lozano Long Institute of
Latin American Studies
National Endowment for the Arts
National Council on the Arts
Texas Women's Hall of Fame
Texas Medal of Arts Award
<http://www.utexas.edu/cola/insts/lilas/about/advisory-council.php>

Charles W. Matthews, BA '67
Exxon Mobil Corporation, Vice President and
General Counsel, 1995-2010
Board of Directors, Cullen/Frost Bankers, Inc.
Commissioner, Texas Access to Justice Commission
Chair, The University of Texas at Austin
Development Board
<http://www.texasexes.org/involved/daa-past-recipients.aspx>

James J. Mulva, BBA '68, MBA '69
Board of Directors: General Electric; General
Motors; and Green Bay Packaging Inc.
Member, Board of Visitors, M.D. Anderson
Cancer Center
Chairman & CEO, ConocoPhillips, 2004-2012
Chairman & CEO, Phillips Petroleum Company,
1999-2002
http://www.ge.com/company/leadership/bios_bod/james_mulva.html

Dr. Diana Natalicio, MA '64, PhD '69
President, The University of Texas at El Paso,
1988-present
Board of Trustees, Rockefeller Foundation
Board of Directors, American Council on Education
Member, National Science Board, 1994-2006
<http://www.utep.edu/aboututep/presidentsbio.aspx>

Jon Newton, BA '63, LLB '65

President, University of Texas Law School
Foundation

Vice Chairman, American General Corporation,
1995-2000

Texas Railroad Commissioner, 1977-1979

Member, Texas House of Representatives,
1971-1976

[http://www.utexas.edu/law/about/foundation/
trustees/newton.html](http://www.utexas.edu/law/about/foundation/trustees/newton.html)

Melinda Perrin, BS '69

Founding Member and Executive Committee,
Texas Coalition for Excellence in Higher
Education

Board, Memorial Hermann Healthcare System

Former Chair, The University of Texas at Austin
Development Board

Former Chair, The University of Texas System
Chancellor's Council

[http://www.texasexes.org/involved/daa-past-
recipients.aspx](http://www.texasexes.org/involved/daa-past-recipients.aspx)

Shannon Ratliff, BA '61, LLB '64

Partner and Founder, Ratliff Law Firm, PLLC

Member, The University of Texas System Board
of Regents, 1985-1991

Member and Chairman, Texas Public Safety
Commission, 1983-1985

Law Clerk to Associate Justice Tom C. Clark,
United States Supreme Court, 1964-1965

http://www.ratlifflaw.com/biography_details.php

Harry M. Reasoner, LLB '62
Senior Partner and Former Managing Partner,
Vinson & Elkins, L.L.P.
Board, The University of Texas Law School
Foundation
Chair, Texas Access to Justice Commission
<http://www.velaw.com/lawyers/HarryReasoner.aspx>

Dr. Ricardo Romo, BS '67
President, The University of Texas at San Antonio,
1999-present
U.S. President's Advisory Commission on
Educational Excellence for Hispanics
United States-Mexico Commission for Educational
and Cultural Exchange
Board of Directors, American Council on Education
<http://utsa.edu/president/romobio.html>

Dr. Ben Streetman, BS '61, MS '63, PhD '66
Professor Emeritus of Electrical and Computer
Engineering, The University of Texas at Austin
Dean of the Cockrell School of Engineering,
The University of Texas at Austin, 1996-2008
Member, National Academy of Engineering and
the American Academy of Arts and Sciences
http://www.ece.utexas.edu/directory/directory_details.cfm?id=143

Stephen D. Susman, JD '65
Managing Partner and Founder, Susman Godfrey,
L.L.P.
Law Clerk to Justice Hugo L. Black,
United States Supreme Court, 1966-1967
Trustee, U.S. Supreme Court Historical Society
<http://www.susmangodfrey.com/Attorneys/Stephen-D-Susman/#Panel>

Ellen Clarke Temple, BA '64
Owner and President, Ellen C. Temple
Publishing, Inc.
The University of Texas System Board of Regents,
1991-1997
Angelina College, President, Board of Trustees
[http://www.utsystem.edu/bor/former_regents/regents/
Temple/biosketch.htm](http://www.utsystem.edu/bor/former_regents/regents/Temple/biosketch.htm)

Larry E. Temple, BBA '57, LLB '59
Attorney-at-Law
Chairman, Lyndon Baines Johnson Foundation
Chairman, Texas Select Committee on Higher
Education, 1985-1986
Former Chairman, Texas Higher Education
Coordinating Board
White House Staff Special Counsel to Lyndon B.
Johnson, 1967-1969
Law Clerk to Associate Justice Tom C. Clark,
U.S. Supreme Court, 1959-1960
<http://www.lbjfoundation.org/board/>

The Honorable Sara Martinez Tucker, BJ '76, MBA '79
Member, Board of Directors: American Electric
Power; Xerox Corporation; The University of
Notre Dame; and Teach for America
Under Secretary of Education, U.S. Department
of Education, 2006-2008
CEO – Hispanic Scholarship Fund, 1997-2006
[http://www2.ed.gov/news/staff/bios/martinez-
tucker.html](http://www2.ed.gov/news/staff/bios/martinez-tucker.html)

Darren Walker, BS '82, BA '82, JD '86
Vice President, Ford Foundation
Vice President, Rockefeller Foundation, 2006-2010
[http://www.fordfoundation.org/about-
us/leadership/darren-walker](http://www.fordfoundation.org/about-us/leadership/darren-walker)

Pete Winstead, LLB '65

Founder and Shareholder, Winstead P.C.

Former Chair, Texas Turnpike Authority

Chairman, Board of Trustees, St. Edward's
University

<http://www.winstead.com/pwinstead>

The Honorable Judith Zaffirini, BS '67, MA '70, PhD '78

Senator, Texas State Senate – District 21,
1987-present

Chair, Senate Higher Education Committee

Co-Chair, Joint Oversight Committee on Higher
Education Governance, Excellence, and
Transparency

Owner, Zaffirini Communications

http://www.judithzaffirini.com/pages/about_us.htm;

<http://www.zaffirinicom munications.com/profile.html>