No. 21-707

In the Supreme Court of the United States

STUDENTS FOR FAIR ADMISSIONS, INC., PETITIONER

v.

UNIVERSITY OF NORTH CAROLINA, ET AL.

ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENTS

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QUESTIONS PRESENTED

This Court has held that the Equal Protection Clause and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, do not prohibit limited consideration of race by colleges and universities in their admissions processes if such consideration is narrowly tailored to advance the compelling interest in the educational benefits that flow from "student body diversity." *Grutter* v. *Bollinger*, 539 U.S. 306, 325 (2003). The questions presented are:

1. Whether the Court should overrule its decision in *Grutter*, along with its decisions in *Regents of the University of California* v. *Bakke*, 438 U.S. 265 (1978), *Fisher* v. *University of Texas*, 570 U.S. 297 (2013), and *Fisher* v. *University of Texas*, 136 S. Ct. 2198 (2016).

2. Whether the district court correctly determined that the University of North Carolina's undergraduate admissions process comports with the Equal Protection Clause and Title VI.

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INTEREST OF THE UNITED STATES

The United States has authority to enforce the Equal Protection Clause in the context of public university admissions. 42 U.S.C. 2000c-6. The United States is also responsible for enforcing Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* And the United States has a vital interest in ensuring that our Nation's institutions of higher education—including the military's service academies—produce graduates who come from all segments of society and who are prepared to succeed and lead in an increasingly diverse Nation.

STATEMENT

1. Respondent the University of North Carolina (UNC) was founded in 1789 as the Nation's first public university. Pet. App. 3. UNC is a selective institution,

receiving approximately 43,500 applications for a freshman class of just 4200. *Id.* at 23. UNC "recognize[s] and actively pursue[s] the educational benefits of diversity as one of its institutional priorities." *Id.* at 10. UNC's "core values" with respect to diversity include "'promot[ing] intellectual growth and deriv[ing] the educational benefits of diversity by creating opportunities for intense dialogue and rigorous analysis and by fostering mutually beneficial interactions among members of the community.'" *Id.* at 12 (citation omitted); see *id.* at 57-58.

UNC begins its admissions process by seeking to recruit high-achieving applicants of varied socioeconomic, geographic, and racial backgrounds. Pet. App. 46-49, 118-120. UNC then evaluates applications using a rigorous multistep process. Its admissions officers undergo extensive training in UNC's admissions policies, procedures, and goals. *Id.* at 26-27. Those goals include enrolling "a diverse class across multiple dimensions, including but not limited to diversity of experience; ideas; backgrounds; socioeconomic status; racial and ethnic background; and first-generation college status." *Id.* at 28 (citation omitted). Admissions officers are instructed that race and ethnicity may be considered "as one factor among many based on a holistic review of all circumstances relevant to an individual applicant" and that "there are no quotas, fixed points, or separate admissions processes based on a particular candidate's race or ethnicity." *Ibid.* (citation omitted).

2. Petitioner is a nonprofit organization created in July 2014 to challenge college affirmative-action policies. See Pet. App. 232. In November 2014, petitioner filed this suit alleging that UNC's consideration of race in admissions violates the Equal Protection Clause and Title

VI. *Id.* at 1-2. The district court denied UNC's motion to dismiss, holding that petitioner had standing. *Id.* at 236-245.[1]

3. Following an eight-day bench trial and review of a "voluminous" record, Pet. App. 7, the district court rejected petitioner's claims, finding that UNC's consideration of race in admissions satisfies strict scrutiny under the standard set forth in *Grutter* v. *Bollinger*, 539 U.S. 306 (2003). Pet. App. 1-186.

a. The district court first concluded that UNC has "a compelling interest in pursuing the educational benefits of diversity, including racial diversity." Pet. App. 158-159; see *id.* at 8-14. The court found that UNC had established, through "substantial, credible, and largely uncontested evidence," that it has "made the deliberate decision to pursue the educational benefits that flow from student body diversity" to "prepare the next generation of leaders for North Carolina and the nation." *Id.* at 8, 14.

The district court also found that UNC "consistently assesses its progress towards achieving these educational benefits." Pet. App. 161. And the court determined that although UNC's efforts have borne fruit, the

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[1] Petitioner invoked associational standing to sue "solely as the representative of its members." *Warth* v. *Seldin*, 422 U.S. 490, 511 (1975). UNC argues (Br. 24-26) that petitioner does not adequately represent its members because it is a made-for-litigation entity whose members played no meaningful role in the organization when the suit was filed. If correct, those assertions would raise serious questions about petitioner's standing. Cf. *International Union, United Auto., Aerospace, & Agric. Implement Workers of Am.* v. *Brock*, 477 U.S. 274, 290 (1986); *Hunt* v. *Washington State Apple Adver. Comm'n*, 432 U.S. 333, 344-345 (1977). But petitioner disputes the relevant facts, see Cert. Reply Br. 4-6, and the United States takes no position on those factual disputes.

university still has "significant work to do" to "fully realize its [diversity] goals." *Id.* at 19; see *id.* at 60-62. For example, UNC has struggled to enroll underrepresented minorities—particularly Black and Native-American students, whose representation at UNC is less than half of their representation in North Carolina's population. *Id.* at 21. Students also testified that "there were far fewer students of color on campus than they expected," leading to feelings of "tokenism," "isolation," and "unfair pressure to represent their race or ethnicity." *Id.* at 20, 61; see *id.* at 60-62.

b. The district court next determined that UNC's admissions program "bears all the hallmarks of a narrowly tailored race conscious admissions program." Pet. App. 175. Among other things, UNC "engages [in] a highly individualized, holistic review of each applicant's file, which considers race flexibly as a 'plus factor.'" *Ibid.*; see *id.* at 165-175.

The district court also found that UNC had "engaged in ongoing, serious, and good faith consideration of workable race neutral alternatives." Pet. App. 176. And after assessing the extensive evidence concerning alternative admissions policies, the court found that there are "no adequate, workable, or sufficient race neutral alternatives available" to achieve UNC's compelling interest. *Ibid.*; see *id.* at 113-144, 176-183. The court emphasized that "it is incumbent upon UNC to continue to study emerging ideas." *Id.* at 143. But the court determined that UNC was not required "to abandon the current admissions process in favor of untested proposals that, even in the best-case scenarios and under dubious assumptions, exact significant consequences on [UNC's] ability to recruit and enroll an

academically prepared student body that is diverse along the several dimensions it values." *Id.* at 143-144.

SUMMARY OF ARGUMENT

I. In *Grutter* v. *Bollinger*, 539 U.S. 306 (2003), this Court held that student body diversity is a compelling interest that can justify narrowly tailored consideration of race in university admissions. That holding was and remains correct, and it has allowed the Nation's people and their elected representatives to engage in ongoing dialogue about this sensitive and important issue. The Court should reject petitioner's invitation to overrule its precedents and curtail that democratic process.

A. *Grutter* reaffirmed Justice Powell's landmark opinion in *Regents of the University of California* v. *Bakke*, 438 U.S. 265 (1978). Like Justice Powell, the Court recognized that our Nation's future depends on having diverse leaders who are prepared to lead in an increasingly diverse society—and that "the path to leadership" must "be visibly open to talented and qualified individuals of every race and ethnicity." *Grutter*, 539 U.S. at 332. At the same time, *Grutter* and the Court's subsequent decisions have placed strict limits on the use of race, requiring that it be considered only as part of a holistic, individualized assessment of each candidate and only so long as such consideration remains necessary to achieving a university's compelling interest in diversity.

B. *Grutter* correctly recognized the vital importance of diversity in higher education. The Nation's military leaders, for example, have learned through hard experience that the effectiveness of our military depends on a diverse officer corps that is ready to lead an increasingly diverse fighting force. The Armed Forces thus rely on *Grutter* both in admitting students to West

Point and the Nation's other military academies and in recruiting officers from civilian universities like UNC. Other federal agencies likewise depend on diversity in our Nation's universities to recruit highly qualified graduates from all segments of society who are equipped to succeed in diverse environments. And the educational benefits of diversity are validated by recent scholarship confirming the academic and civic benefits of racial diversity on university campuses.

C. Principles of *stare decisis* strongly support adherence to *Grutter*. No subsequent developments have cast doubt on the importance of diversity in higher education. *Grutter*'s framework has proven eminently workable, carefully limiting the consideration of race and requiring use of race-neutral alternatives to the extent possible. And colleges and universities around the country—including the Nation's service academies—have relied extensively on *Grutter* in shaping their admissions systems.

D. Petitioner's contrary arguments lack merit. Petitioner principally asserts that the Equal Protection Clause categorically bars any consideration of an individual's race. But this Court has repeatedly held that although all racial classifications are subject to strict scrutiny, consideration of race is permissible if it is narrowly tailored to serve a compelling interest. Petitioner purports to ground its contrary view in *Brown* v. *Board of Education*, 347 U.S. 483 (1954). But nothing in *Brown*'s condemnation of laws segregating the races to perpetuate a caste system calls into question admissions policies adopted to promote greater integration and diversity. And petitioner's persistent attempts to equate this case with *Brown* trivialize the grievous legal and moral wrongs of segregation.

Petitioner also asserts that *Grutter*'s analysis of the value of diversity was mistaken. But petitioner fails to engage with *Grutter*'s analysis or with the decades of research and experience supporting *Grutter*'s conclusion—including the judgment of generations of military leaders.

Finally, petitioner asserts (Br. 48) that *Grutter* has had "negative consequences." But petitioner does not establish any connection between *Grutter* and the asserted problems it identifies. And petitioner greatly understates the disruptive and harmful consequences of overruling *Grutter*, which would dramatically reduce minority representation at our Nation's leading institutions of higher education, compromise those institutions' identities and missions, or both.

II. The district court correctly upheld UNC's admissions program in light of this Court's precedent. Before this Court, petitioner challenges only the district court's finding that UNC lacks workable race-neutral alternatives. But petitioner provides no reason to question the court's exhaustive analysis and detailed factual findings. And this Court has already rejected petitioner's contention that a mechanical admissions policy based on one or two metrics like GPA and SAT scores is a workable alternative to a holistic policy like UNC's.

ARGUMENT

I. THIS COURT SHOULD ADHERE TO *GRUTTER*'S HOLDING THAT THE EDUCATIONAL BENEFITS OF DIVERSITY ARE A COMPELLING INTEREST[2]

In *Grutter* v. *Bollinger*, 539 U.S. 306 (2003), this Court held that "student body diversity is a compelling

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[2] Because the first question presented in this case is the same as the first question presented in *Students for Fair Admissions, Inc.*

state interest that can justify the use of race in university admissions." *Id.* at 325. In reaching that conclusion, the Court reaffirmed Justice Powell's insight that the "'nation's future depends upon leaders trained through wide exposure' to the ideas and mores of students as diverse as this Nation of many peoples." *Id.* at 324 (quoting *Regents of the Univ. of Cal.* v. *Bakke*, 438 U.S. 265, 313 (1978) (opinion of Powell, J.)).

That insight remains true today. Our military leaders, for example, have determined that the Nation's security depends on developing and sustaining a diverse officer corps that is prepared to lead an increasingly diverse fighting force. The service academies have also concluded that admissions policies like the one this Court approved in *Grutter* remain essential to achieving that goal.

At the same time, *Grutter* and subsequent decisions have placed stringent limits on the use of race in admissions. The Court has held that any consideration of an individual applicant's race must satisfy the most exacting level of scrutiny. The Court has demanded individualized consideration of all applicants and insisted that race play only a limited role. And the Court has made clear that this limited consideration of race in admissions is permissible only if and to the extent it remains necessary to serve a university's compelling educational interests.

This Court's precedents have, in short, struck a careful balance on this important and sensitive issue. That balance has allowed our Nation's leading educational institutions to become more "inclusive of talented and

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v. *President & Fellows of Harvard College*, No. 20-1199, Part I of this brief is substantially identical to Part I of the government's brief in that case.

qualified individuals of every race and ethnicity." *Grutter*, 539 U.S. at 332. It has also fostered "a dialogue regarding this contested and complex policy question among and within States." *Schuette* v. *BAMN*, 572 U.S. 291, 301 (2014) (plurality opinion). The Court should reject petitioner's invitation to overturn its precedents and curtail that dialogue between the people and their elected representatives.

A. *Grutter* Held That Universities Have A Compelling Interest In Diversity That Justifies Narrowly Tailored Consideration Of Race In Admissions

1. This Court first addressed a university's consideration of race to increase student-body diversity in the "landmark *Bakke* case." *Grutter*, 539 U.S. at 322. The University of California at Davis's Medical School had set aside 16 of the 100 places in each incoming class for underrepresented minorities. *Bakke*, 438 U.S. at 289 (opinion of Powell, J.). In his controlling opinion, Justice Powell concluded that universities have a "compelling" interest in student-body diversity. *Id.* at 314. He also determined, however, that the Medical School's rigid set-aside was not narrowly tailored. *Id.* at 315-319. He emphasized the availability of alternative admissions programs where "race or ethnic background may be deemed a 'plus' in a particular applicant's file," but the program "is flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant," treating "each applicant as an individual." *Id.* at 317-318.

2. In *Grutter*, this Court "endorse[d] Justice Powell's view." 539 U.S. at 325. The Court held that a university may determine that the educational benefits of diversity, including racial and ethnic diversity, are "essential to its educational mission." *Id.* at 328. The

Court explained that a diverse student body "promotes 'cross-racial understanding,' helps to break down racial stereotypes, and 'enables students to better understand persons of different races.'" *Id.* at 330 (brackets and citation omitted). And *Grutter* emphasized that "[j]ust as growing up in a particular region or having particular professional experiences is likely to affect an individual's views, so too is one's own, unique experience of being a racial minority in a society, like our own, in which race unfortunately still matters." *Id.* at 333.

The Court also gave weight to the views of military and business leaders who stressed that the educational institutions that train the next generation of our Nation's leaders "must remain both diverse and selective." *Grutter*, 539 U.S. at 331 (citation omitted). And the Court added that, "to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity." *Id.* at 332. The Court thus held that, for an institution that deems diversity essential to its mission, obtaining "the educational benefits that flow from student body diversity" is a compelling interest. *Id.* at 330.

At the same time, *Grutter* emphasized that any consideration of race must be narrowly tailored. 539 U.S. at 333. Again endorsing Justice Powell's view, the Court held that race may be considered only "in a flexible, nonmechanical way," as "a 'plus' factor in the context of individualized consideration of each and every applicant." *Id.* at 334 (citation omitted). And the Court also held that although narrow tailoring "does not require exhaustion of every conceivable race-neutral alternative," it demands "serious, good faith consideration of workable race-neutral alternatives that will

achieve the diversity [a university] seeks" while maintaining academic excellence. *Id.* at 339.

Applying that standard, the Court held that the University of Michigan Law School's admissions program satisfied strict scrutiny because it relied on "a highly individualized, holistic review of each applicant's file"; because the Law School had adequately considered race-neutral alternatives; and because the Law School was committed to ongoing reviews to ensure that consideration of race in admissions continued no longer than necessary. *Grutter*, 539 U.S. at 337; see *id.* at 340-343. In contrast, the Court held that the University of Michigan's undergraduate admissions program was not narrowly tailored because it "automatically" afforded "one-fifth of the points needed to guarantee admission" to "every single 'underrepresented minority' applicant." *Gratz* v. *Bollinger*, 539 U.S. 244, 270 (2003).

Grutter also endorsed Justice Powell's conclusion that Title VI permits funding recipients to engage in individualized consideration of race in admissions where necessary to further a compelling interest in diversity because the statute prohibits "only those racial classifications that would violate the Equal Protection Clause" if employed by a state actor. *Grutter*, 539 U.S. at 343 (citation omitted); see *Gratz*, 539 U.S. at 276 n.23.

3. A decade later, this Court applied the same principles in *Fisher* v. *University of Texas*, 570 U.S. 297 (2013) (*Fisher I*), and *Fisher* v. *University of Texas*, 136 S. Ct. 2198 (2016) (*Fisher II*). In *Fisher I*, the Court underscored the "demanding burden of strict scrutiny articulated in *Grutter* and [*Bakke*]" and remanded to allow the lower courts to apply the correct standard. 570 U.S. at 303. And in *Fisher II*, the Court held that the

University of Texas's undergraduate admissions process satisfied that rigorous standard. 136 S. Ct. at 2214.

The Court emphasized in *Fisher II* that States and universities can and should serve as "'laboratories for experimentation'" as their voters and leaders adopt and learn from "different approaches to admissions." 136 S. Ct. at 2214 (citation omitted). That dialogue continues: Some States and institutions have chosen to eliminate consideration of race in admissions, see Pet. Br. 69, but many others have determined that policies like those upheld in *Grutter* and *Fisher* remain essential to achieving their educational goals.

B. The Educational Benefits Of Diversity Remain A Compelling Interest Of Vital Importance To The United States

The central holding of *Bakke* and *Grutter*, subsequently applied in *Fisher*, is that the educational benefits of diversity can be a sufficiently compelling interest to justify limited consideration of race in admissions. That holding was and remains correct. It has been further reinforced by recent scholarship and is powerfully confirmed by the experience of the United States, which has long concluded that the educational benefits of diversity are essential to our Nation's security and other vital national interests.

1. The United States military depends on a well-qualified and diverse officer corps that is prepared to lead a diverse fighting force

The United States Armed Forces have long recognized that the Nation's military strength and readiness depend on a pipeline of officers who are both highly qualified and racially diverse—and who have been educated in diverse environments that prepare them to lead

increasingly diverse forces. The military service academies cultivate a diverse officer corps by relying on holistic admissions policies that consider race alongside many other qualities relevant to the mission of training the Nation's future military leaders. The military also depends on the benefits of diversity at civilian universities, including UNC, that host Reserve Officers' Training Corps (ROTC) programs and educate students who go on to become officers. The United States thus has a vital interest in ensuring that the Nation's service academies and civilian universities retain the ability to achieve those educational benefits by considering race in the limited manner authorized by *Bakke*, *Grutter*, and *Fisher*.

a. For decades, the Armed Forces have recognized that building a cohesive force that is highly qualified and broadly diverse—including in its racial and ethnic composition—is "integral to overall readiness and mission accomplishment." Department of Defense (DoD), *Department of Defense Board on Diversity and Inclusion Report: Recommendations To Improve Racial and Ethnic Diversity and Inclusion in the U.S. Military* 3 (2020) (*D&I Report*); see, *e.g.*, DoD, *Diversity and Inclusion Strategic Plan: 2012-2017*, at 3 (2012); DoD Directive No. 1350.2, § 4.4 (Aug. 18, 1995); DoD Directive No. 1350.3, § E1.1.1 (Feb. 29, 1988). DoD has identified diversity as a "strategic imperative[]," and has focused on the need to "ensure that the military across all grades reflects and is inclusive of the American people it has sworn to protect." *D&I Report* vii. Secretary of Defense Lloyd Austin recently emphasized that "[b]uilding a talented workforce that reflects our nation * * * is a national security imperative" that "improves our ability to compete, deter, and win in today's

increasingly complex global security environment." *Fiscal Year 2023 Defense Budget Request: Hearing Before the House Armed Services Comm.*, 117th Cong., 2d Sess. (2022); see, *e.g.*, Memorandum from Christopher C. Miller, Acting Sec'y of Def., DoD, for Senior Pentagon Leadership, Commanders of the Combatant Commands, Def. Agency & DoD Field Activity Dirs., *Re: Actions To Improve Racial and Ethnic Diversity and Inclusion in the U.S. Military* 1 (Dec. 17, 2020) (reiterating that racial diversity "is essential to achieving a mission-ready fighting force in the 21st Century").

That longstanding military judgment reflects lessons from decades of battlefield experience. During the Vietnam War, for example, the disparity between the overwhelmingly white officer corps and highly diverse enlisted ranks "threatened the integrity and performance of the military." Military Leadership Diversity Comm'n, *From Representation to Inclusion: Diversity Leadership for the 21st-Century Military* xvi (2011) (*MLDC Report*). Officers often failed to perceive racial tensions that endangered combat readiness. Bernard C. Nalty, *Strength for the Fight: A History of Black Americans in the Military* 303-317 (1986). The absence of diversity in the officer corps also undermined the military's legitimacy by fueling "perceptions of racial/ethnic minorities serving as 'cannon fodder' for white military leaders." *MLDC Report* 15.

Those problems were starkly illustrated by racial conflicts triggered, at least in part, by the "lack of diversity in military leadership." *MLDC Report* xvi; see *id.* at 12. In 1969, fights between Black and white marines at Camp Lejeune left 15 injured and one dead. See Richard Stillman, *Racial Unrest in the Military: The Challenge and the Response*, 34 Pub. Admin. Rev.

221, 221 (1974). In 1971, racially charged conflicts erupted at Travis Air Force Base, lasting for two days and injuring at least ten airmen. See Nicole Leidholm, *Race riots shape Travis' history* (Nov. 8, 2013). And in 1972, racial unrest aboard the *U.S.S. Kitty Hawk* injured 47 sailors and resulted in 26 sailors, all Black, being charged with offenses under the Uniform Code of Military Justice. Stillman 222.

As a result of that Vietnam-era experience, DoD "made a sustained effort to increase the percentage of blacks at senior officer levels." Stillman 223. Over the following decades, those efforts led to "modest increases in minority demographic representation among junior to mid-grade officers," but failed to close the demographic gap and yielded even "less progress" in "diversifying the military's senior leadership." *D&I Report* 2.

In 2009, Congress established the Military Leadership Diversity Commission (MLDC) and charged it with conducting "a comprehensive evaluation and assessment of policies that provide opportunities for the promotion and advancement of minority members of the Armed Forces." *MLDC Report* vii. The resulting report underscored the importance of "[d]evelop[ing] future leaders who represent the face of America and are able to effectively lead a diverse workforce." *Id.* at 8. The MLDC explained that a diverse officer corps would "inspire future servicemembers," "engender trust among the population," and foster trust and confidence "between the enlisted corps and its leaders." *Id.* at 44. Other research has shown that more diverse military organizations "are more effective at accomplishing their missions," while "armies with high rates of inequality have done poorly based on various measures of

battlefield performance." Dwayne M. Butler & Sarah W. Denton, RAND Corp., *How Effective Are Blinding Concepts and Practices To Promote Equity in the Department of the Air Force?* 4 (Dec. 2021).

The military has not yet achieved its goal of building an officer corps that adequately reflects "the racial and ethnic composition of the Service members [officers] lead and the American public they serve." *D&I Report* 9. The officer corps remains "significantly less racially and ethnically diverse than the enlisted corps." *Id.* at 8. White servicemembers are 53% of the active force, but 73% of officers. *Ibid.* Black servicemembers, in contrast, are 18% of the active force but only 8% of officers. *Ibid.* The disparity is similar for Hispanic servicemembers, who constitute 19% of the active force but only 8% of officers. *Ibid.*

b. Because the military generally does not hire officers laterally, tomorrow's military leaders will be drawn almost entirely from those who join the military today. *MLDC Report* xvi. "To achieve a more diverse force at the senior grades," therefore, "DoD must ensure the development of a diverse pipeline of leaders." *D&I Report* 21. The military has thus concluded that fostering diversity at the service academies and the public and private universities that supply officer candidates is essential to fulfilling its mission to defend the Nation.

Commissioned officers generally must have a bachelor's degree, in addition to meeting other requirements. *MLDC Report* 47. And setting aside certain specialized roles, new officers must complete one of three types of commissioning program: A service academy, an ROTC program completed in conjunction with a bachelor's degree, or Officer Candidate School (known as Officer Training School for the Air Force). *Id.* at 53-54.

Approximately 19% of military officers come from the service academies. See Office of the Under Sec'y of Def., Personnel & Readiness, DoD, *Active Component Commissioned Officer Corps, FY18: By Source of Commission, Service, Gender, and Race/Ethnicity*, App. B, Tbl. B-33, at 96 (2018) (*Active Component*). Each service academy has concluded that a diverse student body is essential to preparing cadets to be effective military leaders. "Diversity," as the Air Force Academy has put it, "is a military necessity." *USAFA Diversity, Equity & Inclusion: Strategic Plan 2021*, at 3 (2021) (citation omitted). Likewise, the U.S. Military Academy at West Point has concluded that "its ability to leverage diversity across the spectrum" is critical to the strength of "the cohesive teams that are foundational to Army readiness." *Diversity and Inclusion Plan (2020-2025)*, at 3 (2020). "An Army not representative of the nation risks becoming illegitimate in the eyes of the people." *Id.* at 5. And diversity is crucial to equip "graduates with the skills and competencies needed to lead a diverse and inclusive 21st century Army." *Id.* at 3. The U.S. Naval Academy has similarly concluded that "[a] diverse workforce is a force multiplier required to maintain maritime superiority and dominance on the battlefield." *Diversity and Inclusion Strategic Plan* 1 (Mar. 2021).

The Air Force, Military, and Naval Academies, along with the Coast Guard Academy, all currently employ holistic recruiting and admissions policies that consider race—along with many other factors—in an individualized review of applicants. Each of those institutions has concluded that this limited consideration of race in a

holistic admissions system is necessary to achieve the educational and military benefits of diversity.[3]

The service academies have carefully considered potential race-neutral alternatives, but have concluded that, at present, those alternatives would not achieve the military's compelling interest in fostering a diverse officer corps. A percentage plan, which offers admission to a certain number of students at each high school based solely on class rank, cf. Pet. Br. 84-85, would not be workable for the service academies, which have a nationwide applicant pool and require a combination of academic excellence, leadership skills, physical ability, and personal character for success. Nor is an admissions policy based on socioeconomic status sufficient: West Point, for example, reports that its efforts to emphasize socioeconomic status have actually reduced racial diversity. Cf. *Fisher II*, 136 S. Ct. at 2213 (noting that the University of Texas had likewise "tried, and failed, to increase diversity through enhanced consideration of socioeconomic and other factors"). Finally, the academies employ many additional strategies, including recruiting diverse candidates, but thus far those strategies have proved insufficient on their own.

c. In addition to training officers directly through the service academies, DoD recruits and trains a large share of active-duty officers—over one third of the current officer corps—through ROTC programs at civilian universities. *D&I Report* 22-23. Those programs are

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[3] The Merchant Marine Academy considers race for the seats it fills through its appointment process pursuant to its policy to train leaders through "wide exposure to the ideas and mores of students as diverse as this Nation's population." *Superintendent Instruction 2013-01*, at 1 (Jan. 16, 2013). It does not consider race for the seats it fills through the general admissions process.

particularly important to building a diverse officer corps because racial and ethnic minorities are more likely than white officers to gain their commissions through ROTC programs. *Id.* at 23. Civilian universities also educate the approximately 22% of commissioned officers who obtain their commissions through Officer Candidate Schools. See *Active Component* 96. In the judgment of DoD and the Department of Homeland Security, selective universities that provide their students opportunities for cross-racial interaction are a critical source of future officers who are prepared to lead servicemembers of different racial and cultural backgrounds. In sum, what was true when *Grutter* was decided remains true today: "[T]he military cannot achieve an officer corps that is both highly qualified and racially diverse" unless the service academies and, as necessary, universities that host ROTC programs are able to "use[] limited race-conscious recruiting and admissions policies." *Grutter*, 539 U.S. at 331 (citation and emphases omitted).

2. Well-qualified and diverse graduates are critical to other national interests

The United States also has a vital interest in the educational benefits of diversity because it is "the Nation's largest employer." The White House, *Government-Wide Strategic Plan To Advance Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce* 3 (Nov. 2021). The federal government seeks to build "a federal workforce that draws from the full diversity of the Nation" because the United States "is at its strongest when our Nation's workforce reflects the communities it serves, and when our public servants are fully equipped to advance equitable outcomes for all American communities." *Ibid.*

Consistent with that judgment, other federal agencies have concluded that fulfillment of their missions requires well-qualified and diverse graduates—both because leaders who have been educated in diverse and challenging environments are more effective, and because government agencies that lack diversity risk losing legitimacy in the eyes of a diverse Nation. To take just a few examples:

- The Federal Bureau of Investigation has emphasized that it "need[s] to reflect the communities that we serve, because when people look at us, they need to see themselves. If they don't see themselves, it's harder for them to trust us." *Diversifying the FBI: Beacon Project Connects FBI, Historically Black Colleges and Universities*, Homeland Sec. Today (Sept. 8, 2021).
- The Office of the Director of National Intelligence (ODNI) has concluded that the intelligence community's "ability to leverage the talent and perspectives that demographic diversity and diversity of viewpoints offer is critical in a rapidly changing global threat environment." *Annual Demographic Report Fiscal Year 2020*, at 3 (2021). Congress shares ODNI's judgment about the importance of diverse personnel to carrying out intelligence efforts. See 50 U.S.C. 3024(f)(3)(A)(iv), 3224, 3506a(3).
- The National Aeronautics and Space Administration (NASA) has stressed the importance of diversity to its mission: "If we want to ensure our workforce reflects the diversity of the public we serve, we need individuals from a wide variety of backgrounds, skills, and abilities." Office of

Diversity & Equal Opportunity, NASA, *Promising Practices for Equal Opportunity, Diversity, and Inclusion* 9 (July 2015).

- The National Institutes of Health (NIH) has recognized that "[s]cientists and trainees from diverse backgrounds and life experiences bring different perspectives, creativity, and individual enterprise to address complex scientific problems." *Notice of NIH's Interest in Diversity*, *Notice No.: NOT-OD-20-031* (release date Nov. 22, 2019).

In short, the on-the-ground experience of the United States confirms the continuing correctness of the Court's recognition that the educational benefits of diversity qualify as a compelling interest.

3. Recent research reinforces the longstanding recognition of the educational benefits of diversity

Grutter broke no new ground in recognizing the importance of diversity's educational benefits. More than 225 years ago, George Washington emphasized the importance of a university education that would "qualify our citizens for the exigencies of public, as well as private life" by "assembling the youth from the different parts of this rising republic, contributing from their intercourse, and interchange of information, to the removal of prejudices which might perhaps, sometimes arise, from local circumstances." *Letter from President George Washington to the Commissioners of the District of Columbia* (Jan. 28, 1795), *reprinted in* 34 *The Writings of George Washington*, 106-107 (John C. Fitzpatrick ed., 1940). And a century ago, John Dewey extolled the virtues of education in a racially diverse setting, writing that "[t]he intermingling in the school of youth of different races, differing religions, and unlike

customs creates for all a new and broader environment." *Democracy and Education* 25-26 (1922).

Recent scholarship further confirms the wisdom of those longstanding ideas. For example, multiple studies have shown that "[i]nterpersonal interactions with racial diversity are associated with greater civic gains than are diversity course work, cocurricular diversity, and intergroup dialogue." Nicholas A. Bowman, *Promoting Participation in a Diverse Democracy: A Meta-Analysis of College Diversity Experiences and Civic Engagement*, 81 Rev. Educ. Research 29, 49 (2011). In other words, "the civic benefits of racial diversity cannot be replaced by teaching about diversity abstractly in courses or workshops," *ibid.*, or "making students take a class on the topic" of "'cross-racial understanding,'" Pet. Br. 55. Unlike abstract classroom instruction, actual cross-racial interaction with peers increases students' "ability to see the world from someone else's perspective, tolerance of others with different beliefs, openness to having one's views challenged, ability to work cooperatively with diverse people, and ability to discuss and negotiate controversial issues." Mark E. Engberg & Sylvia Hurtado, *Developing Pluralistic Skills and Dispositions in College: Examining Racial/Ethnic Group Differences*, 82 J. Higher Educ. 416, 418 (2011).

Racial diversity also carries educational benefits beyond increasing tolerance and decreasing racial prejudice. A seminal 2010 meta-analysis showed that "college diversity experiences are significantly and positively related to cognitive development," and "[s]pecifically, interpersonal interactions with racial diversity are the most strongly related to cognitive development." Nicholas A. Bowman, *College Diversity*

Experiences and Cognitive Development: A Meta-Analysis, 80 Rev. Educ. Research 4, 20 (2010). The analysis concluded that "compared with other forms of diversity, interpersonal interactions with racial diversity may be particularly likely to trigger disequilibrium and effortful thinking, which may then contribute to cognitive growth." *Id.* at 21.

C. *Stare Decisis* Supports Adherence To *Grutter*

Stare decisis is a "foundation stone of the rule of law." *Allen* v. *Cooper*, 140 S. Ct. 994, 1003 (2020) (citation omitted). This Court always "demand[s] a 'special justification,' over and above the belief 'that the precedent was wrongly decided,'" before reversing one of its decisions. *Ibid.* That demanding standard "contributes to the actual and perceived integrity of the judicial process," *Kimble* v. *Marvel Entm't, LLC*, 576 U.S. 446, 455 (2015) (citation omitted), and "permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals," *Vasquez* v. *Hillery*, 474 U.S. 254, 265 (1986). Petitioner has not offered the requisite special justification here; instead, traditional *stare decisis* considerations powerfully support adherence to *Grutter*.

First, *Grutter* is in no sense an "outlier." *Janus* v. *American Fed'n of State, Cnty. & Mun. Emps.*, 138 S. Ct. 2448, 2482 (2018). It reaffirmed the principles articulated 25 years earlier in Justice Powell's landmark controlling opinion in *Bakke*, see *Grutter*, 539 U.S. at 322-323, and provided the framework for this Court's analysis in *Fisher I* and *Fisher II*. And no decision of the Court has called *Grutter* into doubt or cabined its holding that obtaining the educational benefits of a diverse student body qualifies as a compelling interest that may justify limited consideration of race in

university admissions. Cf. *Janus*, 138 S. Ct. at 2483-2485. To the contrary, the two decisions petitioner describes (Br. 57-58) as undermining *Grutter* both emphasized that they addressed very different issues. See *BAMN*, 572 U.S. at 300 (plurality opinion); *Parents Involved in Cmty. Sch.* v. *Seattle Sch. Dist. No. 1*, 551 U.S. 701, 722-725 (2007).

Second, *Grutter* has not proven "unworkable." Pet. Br. 60 (citation omitted). Petitioner offers no evidence that courts have struggled to apply *Grutter*'s teachings. And this Court's other decisions have provided additional guidance about the contours of the standard *Grutter* prescribed. See *Fisher II*, 136 S. Ct. at 2207-2208, 2210-2214; *Fisher I*, 570 U.S. at 310-315; *Gratz*, 539 U.S. at 269-276. Petitioner observes that enforcing those limits may sometimes require litigation (Br. 62), but that does not distinguish *Grutter* from any other constitutional rule.

Third, *Grutter* has engendered widespread reliance. In the quarter-century before the Court issued *Grutter*, "[p]ublic and private universities across the Nation" had already "modeled their own admissions programs on Justice Powell's" opinion in *Bakke*. *Grutter*, 539 U.S. at 323. That reliance has only grown in the two decades since *Grutter* "endorse[d]" Justice Powell's approach, *id.* at 325, as universities around the country—including the Nation's service academies—have relied on *Grutter* in structuring their admissions systems.

Petitioner asserts (Br. 67-68) that those substantial reliance interests are diminished because the *Grutter* Court "expect[ed]" that, within 25 years, "the use of racial preferences w[ould] no longer be necessary" to obtain the educational benefits of diversity. 539 U.S. at 343. But that observation was not a time limit on the

Court's legal holding that those benefits qualify as a compelling interest. Instead, *Grutter* expressed an expectation that changed social conditions would make it possible to achieve that compelling interest without the individualized consideration of race. *Id.* at 342. Unfortunately, the arc of progress has proven longer than the Court hoped. And although *Grutter* put universities on notice that they cannot use race in admissions in perpetuity and must diligently look for race-neutral alternatives, it also made clear that universities may continue to rely on such policies so long as they "are still necessary to achieve student body diversity." *Ibid.*

Grutter's express linkage to the continued existence of social conditions that make the individualized use of race in admissions necessary is another reason why overruling that foundational precedent is unwarranted. Unlike a typical constitutional holding that can be altered only by a constitutional amendment, see *Agostini* v. *Felton*, 521 U.S. 203, 235 (1997), *Grutter*'s holding is self-limiting: It is common ground among *Grutter*'s proponents and critics that its holding will cease to have practical effect as society changes.

Finally, *stare decisis* principles carry yet further force with respect to petitioner's invitation to overturn *Grutter*'s holding that Title VI permits narrowly tailored consideration of race in university admissions. See 539 U.S. at 343. Because "Congress can correct any mistake it sees" in this Court's construction of Title VI, that holding is subject to the "enhanced" version of *stare decisis* that applies in statutory cases. *Kimble*, 576 U.S. at 456. And *Grutter*'s interpretation of the statute also implicates heightened reliance interests: Private colleges and universities around the Nation have relied on

that interpretation for decades in accepting the federal funds that render them subject to Title VI.

D. Petitioner Has Not Justified Overruling *Grutter*

Petitioner contends that the Court should overrule *Grutter* (and *Bakke* and *Fisher*) because the Equal Protection Clause bars *all* consideration of an individual's race, because *Grutter*'s analysis of the benefits of diversity was mistaken, and because *Grutter* has purportedly caused "negative consequences." None of those arguments has merit—much less justifies the destabilizing step of overruling foundational precedents.

1. The Equal Protection Clause does not categorically forbid consideration of race

Petitioner principally asserts (Br. 1-2, 47) that the Equal Protection Clause categorically forbids any consideration of race by the government. But this Court has repeatedly held otherwise. The Court has emphasized the dangers of racial classifications and subjected them to "the most searching judicial inquiry." *Adarand Constructors, Inc.* v. *Pena*, 515 U.S. 200, 236 (1995). But the Court has emphatically rejected "the notion that strict scrutiny is 'strict in theory, but fatal in fact.'" *Id.* at 237 (citation omitted). Instead, the Court has held that "[w]hen race-based action is necessary to further a compelling interest, such action is within constitutional constraints if it satisfies the 'narrow tailoring' test." *Ibid.* And the Court has recognized a variety of interests that might justify the use of race in appropriate circumstances. See, *e.g.*, *Wisconsin Legislature* v. *Wisconsin Elections Comm'n*, 142 S. Ct. 1245, 1248 (2022) (per curiam) (compliance with the Voting Rights Act); *Johnson* v. *California*, 543 U.S. 499, 515 (2005) (prison security); *Adarand Constructors*, 515 U.S. at 237

(remedying "the lingering effects of racial discrimination"). Petitioner wholly ignores the ways its categorical rule contravenes precedents extending far beyond *Grutter*.

Petitioner also fails to justify such a radical change in the law. Petitioner makes no serious attempt, for example, to ground its position in the Fourteenth Amendment's "original meaning." *Ramos* v. *Louisiana*, 140 S. Ct. 1390, 1416 (2020) (Kavanaugh, J., concurring in part). To the contrary, petitioner's passing reference (Br. 50) to the intent of the Amendment's "framers" relies solely on a snippet from a floor statement made six years after the Amendment was ratified by a Senator who was not even in office when the Amendment was adopted. See 2 Cong. Rec. 4083 (1874) (statement of Sen. Pratt).

With no support in original meaning, petitioner instead attempts (Br. 1, 2, 6, 47, 51) to ground its categorical rule that race can never be considered in *Brown* v. *Board of Education*, 347 U.S. 483 (1954), and Justice Harlan's canonical dissent in *Plessy* v. *Ferguson*, 163 U.S. 537 (1896). But those opinions did not adopt such a rule. Instead, they rejected segregation laws that had the purpose and effect of perpetuating a racial caste system. In *Brown*, the Court explained that "separat[ing]" Black children from white children in public schools "solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." 347 U.S. at 494. Justice Harlan's oft-quoted description of the Constitution as "color-blind" was likewise a rejection of the notion that the Equal Protection Clause allows the perpetuation of a legal "caste," a "superior, dominant, ruling class of citizens."

Plessy, 163 U.S. at 559 (Harlan, J., dissenting). Those opinions condemning laws adopted to segregate the races and subordinate a disfavored minority do not prohibit limited consideration of race under policies adopted to promote diversity, integration, and opportunity.

Indeed, the "fundamental purpose" of strict scrutiny is to "take 'relevant differences' into account" in order to "distinguish legitimate from illegitimate uses of race in governmental decisionmaking." *Adarand Constructors*, 515 U.S. at 228. Petitioner's position reduces to the assertion that there are no "relevant differences" between the diversity-promoting measures at issue here and the Jim Crow laws at issue in *Plessy* and *Brown*—an assertion petitioner makes explicit by repeatedly equating those who defend *Grutter* with those who defended *Plessy*. *E.g.*, Pet. Br. 1, 47, 51, 55, 68, 86. That profoundly ahistorical position trivializes the grievous legal and moral wrongs of segregation and the immense harms suffered by the millions of Americans who lived under state-sanctioned racial oppression.

2. Petitioner's criticisms of* Grutter*'s analysis of diversity lack merit

Petitioner asserts (Br. 51-55) that *Grutter* erred in holding that the educational benefits of diversity can be a compelling interest. But petitioner's argument depends on caricaturing those benefits as nothing more than "'livelier' classroom discussion." Br. 51 (citation omitted). Petitioner fails to acknowledge, much less rebut, *Grutter*'s observations about the importance of ensuring that "the path to leadership [is] visibly open to talented and qualified individuals of every race and ethnicity" and that the Nation's next generation of leaders is equipped to lead in our increasingly diverse society.

539 U.S. at 332. Nor does petitioner engage with the judgments of the military, government and business leaders, and social scientists, all of which further validate *Grutter*'s conclusion about the importance of diversity. See pp. 12-23, *supra*.

Petitioner also errs in asserting (Br. 52-53) that *Grutter* relied on stereotypes that students of a particular race share the same views. "To the contrary, diminishing the force of such stereotypes is both a crucial part of [universities'] mission, and one that [they] cannot accomplish with only token numbers of minority students." *Grutter*, 539 U.S. at 333. Just as universities seek to enroll students from different regions, backgrounds, and socioeconomic settings without presuming that those aspects of a student's identity dictate her beliefs, they may also conclude that enrolling students of different races materially advances diversity and cross-racial understanding. In pursuing those educational benefits, universities do not seek a single racial viewpoint, but rather each student's "own, unique experience of being a racial minority in a society, like our own, in which race unfortunately still matters." *Ibid.*

Petitioner further contends (Br. 61) that *Grutter*'s requirements have not "meaningfully limit[ed] universities' use of race." To the contrary, this Court's precedents have provided effective guideposts to lower courts considering the constitutionality of admissions programs that take account of race. See pp. 9-12, *supra*. And if the Court had any concerns about lower courts' applications of *Grutter*, it could address those concerns in appropriate cases by reinforcing and clarifying *Grutter*'s stringent narrow-tailoring inquiry—as the Court has already done in *Fisher*.

3. Overruling Grutter *would have harmful consequences*

Finally, petitioner asserts (Br. 62-65) that *Grutter* has caused "negative consequences." That gets things backwards: It is overruling *Grutter* that would have profoundly disruptive and harmful consequences.

a. Petitioner attributes a variety of ills to *Grutter*, but fails to substantiate those claims. For example, petitioner states (Br. 62) that "holistic admissions" allow universities to surreptitiously discriminate against Asian Americans. But as petitioner elsewhere acknowledges (Br. 12-13), holistic admissions long predated *Grutter*. And petitioner ultimately concedes (Br. 69) that overruling *Grutter* and prohibiting overt consideration of race would not eliminate "holistic, individualized review"—and thus would not address petitioner's criticisms of such admissions policies.

Petitioner also notes (Br. 64-65) that some observers have argued that college campuses have become less integrated and less ideologically diverse in recent years. But none of the sources petitioner cites attribute those (contestable) effects to *Grutter*. And the record evidence provides substantial reason to conclude that the greater diversity enabled by *Grutter* has made things better than they would have been without it. See, *e.g.*, Pet. App. 17-18; J.A. 1567-1569, 1581-1582.

b. Overruling *Grutter*, in contrast, would have substantial harmful consequences because it would significantly reduce diversity—and the resulting educational benefits—at many of our Nation's leading educational institutions. See, *e.g.*, Peter Hinrichs, *The Effects of Affirmative Action Bans on College Enrollment, Educational Attainment, and the Demographic Composition*

of Universities, 94 The Rev. of Econ. & Statistics 712, 717-718 (2012).

Petitioner asserts (Br. 70) that "real diversity would not decline" under its rule, citing the example of race-neutral percentage plans and other similar measures employed by universities in California. But petitioner fails to grapple with the serious shortcomings of those measures. Percentage plans promote racial diversity only when implemented against a backdrop of racial segregation in housing, see *Fisher II*, 136 S. Ct. at 2213, and are not workable for universities that draw on a nationwide applicant pool. In addition, such plans leave out "students who fell outside their high school's top ten percent but excelled in unique ways." *Id.* at 2213-2214 (citation and internal quotation marks omitted). For those reasons, percentage plans would not work at all for institutions like the service academies, which admit students from throughout the Nation and require a mix of qualities that cannot be reduced to class rank or standardized test scores. And even where percentage plans have been implemented, they have resulted in reduced diversity at the States' most selective institutions and produced various distorting effects on the high school experience. See, *e.g.*, J.A. 944; President & the Chancellors of the Univ. of Cal. Amici Br. at 19-20, *Fisher II*, *supra* (No. 14-981).

Finally, petitioner's proposal disregards that States have different racial dynamics, residential housing patterns, university systems, and policies. North Carolina is not California. Under *Grutter*, States are free to bar or restrict the consideration of race in admissions, and a few States have made that choice. Those States can serve as "'laboratories for experimentation,'" and all universities that still permit consideration of race must

study and learn from those States' experiences. *Fisher II*, 136 S. Ct. at 2214 (citation omitted). But petitioner provides no justification for pretermitting that dialogue between and among the States by foreclosing an approach to admissions that this Court has blessed for more than four decades and that many States and universities continue to regard as essential to their educational missions.

II. THE DISTRICT COURT CORRECTLY UPHELD UNC'S ADMISSIONS PROCESS UNDER THIS COURT'S PRECEDENTS

After an exhaustive analysis, the district court held that UNC's admissions process comports with the requirements set out in *Grutter* and *Fisher*. Pet. App. 1-186. As UNC explains in detail (Br. 12-15, 50-57), petitioner's critique of UNC's process largely ignores the district court's factual findings and rests on allegations that petitioner failed to prove at trial.[4] In the end, petitioner's sole argument that UNC's admissions process fails strict scrutiny, advanced in just three pages at the end of its brief (at 83-86), is that the district court erred

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[4] In its factual exposition, petitioner implies (Br. 40-44), based on statements by a few application readers, that UNC gives race an outsized role in the admissions process. But petitioner does not press that argument before this Court. Br. 83 n.8. With good reason: Some of those statements are crudely phrased and regrettable, but the district court found that the "eight statements" "out of the hundreds of thousands of application files and materials shared during discovery" do not suggest that "race was considered as anything other than a 'plus' factor" in the admissions process, or became "a defining feature" of any application. Pet. App. 39, 41, 169. In fact, statistical evidence credited by the court demonstrated that "race plays a role in a very small percentage of decisions" at UNC: "1.2% for in-state students and 5.1% for out-of-state students." *Id.* at 112.

in rejecting the race-neutral alternatives petitioner proposed at trial. That argument lacks merit.

Based on extensive record evidence, the district court determined "that there are not any available, workable, or sufficient [race-neutral alternatives] that would allow [UNC] to achieve its diversity goals." Pet. App. 114; see *id.* at 113-144, 176-183. After considering testimony by highly qualified expert witnesses who analyzed more than one hundred alternative approaches, the court concluded that "even in the best-case scenarios and under dubious assumptions," the alternatives would "exact significant consequences on the University's ability to recruit and enroll an academically prepared student body that is diverse along the several dimensions it values." *Id.* at 183.

The district court carefully analyzed the problems with the proposed alternatives. For instance, a plan that replaced consideration of race with socioeconomic status was "very attractive" to scholars in the field when the idea first surfaced, but it soon became clear that socioeconomic-based plans perform poorly at achieving racial diversity, which serves additional and separate interests from socioeconomic diversity. Pet. App. 136 (citation omitted); see *id.* at 115, 132. One of the socioeconomic-based alternatives, for example, reduced enrollment by underrepresented minorities "by more than half," while another reduced average SAT scores by "at least 200 points"—which, across a population of thousands of students, would correspond to a significant drop in academic excellence. *Id.* at 134; see *id.* at 115. Given those problems, no university—including those that are barred by state law from considering race in admissions decisions—has actually implemented a socioeconomic-status focused plan. *Id.* at 137.

The district court also considered and rejected plans that were variations on the "top X percent" approaches used by some universities in other States. Pet. App. 138. The court found those plans unworkable for UNC. Some rested on unrealistic assumptions and would not be feasible to implement. *Id.* at 141; see UNC Br. 53. Others would substantially reduce the overall academic qualifications of the class, would particularly reduce the overall academic qualifications of the underrepresented minorities who were admitted, and would "nearly erase the Native American incoming class." Pet. App. 139.

In this Court, petitioner primarily endorses (Br. 83-84) an alternative policy that would reserve 750 seats for high-achieving applicants from the bottom 20% of the socioeconomic distribution. See Pet. App. 133; J.A. 1157. But the district court explained that even setting aside the "dubious assumptions" on which that proposal relies, Pet. App. 143, it "abandons holistic admissions entirely" because it requires UNC to fill the remaining seats—the vast majority of its offers of admission—solely based on GPA and SAT scores. Pet. App. 134 n.43; see J.A. 1157. Requiring a university to admit most of its class based solely on those two criteria would deprive UNC of its "essential freedom[]" to determine the criteria it values in its student body. *Sweezy* v. *New Hampshire*, 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring in the result) (citation omitted). Indeed, this Court rejected a similar proposal in *Fisher II*, explaining that it would "sacrifice all other aspects of diversity in pursuit of enrolling a higher number of minority students." 136 S. Ct. at 2213. "[T]o compel universities to admit students based on class rank alone"—or a rigid combination of GPA and SAT scores—would be "in deep

tension with the goal of educational diversity as this Court's cases have defined it." *Id.* at 2213-2214.

Petitioner also invokes (Br. 85-86) the steps taken by universities in other States. But the district court found that UNC "already engages" in many of those race-neutral strategies and those steps alone have not proved sufficient. Pet. App. 181; see *id.* at 182. After considering "exhaustive" simulations of race-neutral approaches, including those used by other universities, the court determined that there are "no actual examples of race neutral alternatives in the real world," that "would allow [UNC] to achieve its compelling interest nearly as well as race conscious strategies at tolerable expense." *Id.* at 180, 182. Petitioner offers no persuasive reason to disturb that fact- and record-intensive finding.

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted.

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