

No. 12-682

IN THE
Supreme Court of the United States

BILL SCHUETTE, MICHIGAN ATTORNEY GENERAL,
Petitioner,

v.

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

AND

CHASE CANTRELL, ET AL.,
Respondents.

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

BRIEF OF *AMICI CURIAE* AMERICAN COUNCIL ON
EDUCATION AND 48 OTHER HIGHER EDUCATION
ORGANIZATIONS SUPPORTING RESPONDENTS

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AMICI ON THIS BRIEF

Accreditation Council for Pharmacy Education
American Council on Education
American Anthropological Association
American Association of Colleges for Teacher
Education
American Association of Colleges of Nursing
American Association of Colleges of Pharmacy
American Association of Collegiate Registrars and
Admissions Officers
American Association of Community Colleges
American Association of State Colleges and
Universities
American Association of University Professors
American College Personnel Association
American Dental Education Association
American Indian Higher Education Consortium
American Speech-Language-Hearing Association
APPA
Association of American Colleges and Universities
Association of American Medical Colleges
Association of American Universities
Association of Catholic Colleges and Universities
Association of Community College Trustees
Association of Governing Boards of Universities and
Colleges
Association of Jesuit Colleges and Universities
Association of Public and Land Grant Universities
Association of Research Libraries
Association of Schools of Allied Health Profession
Association to Advance Collegiate Schools of Business
College and University Professional Association for
Human Resources
The College Board
The Common Application
Council for Christian Colleges and Universities
Council for Opportunity in Education
Council of Graduate Schools
Council of Independent Colleges
Educational Testing Service
EDUCAUSE

Group for the Advancement of Doctoral Education in
Social Work
Hispanic Association of Colleges and Universities
National Action Council for Minorities in Engineering,
Inc.
National Association for College Admission
Counseling
National Association for Equal Opportunity in Higher
Education
National Association of College and University
Business Officers
National Association of Diversity Officers in Higher
Education
National Association of Hispanic-Serving Health
Professions Schools
National Association of Independent Colleges and
Universities
National Association of Student Financial Aid
Administrators
National Collegiate Athletic Association
Southern Association of Colleges and Schools
Commission on Colleges
Student Affairs Administrators in Higher Education
Thurgood Marshall College Fund

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STATEMENT OF INTEREST¹

Amici are 49 associations of colleges, universities, educators, trustees, and other representatives of higher education in the United States. *Amici*

¹ No party or counsel for a party authored or paid for this brief in whole or in part, or made a monetary contribution to fund the brief's preparation or submission. No one other than *amici* or their members or counsel made a monetary contribution to the brief. Petitioner and respondents filed blanket *amicus* consent letters.

represent public, independent, large, small, urban, rural, denominational, non-denominational, graduate, and undergraduate institutions and faculty. American higher education institutions enroll over 20 million students. For decades *amici* have worked to achieve student diversity.

Amicus American Council on Education (ACE) represents all higher education sectors. Its approximately 1,800 members include a substantial majority of United States colleges and universities. Founded in 1918, ACE seeks to foster high standards in higher education, believing a strong higher education system to be the cornerstone of a democratic society. Among its initiatives, ACE had a major role in establishing the Commission on Minority Participation in Education and American Life, chaired by former Presidents Ford and Carter, which issued *One-Third of a Nation* (1988), a report on minority matriculation, retention, and graduation. ACE regularly contributes *amicus* briefs on issues of importance to the education sector.

The Addendum contains information on the other *amici* on this brief.

SUMMARY OF ARGUMENT

A diverse student body is essential to the educational objectives of colleges and universities. The constitutionality of the pursuit of racial diversity in higher education is not, however, at issue in this case. The issue is whether Proposal 2 distorts the political process against racial and ethnic minority voters in Michigan, thereby violating the Fourteenth Amendment to the United States Constitution. Petitioner and his supporting *amici* nevertheless raise policy questions about the educational benefits

of racially diverse student enrollments and offer commentary on the methods they believe colleges and universities should employ to attain diversity. These arguments are misplaced and unnecessary to the disposition of this case. For that reason, the *amici* on this brief do not address them at length here and instead refer the Court to the briefs submitted by the higher education community in support of Respondents in *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013), which refute Petitioner's arguments and identify reasons why colleges and universities need flexibility to pursue diversity consistent with their educational missions.

ARGUMENT

Diversity in higher education is now more urgent than ever. Higher education institutions must equip their students to work and live in an increasingly interconnected world, stimulate students' interest in the new and unfamiliar, and prepare them to understand and account for differences. As this Court acknowledged last Term in *Fisher*, colleges and universities have a compelling interest in the educational benefits that flow from student body diversity and may pursue that interest consistent with the principles of the Equal Protection Clause. 133 S. Ct. 2411.

Petitioner rightly does not question higher education institutions' compelling interest in diversity, nor does he challenge the constitutionality of narrowly tailored race-conscious measures to attain it. This case is about a different issue, the asserted distortion of the political process in respect of public universities' authority over their admission of students. This case does not entail the legitimacy

of that compelling interest or the constitutionality of such measures. In fact, it presumes their constitutionality. The Sixth Circuit Court of Appeals correctly decided that Proposal 2, which forbids public universities in Michigan to consider, *inter alia*, race in admissions, unconstitutionally distorts the political process to the disadvantage of racial and ethnic minorities in that State. The Court should affirm the Sixth Circuit's decision.

Still, Petitioner and some of his *amici* question as a policy matter the wisdom of race-conscious admissions and the educational benefits of a diverse student body. *See, e.g.*, Brief for Petitioner at 31-36, *Schuetz v. Coal. to Defend*, No. 12-682 (June 2013). These arguments are misplaced. The value of diversity and the policy merits of race-conscious admissions are not before the Court; those matters do not determine whether Michigan voters ran afoul of the Fourteenth Amendment by amending the State Constitution to forbid public universities to use otherwise lawful race-conscious measures in university admissions.

For that reason, *amici* do not address at length the arguments raised in this case by Petitioner and his *amici* questioning the educational benefits of racial diversity, but refer the Court to the briefs submitted by representatives of the higher education community in *Fisher*, which rebut those arguments. *See, e.g.*, Brief *Amici Curiae* of Fordham Univ. *et al.* in Support of Respondents, *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411 (2013) (No. 11-345); Brief *Amicus Curiae* of the President and Chancellors of the Univ. of California in Support of Respondents, *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411 (2013) (No. 11-345); Brief for *Amici Curiae* Ass'n of

Am. Med. Colleges *et al.* in Support of Respondents, *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411 (2013) (No. 11-345); Brief for *Amici Curiae* The College Board and the Nat'l Sch. Boards Ass'n *et al.* in Support of Respondents, *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411 (2013) (No. 11-345); Brief for California Inst. of Tech. *et al.* as *Amici Curiae* in Support of Respondents, *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411 (2013) (No. 11-345); Brief for Leading Public Research Univs. as *Amici Curiae* in Support of Respondents, *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411 (2013) (No. 11-345); Brief for Respondents Univ. of Texas at Austin, *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411 (2013) (No. 11-345); Brief of Amherst Coll. *et al.*, *Amici Curiae*, in Support of Respondents, *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411 (2013) (No. 11-345); Brief of *Amici Curiae* Am. Council on Educ. and 39 Other Higher Educ. Orgs. in Support of Respondents, *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411 (2013) (No. 11-345); Brief of *Amicus Curiae* the Univ. of North Carolina at Chapel Hill Supporting Respondents, *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411 (2013) (No. 11-345); Brief of Appalachian State Univ. and 35 Fellow Colleges and Universities as *Amicus Curiae* in Support of Respondents, *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411 (2013) (No. 11-345); Brief of Brown Univ. *et al.* in Support of Respondents, *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411 (2013) (No. 11-345).²

² A complete listing of the *Fisher* briefs, with links to the briefs, can be found on the University of Texas at Austin's website. See University of Texas at Austin, *Fisher v. Texas*, <http://www.utexas.edu/vp/irla/Fisher-V-Texas.html> (last visited August 29, 2013).

It suffices to say that the cramped notion of diversity that Petitioner and his *amici* promote, and the constraints they propose on the lawful tools colleges and universities may employ to attain diversity, are at odds with this Court's decisions, *see Fisher*, 133 S. Ct. 2411; *Grutter v. Bollinger*, 539 U.S. 306 (2003), and this country's longstanding and salutary tradition of governmental forbearance in higher education. Institutional pluralism, the hallmark of American higher education, is traceable to that forbearance and has allowed our colleges and universities to become the envy of the world.

Whether and how, within the bounds of the Equal Protection Clause, to pursue the educational benefits of a diverse student body are questions of academic policy and practice properly assigned to the judgment of colleges and universities. In *Grutter*, 539 U.S. at 328-29, 333, the Court endorsed deference to institutional judgment that student diversity is a compelling interest, reasoning that those responsible for higher education are best qualified to evaluate the cumulative information – related, for instance, to campus dynamics, cognitive processes, nurturance of moral reasoning, and pursuit of the institution's particular educational mission – necessary to make that judgment. *See Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 226 (1985). Therefore, courts and States should “resist substitut[ing] their own notions of sound educational policy for those of the school authorities which they review.” *Christian Legal Soc’y v. Martinez*, 130 S. Ct. 2971, 2988 (2010) (internal quotations omitted). To override those academic judgments by State constitutional amendment would truncate educators’ traditional authority, an authority that educators

have exercised to the immense benefit of this nation from the nation's beginnings to the present day.

CONCLUSION

This Court should affirm the Court of Appeals.

August 30, 2013

Respectfully submitted,

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ADDENDUM

ADDENDUM: *AMICI* ON THIS BRIEF

- Accreditation Council for Pharmacy Education (ACPE) is the national agency for the accreditation of professional degree programs in pharmacy and of providers of continuing pharmacy education.
- The American Council on Education is described at page 2 of this brief.
- The American Anthropological Association (AAA) represents more than 11,000 archaeologists and anthropologists in the academy and practice.
- The American Association of Colleges for Teacher Education (AACTE) is a national alliance of educator preparation programs dedicated to the highest quality professional development of teachers and school leaders in order to enhance PK-12 student learning. Its 800 members represent public and private colleges and universities.
- The American Association of Colleges of Nursing (AACN), which represents more than 750 schools of nursing at public and private institutions, works to establish quality standards for nursing education, assist with implementation of those standards, improve health care, and promote public support of nursing education, research, and practice.
- The American Association of Colleges of Pharmacy (AACP), which represents the interests of pharmacy education and educators, comprises 129 accredited colleges and schools of pharmacy including more than 6,300 faculty, 61,000

students enrolled in professional programs, and 4,300 individuals pursuing graduate study.

- The American Association of Collegiate Registrars and Admissions Officers (AACRAO) includes as members more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and over 40 countries internationally.
- The American Association of Community Colleges (AACC) is the primary advocacy organization for the nation's community colleges. It represents nearly 1,200 two-year, associate degree-granting institutions.
- The American Association of State Colleges and Universities (AASCU) includes as members more than 400 public colleges, universities, and systems whose members share a learning- and teaching-centered culture, a historic commitment to underserved student populations, and a dedication to research and creativity that advances their regions' economic progress and cultural development.
- The American Association of University Professors (AAUP) represents some 48,000 faculty members and research scholars. It defends academic freedom and the free exchange of ideas in higher education.
- The American College Personnel Association (ACPA) advances student affairs and engages students for a lifetime of learning and discovery. ACPA, with almost 8,000 members, supports and fosters college student learning through the

generation and dissemination of knowledge, which informs policies, practices, and programs for student affairs professionals and the higher education community.

- The American Dental Education Association (ADEA) represents all 66 dental schools in the United States, nearly 700 dental residency training programs, 600 allied dental programs, and more than 12,000 faculty who educate and train over 50,000 students and residents attending these institutions.
- The American Indian Higher Education Consortium (AIHEC) is the unifying voice of our nation's 37 Tribal Colleges and Universities—federally recognized public institutions working to strengthen tribal nations and make a lasting difference in the lives of American Indians and Alaska Natives. Through public policy, advocacy, research, and program initiatives AIHEC strives to ensure strong tribal sovereignty through excellence in American Indian higher education.
- The American Speech-Language-Hearing Association (ASHA) is the national professional, scientific, and credentialing association for more than 166,000 members and affiliates who are audiologists; speech-language pathologists; speech, language, and hearing scientists; audiology and speech-language pathology support personnel; and students.
- APPA promotes leadership in educational facilities for its more than 5,200 professional members throughout the United States, Canada, and abroad.

- The Association of American Colleges and Universities (AAC&U) has more than 1,250 member institutions, including accredited public and private colleges, community colleges, and universities of every type and size. Its mission is to reinforce commitment to liberal education and help institutions prioritize the quality of student learning.
- The Association of American Medical Colleges (AAMC) represents all 141 accredited U.S. and 17 accredited Canadian medical schools; nearly 400 major teaching hospitals and health systems; and 90 academic and scientific societies. Through these institutions and organizations, the AAMC represents 128,000 faculty members, 75,000 medical students, and 110,000 resident physicians.
- The Association of American Universities (AAU) is an association of 61 leading public and private research universities in the United States and Canada. Founded to advance the international standing of U.S. research universities, AAU today focuses on issues that are important to research-intensive universities, such as funding for research, research policy issues, and graduate and undergraduate education.
- The Association of Catholic Colleges and Universities (ACCU) serves as the collective voice of U.S. Catholic higher education. Through programs and services, ACCU strengthens and promotes the Catholic identity and mission of its member institutions so that all associated with Catholic higher education can contribute to the greater good of the world and the Church.

- The Association of Community College Trustees (ACCT) represents over 6,000 board members who govern community, technical, and junior colleges.
- The Association of Governing Boards of Universities and Colleges (AGB) serves the interests and needs of academic governing boards, boards of institutionally related foundations, and campus CEOs and other senior-level campus administrators on issues related to higher education governance and leadership. Its mission is to strengthen, protect, and advocate on behalf of citizen trusteeship that supports and advances higher education.
- The Association of Jesuit Colleges and Universities (AJCU) represents all 28 Jesuit institutions in the U.S. and is affiliated with over 100 Jesuit institutions worldwide. The first Jesuit institution opened in 1548 in Messina, Sicily, and Jesuit institutions remain committed to academic rigor, with a focus on quality teaching, learning, and research to educate the whole person.
- The Association of Public and Land-grant Universities (APLU) is a research and advocacy organization of public research universities, land-grant institutions, and state university systems with member campuses in all 50 states, U.S. territories, and the District of Columbia.
- The Association of Research Libraries (ARL) is an organization of 126 research libraries at comprehensive, research-extensive institutions in

the U.S. and Canada that share similar research missions, aspirations, and achievements.

- The Association of Schools of Allied Health Professions (ASAHP) is comprised of 120 colleges and universities focused on improving health through excellence in education, interprofessional collaboration, leadership, research, and advocacy.
- The Association to Advance Collegiate Schools of Business (AACSB) represents more than 1,300 business schools worldwide in 85 countries. Its mission is to advance quality management education worldwide through accreditation, thought leadership, and value-added services.
- The College and University Professional Association for Human Resources (CUPA-HR), the voice of human resources in higher education, represents more than 14,000 human-resources professionals at over 1,800 colleges and universities. Its membership includes 92 percent of all United States doctoral institutions, 75 percent of all master's institutions, 60 percent of all bachelor's institutions, and nearly 600 two-year and specialized institutions.
- The College Board is a not-for-profit organization that connects students to college success and opportunity. Founded in 1900, The College Board was created to expand access to higher education. Today, the membership association is made up of more than 6,000 of the world's leading educational institutions and is dedicated to promoting excellence and equity in education.
- The Common Application is committed to providing reliable services that promote equity,

access, and integrity in the college application process. It serves students, member institutions, and secondary schools by providing applications that students and school officials may submit to any of its nearly 500 member institutions. Membership is open to colleges and universities that promote access by evaluating students using a holistic selection process.

- The Council for Christian Colleges & Universities (CCCU) is an international association of 173 fully accredited Christ-centered institutions of higher education committed to the integration of Christian faith and higher learning. Its member institutions transform lives by faithfully relating scholarship and service to biblical truth. CCCU member and affiliate campuses currently serve over 400,000 students.
- The Council for Opportunity in Education (COE) expands educational opportunities for low-income students, first-generation students, students with disabilities, veterans, and adult learners.
- The Council of Graduate Schools (CGS) is an organization of institutions of higher education in the United States, Canada, and across the globe engaged in graduate education, research, scholarship, and the preparation of candidates for advanced degrees.
- The Council of Independent Colleges (CIC) represents 619 liberal arts colleges and universities and 90 state associations and other higher education organizations.
- The Educational Testing Service (ETS) advances quality and equity in education for people

worldwide by creating assessments based on rigorous research. Founded as a nonprofit in 1947, ETS serves individuals, educational institutions, and government agencies by providing customized solutions for teacher certification, English language learning, and elementary, secondary and post-secondary education, as well as conducting education research, analysis, and policy studies.

- EDUCAUSE is a nonprofit association of over 2,400 colleges, universities, and related organizations whose mission is to advance higher education through the use of information technology.
- The Group for the Advancement of Doctoral Education in Social Work (GADE) promotes excellence in doctoral education in social work and facilitates information exchange among its member doctoral programs.
- The Hispanic Association of Colleges and Universities (HACU) represents approximately 450 colleges and universities in the U.S., Puerto Rico, Latin America, and Spain. HACU's mission is to promote the development of member colleges and universities; to improve access to and the quality of postsecondary educational opportunities for Hispanic students; and to meet the needs of business, industry, and government through the development and sharing of resources, information, and expertise.
- The National Action Council for Minorities in Engineering, Inc. (NACME) ensures American competitiveness in a flat world by leading and

supporting the national effort to increase the number of successful African American, American Indian, and Latino women and men in science, technology, engineering and mathematics education and careers. It has supported over 24,000 students with more than \$124 million in scholarships and other support.

- The National Association for College Admission Counseling (NACAC) is a non-profit education association of more than 13,000 secondary school counselors, independent counselors, college admissions and financial aid officers, enrollment managers, and organizations that work with students as they make the transition from high school to postsecondary education.
- The National Association for Equal Opportunity in Higher Education (NAFEO) is the umbrella organization of the nation's Historically Black Colleges and Universities and Predominantly Black Institutions. It represents the presidents and chancellors of the diverse black colleges and universities: public, private, and land-grant, two-year, four-year, graduate, and professional, historically and predominantly black colleges and universities.
- The National Association of College and University Business Officers (NACUBO) represents more than 2,500 colleges, universities, and higher education service providers. It represents chief business and financial officers through advocacy efforts, community service, and professional development activities. NACUBO's mission is to advance the economic viability and business practices of higher education

institutions in fulfillment of their academic missions.

- The National Association of Diversity Officers in Higher Education (NADOHE) is the leading voice of chief diversity officers in higher education. Its membership includes almost 200 colleges and universities, as well as individual members, affiliated professional organizations, and two formal state chapters.
- The National Association of Hispanic-Serving Health Professions Schools (HSHPS) represents 29 schools of medicine and public health nationwide that strive to improve the health of Hispanics through academic development, research initiatives, and training.
- The National Association of Independent Colleges and Universities (NAICU) serves as the unified national voice of private, nonprofit higher education in the United States. It has nearly 1,000 members nationwide, including traditional liberal arts colleges, major research universities, special service educational institutions, and schools of law, medicine, engineering, business, and other professions.
- The National Association of Student Financial Aid Administrators (NASFAA) represents more than 18,000 student financial assistance professionals at nearly 2,800 institutions of higher education, serving over 16 million students. It supports the training, diversity, and professional development of financial aid administrators; advocates for public policies and programs that increase student access to and

success in postsecondary education; and serves as a forum for communication and collaboration on student financial aid issues.

- The National Collegiate Athletic Association (NCAA) serves as the organizing, regulating, and standard-setting body for 23 intercollegiate sports. The NCAA's active membership includes over 1,000 institutions of higher education that jointly create seasons of amateur intercollegiate competition across three Divisions.
- The Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) is the regional body for the accreditation of degree-granting higher education institutions in the Southern states. Its mission is the enhancement of educational quality throughout the region, and it strives to improve the effectiveness of institutions by ensuring that institutions meet standards established by the higher education community that address the needs of society and students.
- Student Affairs Administrators in Higher Education (NASPA) is the leading association for the advancement, health, and sustainability of the student affairs profession. It serves a full range of professionals who provide programs, experiences, and services that cultivate student learning and success in concert with the mission of our colleges and universities. NASPA has more than 13,000 members in all 50 states, 29 countries, and 8 U.S. Territories.
- The Thurgood Marshall College Fund (TMCf) is the only national organization founded for the

sole purpose of providing scholarships to students attending the nation's public Historically Black Colleges and Universities. In addition to scholarships, TMCF provides leadership development and training as well as programmatic and capacity building support to its member schools.