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Commentary

*1 *FISHER v. UNIVERSITY OF TEXAS*: THE POTENTIAL FOR SOCIAL SCIENCE RESEARCH IN RACE–CONSCIOUS ADMISSIONS [FNa1]

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Less than ten years after *Grutter v. Bollinger [FN1]* and *Gratz v. Bollinger*, [FN2] the U.S. Supreme Court has decided to hear ***Fisher*** *v. University of* ***Texas***, another race conscious admissions case in higher education. [FN3] In ***Fisher*** *v. University of* ***Texas***, Abigail **Fisher**, a white **Texas** resident, claimed that she was denied admission to the University of **Texas** in Austin because of her race. [FN4] Specifically, she alleges that minority students with less stellar qualifications were admitted instead of her. Affirming the district court's opinion, the Fifth Circuit Court of Appeals held in favor of the University. [FN5] The Fifth Circuit did not find the university's plan to be an illegal quota or akin to racial balancing. Instead, the court determined that the university followed the *Grutter* decision and carefully considered race as one of many factors in admitting students. The Fifth Circuit declined to hear the case *en banc*. [FN6]

Many are predicting that the ***Fisher*** case will overturn the *Grutter* and *Gratz* decisions, or at the very least, limit further the consideration of race in student assignment plans. [FN7] Since the *Grutter* and *Gratz* decisions, the composition of the U.S. Supreme Court has changed. For example, Justice Sandra Day O'Connor, who wrote the majority opinion in *Grutter*, has been replaced by Justice Samuel Alito, who appears to doubt the constitutionality of race–conscious policies in education. To illustrate, his 2007 opinion in *Parents Involved in Community Schools v. Seattle School School District No. 1 [FN8]* (*PICS*) gives us some insight into his views on such policies. Likewise, Justice Elena ***2** Kagan, who was appointed after Justice John Paul Stevens retired, has disqualified herself from the case because of her work on the topic as the U.S. Solicitor General. Thus, the decision will be made by only eight justices. If the Court overturns or limits the holding in *Grutter*, universities throughout the U.S. will need to adjust their admissions policies, and the number of minority students at some universities will likely decrease. There will be implications for public elementary and secondary schools as well.

In order to set the necessary context for an examination of ***Fisher***, the article will briefly highlight the equal protection analysis and the outcomes in earlier Supreme Court decisions involving race–conscious admissions, including the *University of California Regents v. Bakke*, *Grutter*, *Gratz*, and *PICS*. [FN9] It also discusses the 2011 Guidance from the U.S. Department of Education and the U.S. Department of Justice on implementing race–conscious policies in elementary, secondary, and post–secondary education. The article then examines the amicus briefs filed on behalf of Abigail **Fisher** and the University of **Texas**. In analyzing the amicus briefs, particular attention is focused on whether social science research was relied upon. Specifically, the social science research was rated and then discussed in order to highlight the range of research relied upon by amici.

Legal Background

Students who believe that they have been denied admission to an educational program as a result of race, will likely argue that these programs violate the Equal Protection Clause of the Fourteenth Amendment. The Equal Protection Clause states that "no State shall ... deny to any person within its jurisdiction the equal protection of the laws." [FN10] The Clause has been interpreted to mean that "similar individuals ... be dealt with in a similar manner by the government." [FN11]

Under the Equal Protection Clause, when a court considers the constitutionality of a government policy, it will apply one of three standards or judicial levels of review (i.e., strict scrutiny, mid–level scrutiny, and rational basis). [FN12] The easiest standard to satisfy is the rational basis standard. [FN13] When the court applies this standard, it will uphold the governmental action if the government is pursuing a legitimate governmental objective and if there is a rational relation between the means chosen by the government and the state objective. [FN14] Sexual orientation falls under this level of scrutiny. Thus, if a school policy treated a gay teacher differently than other teachers, the district would need to demonstrate a rational reason for the policy and show that there is a rational relation between the means chosen by the school and the state's objective. The next highest standard of review is known as middle–level or intermediate scrutiny. Under this standard, the governmental policy has to ***3** be substantially related to an important government objective. [FN15] Gender falls under this level of scrutiny. [FN16]

Strict scrutiny is the highest standard of review used by the courts and the most difficult to satisfy. This level of scrutiny is employed when race is at issue. Under strict scrutiny, the government must first show that its decision to treat people differently is justified by a compelling state interest. [FN17] The University of **Texas**' admissions policy will be subject to strict scrutiny review. In ***Fisher***, the Court would likely first examine whether promoting diversity in higher education is a "compelling governmental interest." Second, the Court will decide whether the admissions program at the University of **Texas** at Austin is "narrowly tailored." [FN18] To be constitutional, a racial classification must satisfy both parts. [FN19] If a school district is found to have engaged in racial discrimination and violated the Equal Protection Clause, the district would also have violated Title VI and IV. [FN20]

The Context in Higher Education

In order to provide a background for the ***Fisher*** case, it is important to understand the Supreme Court's prior decisions with regard to race–conscious admissions or student assignment programs. Before *Gratz* and *Grutter*, the only Supreme Court case to address race–conscious admissions in higher education was *Regents of the University of California v. Bakke* in 1978. [FN21] The Supreme Court's 1978 *Bakke* decision focused on the University of California Davis Medical School's consideration of race as part of its admissions programs. [FN22] The plaintiff, Allan Bakke, a white male who was rejected twice by the medical school, alleged that its admissions program had violated the Equal Protection Clause by excluding him because of his race. [FN23] He argued that the school had accepted less qualified minority applicants when it reserved sixteen out of 100 places for disadvantaged minority students—claiming that the minority students who filled these sixteen spots had lower GPAs and test scores than rejected white students. [FN24] He further noted that he had a 3.46 undergraduate grade point average and the students admitted into the special program had an average grade point average of 2.88. [FN25]

Before reaching the U.S. Supreme Court, the Davis admissions program was considered by a state court and the California Supreme Court, which both found that the medical school's race–conscious policy to be unconstitutional. [FN26] As a result of these decisions, the University could not consider race in making admissions decisions. [FN27] Similarly, the U.S. Supreme Court held that ***4** the University's program was unconstitutional. In a highly divided opinion, the Court stressed that the medical school's policy of reserving a specific number of seats to be filled only by minorities was

unconstitutional. [FN28] The Court, however, reversed a lower court's ruling that race could never be considered a factor in admissions programs. [FN29] Justice Powell noted that the development of the nation's future is dependent on future leaders well–versed and exposed to the diversity of the American people, and a broader definition of diversity where race and ethnicity is an important factor along with other qualifications and characteristics is a compelling state interest. [FN30] He further posited that it may be permissible for an admissions program to examine diversity holistically while considering several characteristics (e.g., personal traits, service or employment, leadership experience) of each applicant. [FN31] Due to the many opinions filed in the *Bakke* decision, some universities were unclear whether or to what extent race could be used in admissions programs. [FN32] The *Grutter* and *Gratz* decisions clarified this confusion to some extent.

In *Grutter*, Justice O'Connor wrote for the majority upholding the law school's admissions program at the University of Michigan Law School. [FN33] In this 5–4 decision, the Supreme Court reversed that part of the lower court's judgment that enjoined the University from considering the race of the applicant. [FN34] The Court adopted Justice Powell's vision in *Bakke*, which encompassed a wide variety of qualifications where race was only one of many factors considered. [FN35] Specifically, the majority reasoned that the only holding for the Court in *Bakke* was that a "[s]tate has a substantial interest that legitimately may be served by a properly devised admissions program involving the competitive consideration of race and ethnic origin." [FN36] The Court endorsed Justice Powell's view in *Bakke* that student body diversity is a compelling interest that could be used in university admissions if narrowly tailored. [FN37] Significantly, the Court found that the Equal Protection Clause did not prohibit universities from a "narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body." [FN38]

***5** After the Court reasoned that diversity was compelling, it addressed whether the law school's program was narrowly tailored (e.g., the policy was not too broad). [FN39] In examining whether the law school's policy was narrowly tailored, the Court noted that it required admissions teams to consider other criteria beyond grades and test scores, which were referred to as 'soft variables.' [FN40] For example, a soft variable could include letters of recommendation, the quality of the undergraduate institution, the applicant's personal statement, and whether the applicant chose challenging undergraduate courses. [FN41] Some other bases for diversity may include an admittee who lived or traveled widely abroad, one who is fluent in several languages, or one who has an exceptional record in community service. [FN42] The law school's holistic approach in admitting students survived the strict scrutiny review. [FN43]

Interestingly, the Court found that narrow tailoring does not require that "exhaustion of every conceivable race–neutral alternative" be attempted before a race–conscious policy is implemented, but it does require that universities consider race–neutral plans in good faith. [FN44] Race–neutral plans, for example, might include using a lottery system for admission or placing less emphasis on test scores in admissions. The Court also pointed out how some race–neutral plans would be difficult to adopt at the graduate school level. [FN45] The Court also criticized percentage plans because "they may preclude the university from conducting the individualized assessments necessary to assemble a student body that is not just racially diverse, but diverse along all the qualities valued by the university." [FN46]

It was also noteworthy that the Court proposed that race–conscious policies should be limited in time. [FN47] Specifically, when race–conscious admissions programs have a termination point, it "assures all citizens that the deviation from the norm of equal treatment of all racial and ethnic groups is a temporary matter ... " [FN48] Justice O'Connor suggested a timeline when she wrote: "We expect that 25 years from now the use of racial preferences will no longer be necessary to further the interest approved today." [FN49] Thus, it is surprising that only nine years after *Grutter*, the Supreme Court decided to hear another very similar case when it granted *certiorari* in ***Fisher** v. **Texas***.

The 6–3 *Gratz* opinion was issued the same day as *Grutter*, but in this case the majority struck down the undergraduate affirmative action program because it was not narrowly tailored. [FN50] With Justice Rehnquist writing for the majority, the Court held that the admissions program in the College of Literature, Science and the Arts automatically distributed twenty points to every single applicant from an "underrepresented minority" group. [FN51] The Court reasoned that Justice Powell's opinion in *Bakke* emphasized taking a ***6** more holistic approach to admissions. [FN52] Specifically, the Court stressed that Justice Powell's reasoning would not permit any single characteristic to automatically ensure an identifiable contribution to a university's diversity. [FN53] The undergraduate's program of automatically distributing twenty points relied too heavily on race and was not flexible. As a result, the undergraduate program was found to violate the Equal Protection Clause. As noted, in *Grutter*, the Court defined how race–conscious university admissions programs must be designed to be narrowly–tailored—they cannot be a quota system that insulates certain applicants from competition with others based on race or ethnicity. [FN54] The law school's admissions program in *Grutter* satisfied *Bakke's* distinction of recognizing race or ethnicity only as a "plus" among other characteristics, even if the school's goal was to attain a critical mass of underrepresented minority students. The law school considered each applicant as an individual, looking at how each may contribute to the diversity of the School. [FN55] Within these two decisions, the Supreme Court clarified that having a diverse student body is a compelling interest. The Court dispelled the notion that diversity in education had been foreclosed, either expressly or implicitly, by its affirmative action decisions since *Bakke*. [FN56]

The Context in K–12 Education

Although the focus of the ***Fisher*** case is on higher education, the *Parents Involved v. Seattle Schools* (*PICS*) decision will also be briefly examined because ***Fisher*** will certainly have an impact on K–12 education—especially if the Court no longer finds diversity to be a compelling state interest in education.

In *PICS*, the Supreme Court addressed to what extent the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution allows school districts to use race–conscious plans to maintain an integrated public school system. [FN57] In an attempt to integrate student bodies, the school districts in Seattle and Louisville voluntarily implemented integration plans to confront de facto segregation. [FN58] In Louisville, the K–12 public schools were at one time racially segregated by law. [FN59] In Seattle, there was never de jure segregation, but de facto segregation existed. [FN60] The student assignment policies in both districts were intended to keep schools from segregating by neighborhood. In assigning students to particular schools, the school districts considered a number of factors, including race. Parents in both school ***7** districts filed lawsuits contending that the consideration of race in the student assignment plans was unconstitutional. [FN61]

In a 5–4 decision, the Court found that the student assignment plans employed by the district were not narrowly tailored. The plans were considered unconstitutional because they relied on a racial classification system that did not consider applicants in a holistic way. [FN62] In examining whether the programs were narrowly tailored, the Court applied a four–part test from *Grutter*. In doing so, the Court assessed whether the school districts had considered workable race–neutral alternatives, whether the districts' programs provided for a holistic and individualized review of students, whether the programs had minimized undue burdens on other students, and whether its plan is limited in time and subject to periodic review. [FN63]

At least four of the justices would not permit nearly any type of racial classification. Specifically, Chief Justice Roberts, joined by Justices Scalia, Thomas, and Alito, wrote an opinion banning race–conscious school assignment plans. [FN64] At least five justices, however, found student body diversity to be a compelling state interest. In so doing, the Court noted that there are two interests that qualify as compelling. The first is remedying the effects of past discrimina-

tion, and the second is diversity. Regarding the first interest, Chief Justice Roberts asserted that the Seattle and Louisville school districts could not demonstrate that they were currently segregated by law. Specifically, the Court stated that the Seattle public schools were never segregated by law and that the court–ordered decree in Louisville had already been dissolved. Regarding the second interest, Chief Justice Roberts declared that unlike the *Grutter* decision, Seattle and Louisville relied too heavily on race as the only measure of diversity in their assignment plans. The Chief Justice also noted that unlike *Grutter*, the districts sought a defined range of minority students, which equated to racial balancing. In essence, the Court reasoned that both the Seattle and Louisville school districts failed to carry the heavy burden of demonstrating that the diversity they sought to achieve justified the means they had chosen.

In Justice Kennedy's concurring opinion, he refused to sign on to almost half of the Chief Justice's opinion but he did agree with the Court's conservative members to strike down the Louisville and Seattle plans. [FN65] Specifically, he agreed that race–conscious student assignment plans were generally not acceptable, but he rejected Chief Justice Robert's stricter interpretation of such plans as always being unconstitutional. [FN66] He wrote that "[t]his Nation has a moral and ethical obligation to fulfill its historic commitment to creating an integrated society that ensures equal opportunity for all its children." [FN67]

In his dissent, Justice Breyer, with whom Justice Stevens, Justice Souter, and Justice Ginsburg joined, asserted that the *PICS* decision is one that "the ***8** Court and the Nation will come to regret." [FN68] The dissent reasoned that the assignment plans served a compelling interest and were narrowly tailored. Justice Breyer also asserted that in the past the Court has approved "narrowly tailored" race–conscious plans that were similar to those in Seattle and Louisville. [FN69] In referring to the plurality's misinterpretation of *Brown*, Justice Breyer stated that "[t]he lesson of history is not that efforts to continue racial segregation are constitutionally indistinguishable from efforts to achieve racial integration. Indeed, it is a cruel distortion of history to compare Topeka, Kansas, in the 1950s to Louisville and Seattle in the modern day." [FN70]

Although a majority of the Court in *Grutter*, *Gratz*, and *PICS* found that student body diversity was a compelling state interest, some schools and universities struggled to determine admissions plans that would be permissible. As such, the U.S. Department of Education and U.S. Department of Justice issued Guidelines in December 2011 to help school officials in both public K–12 schools [FN71] and universities that might be considering race in student assignment policies. This guidance explains to schools how they might consider race to avoid racial isolation and increase diversity within the K–12 context:

> School districts should first determine if they can meet their compelling interests by using race–neutral approaches. Race–neutral approaches can be used for decisions about individual students, such as admissions decisions for competitive schools or programs, as well as for decisions made on an aggregate basis, such as the drawing of zone lines that affect a large number of students. [FN72]

It is important to note that school districts are required to use race neutral approaches only if they are workable within a given context. Thus, in some limited circumstances a K–12 school district may consider race–conscious policies. [FN73] Regarding the guidance to institutions of higher education, the guidance stated: "Departments recognize the compelling interest that postsecondary institutions have in obtaining the benefits that flow from achieving a diverse student body." [FN74] The guidance does suggest that an institution could try to achieve its desired diversity goals through race–neutral approaches. It does stress though that attempting a race–neutral approach is not necessary if the university finds the approach unworkable. Importantly, if a university does consider race in admitting students, it must do so in an individualistic and holistic way–as prescribed by *Grutter*. [FN75] Thus, the guidance addresses the degree of flexibility that elementary, secondary, and postsecondary institutions have to take proactive steps, in a manner consistent with principles set out in *Grutter*, to meet this compelling interest. Additionally, the guidance ***9** stresses that the Court has made

clear that K–12 schools and universities can take steps where the race of individual students are taken into account in a narrowly tailored manner. [FN76]

The Fisher v. University of Texas Decisions

Before the *Grutter* decision, students who were within the top ten percent of their graduating class at high school in **Texas** were automatically admitted to the public university system. This program is known as the "Top Ten Percent Plan" and it does not consider race in admissions. [FN77] Instead, the program attempts to increase racial diversity by pulling students from racially homogenous high schools in **Texas**. This race–neutral plan was enacted by the state legislature in response to a Fifth Circuit decision that prohibited the consideration of race in admissions. [FN78] After the *Grutter* decision, administrators at the University of **Texas** at Austin, added race to a long list of factors that they would consider in admitting students for the spots that remained after the ten percent system was employed in order to further increase racial diversity at the University.

When Abigail **Fisher** applied in 2008, she just missed the cutoff score at her high school and was not within the top ten percent. As a result, her name was then entered into a separate pool. Specifically, the Top Ten Percent Program filled about 80% of the spots within the class and the separate pool was used to fill the remaining 20% of spots. As noted, within this pool of students, the University used a complex admissions policy where race might be considered among many factors in admitting students.

In **Fisher's** petition, she argued that the University violated her rights to equal protection as well as other federal civil rights statutes. She contends that the University of **Texas**' admissions policies go beyond what is permissible in *Grutter*. [FN79] Specifically, even though the Supreme Court recognized in *Grutter* that universities have a compelling interest in promoting classroom diversity, she believed that the Top Ten Percent Plan had already increased racial diversity at the University of **Texas**. Thus, when the University considered race as a factor for the remaining slots, it equated to racial balancing, which she argued is not permissible under *Grutter*. She further claimed that even if the University of **Texas**' policy aligns with *Grutter*, *Grutter* should still be overruled. [FN80] The federal district court and the Fifth Circuit Court of Appeals held that University officials took a legally permissible multi–factor approach in the admissions process. The district court reasoned that "it would be difficult for UT to construct an admissions policy that more closely resembles the policy approved by the Supreme Court in *Grutter*." [FN81] Both the federal district court and the Fifth Circuit interpreted *Grutter* as giving deference to University officials when creating admissions policies in good faith. The ***Fisher*** case will be heard by the Supreme Court in October 2012.

There were seventeen amicus briefs filed on behalf of Abigail **Fisher**, seventy–four amicus briefs filed in support of the University of **Texas** in ***10** Austin and two briefs that did not specifically support either party. We coded the briefs to determine how much of the arguments relied on social science research. Briefs that did not mention any research or very little research were given a 0. Briefs that briefly mentioned only a few studies were given a 1 and those that discussed and cited some studies were given a 2. Briefs that relied heavily on social science research in making their arguments were given a 3. For the purposes of this paper, we defined social science research as empirical data published in peer–reviewed journals or books; statistics from news articles were not included. We took James Ryan's approach of including studies that establish "correlation or causation." [FN82] Overall, we analyzed 93 amicus briefs. Tables 1–3 outline these amicus briefs.

Table 1: Amicus Briefs Filed in Support of the Petitioner — Social Science Research Cited

The Cato Institute	0
The California Association of Scholars et al.	1
Current and Former Federal Civil Rights Officials	1
The Pacific Legal Foundation et al.	1
Gail Heriot et al.	2
The Louis D. Brandeis Center for Human Rights Under Law et al.	1
Abigail Thernstrom et al.	3
The Southeastern Legal Association et al.	0
The Hon. Allen B. West	0
The Asian American Legal Foundation and the Judicial Education Project	1
The American Center for Law and Justice	0
Scholars of Economics and Statistics	3
Judicial Watch, Inc. and Allied Education Foundation	1
Mountain States Legal Foundation	0
The **Texas** Association of Scholars	0
The American Civil Rights Union	0
The Center for Individual Rights	0

As noted above, there were amicus briefs filed on behalf of **Fisher** that relied on research when framing arguments against the University of **Texas**' plan. The Brief of Scholars and Economic Statistics [FN83] relied on the work of John Lott Jr., J. Mark Ramseyer, and Jeffrey Standen to demonstrate no positive correlation between minority enrollment and the grades of minority students. [FN84] This brief also discussed stereotypes and stressed that no empirical work assigned any quantitative significance to stereotype threat effects. [FN85] ***11** Likewise, Abigail Thernstrom et al. critic-

ally examined the social science research that the Court may rely upon in ***Fisher***. Through their critique of the research, they questioned whether the research demonstrates that student body diversity is a compelling state interest. Their analysis concludes that race–conscious admissions programs undermine race relations and perpetuates stereotypes. [FN86]

The other briefs in support of **Fisher** did not rely on research to the same extent. The American Center for Law and Justice mentioned that "[m]any modern biologists and anthropologists, however, criticize racial classification as arbitrary and of little use in understanding the variability of human beings." [FN87] This brief also cited a Yale University Seminar Presentation when discussing racial labeling in Rwanda. [FN88] The brief from the Current and Former Federal Civil Rights Officials referred to a 2008 study by George La Noue and Kenneth Marcus on race–neutral alternatives in higher education. [FN89] Other briefs cited some empirical studies regarding the negative effects of race–preferential admissions, Gallup Polls, and surveys of professors regarding race–preferential admissions. [FN90] The California Association of Scholars et al. also cited research regarding race, SAT scores, and admission rates published in Thomas Espenshade and Alexandria Walton Radford's 2009 study, "No Longer Separate, Not Yet Equal: Race and Class in Elite College Admission and Campus Life." [FN91] Interestingly, the brief for the Pacific Legal Foundation explicitly argued that social science research should not be relied upon as a rationale for race–based admissions and discrimination. Ironically, it then used some research to buttress and support its own positions by citing Roger Clegg, Thomas Sowell, and Peter Wood. [FN92]

Many of the briefs focused on only legal arguments. For example, the brief for the Southeastern Legal Foundation argued mainly that the Constitution is colorblind and that the University went beyond what was required in *Grutter*. [FN93] The reliance on pure legal arguments was present in both the briefs submitted on behalf of **Fisher** and the University of **Texas**.

TABLE 2: Amicus Briefs Filed in Support of the Respondent

	Social Science Research Cited
The United States	1
The American Association for Affirmative Action	3
American Social Science Researchers	3
The Asian American Legal Defense and Education Fund et al.	3
Association of American Medical Colleges et al.	3
Amherst University et. al.	2
The Anti-Defamation League	1
Coalition of Bar Associations of Color	3

The National Black Law Students Association	3
Social and Organizational Psychologists	3
The University of North Carolina at Chapel Hill	2
Fordham University et. al.	1
Human Rights Advocates	1
Emory OUTLaw	2
Former FCC Commissioners, et. al.	2
The Family of Herman Sweatt	1
The United Negro College Fund	3
The Asian American Legal Defense and Education Fund et. al.	2
The Harvard Graduate School of Education Students for Diversity	2
NAACP Legal Defense Fund and the UT Black Student Alliance	2
Empirical Scholars	3
Undergraduate and Graduate Student Organizations of California	3
Appalachian Stale University et. al.	2
Kimberly West-Faulcon	3
National League of Cities et. al.	3
Dr. Robert D. Putnam	3

The Houston Community College System	1
Experimental Psychologists	3
Former LIT Student Body Presidents	0
The Association of American Law Schools	1
College Board et. al.	2
The State of California	2
Asian American Center for Advancing Justice et. al.	3
U.S. Senators	3
Small Business Owners	0
The Coalition of Black Male Achievement Initiatives	2
Religious Organizations	0
The President and Chancellors of the University of California	1
The American Council on Education et. al.	2
The National Women's Law Center et. al.	3
Members of Congress	0
Members of the **Texas** State Senate and House of Representatives	0
The Association of the Bar of the City of New York	0
The NAACP et. al.	1
The American Civil Liberties Union	1

The Brennan Center for Law and Justice at NYU School of Law	3
The Council for Minority Affairs at **Texas** A&M et. al.	1
The National Education Association et. al.	2
The American Bar Association	0
The New York State Bar Association	0
The National Latino Organizations	1
American Law Teachers	1
The State of New York et. al.	0
The Advancement Project	0
Fortune 100 and Other Leading American Businesses	0
Leading Public Research Universities	1
Former Senior DOD/National Security/Military Leaders	0
The Coalition to Defend Affirmative Action et. al.	0
Brown University et. al.	0
Lawyers Committee for Civil Rights Under Law et. al.	2
Howard University School of Law Civil Rights Clinic	1
The United States Student Association	2
National Association of Basketball Coaches et. al.	2
The California Institute of Technology et. al.	2
The American Jewish Committee et. al.	3

Dean Robert Post and Dean Martha Minow	1
The American Psychological Association	3
The Constitutional Law Scholars et. al.	0
The Boston Bar Association et. al.	1
Distinguished Alumni of the University of **Texas** at Austin	1
Teach For America	0
David Boyle	0
The Law School Admission Council	1
The American Educational Research Council	3

***13** Similar to the amicus briefs submitted on behalf of **Fisher**, some of the amicus briefs filed on behalf of the University of **Texas** cited little or no research. However, those that did cite studies often explained the educational benefits that depend upon opportunities that result from student interaction in a racially diverse classroom, which cannot be achieved with few minorities enrolled. These briefs suggested that without diverse experiences and viewpoints within the classroom, students would be missing out on an important aspect of their education. Larger scale studies were included within this discussion to help demonstrate the importance of diversity. This section will highlight a few of the more widely–cited studies included in the briefs filed on behalf of the University of **Texas**. Some of the studies cited found cognitive skills improved in diverse learning environments. For example, Nicholas Bowman conducted a meta–analysis of 23 studies and found positive gains in students' cognitive development with increased diversity. [FN94] Likewise, Sylvia Hurtado's longitudinal study of over 4,400 students at nine public universities found that diversity is related to improved thinking skills and analytical problem solving. [FN95] Likewise, the American Educational Research Association et al.'s brief argued for the ***14** benefits of "[i]nformal interactions with diverse peers" increase with diversity. [FN96] The brief cited the work of Thomas Nelson Laird to show that these interactions are more likely to cause students to be more self–confident academically and take a personal responsibility to improve society. [FN97] Another study analyzed 500 different studies and reported that diversity reduces prejudice. [FN98] Other studies highlighted that diversity has also been related to increased engagement, [FN99] improved learning, [FN100] better leadership skills, *[FN101]* and more lively and interesting classroom discussions. [FN102]

In addition, many universities also submitted amicus briefs defending the University of **Texas** in Austin for using race and ethnicity in their admissions practice. For example, Amherst College along with thirty–six other private colleges and universities noted the importance of directly seeking diversity for their smaller student population and cited research finding that diversity not only benefits higher education institutions but also the private sector, and the overall society

and economy. [FN103]

TABLE 3: Amicus Briefs Filed in Support of Neither Party	Social Science Research Cited
Richard Sander and Stuart Taylor Jr.	3
The Equal Employment Advisory Council	0

There were two amicus briefs filed in support of neither party. The brief from Richard Sander and Stuart Taylor, however, used research in arguing against race–conscious admissions programs. Thus, it is unclear why this brief was not filed on behalf of **Fisher**. The authors suggest that racial preferences in higher education often undermine minority achievement and cite empirical work to support this proposition. Sander cited his own work from 2005 to show that racial preferences damage the academic performance of black law students because of lower bar passage and graduation rates. [FN104] The brief ***15** submitted by the Equal Employment Advisory Council stressed the impact that the decision could have on private sector employers with regard to federally mandated affirmative action requirements for federal contractors. [FN105]

Discussion

Several education and legal scholars have commented on the role social science research could play in the judicial system, [FN106] and others have discussed how the courts might rely on this research in shaping educational policy. [FN107] It is difficult to determine whether social science research has had an impact on decisions. Legal scholar, James Ryan, argued that the influence "remains fairly limited." [FN108] We contend that this is a missed opportunity and argue that social science research should play a role in the Court's upcoming decision in ***Fisher***. Specifically, the research in those briefs coded with a three in Table 1–3 could be particularly helpful to the Court. The most well–known case that relied on social science research was the U.S. Supreme Court decision in *Brown v. Board of Education*. [FN109] In *Brown*, footnote 11 highlighted the social science research, which demonstrated the social and psychological harm black students experience as a result of racial segregation. Additionally, we know from *Grutter* and *PICS* that social science research was considered to some extent. In *Grutter*, the Court acknowledged the amicus briefs and the studies that highlighted the benefits of diversity in earlier race–conscious decisions. [FN110] Specifically, the Court noted that major American businesses need a diverse workforce and that the U.S. Military needs a racially diverse ***16** officer corps for "the military's ability to fulfill its principle mission to provide national security." [FN111] In *Grutter*, most of the amicus briefs filed in support of the university's admission plan noted that diversity is essential for the interplay of ideas in a nation that is becoming increasingly diverse. [FN112] Moreover, these briefs argued that informal learning results from campuses that recruit students of different, races, religions, gender, and backgrounds. [FN113] In *PICS*, Justice Breyer's dissent more carefully considered social science research, [FN114] but this research was quickly dismissed by Justice Thomas in his concurring opinion. Justice Thomas wrote that "the dissent unquestioningly cites certain social science research to support propositions that are hotly disputed among social scientists. In reality, it is far from apparent that coerced racial mixing has any educational benefits, much less that integration is necessary to black achievement." [FN115] But courts routinely admit competing expert testimony to assist the factfinder in deciding a case and judges have "a fair amount of latitude on how best to use the expert's testimony to understand the information presented." *[FN116]* Of course some observers might argue that much of the research cited in the amicus briefs has been highly politicized or that

researchers may have an outcome in mind before they begin their study. *[FN117]* Thus, experts could play a role in sorting out which social research has employed more rigorous methodologies. [FN118]

In addition to the context of litigation involving integration and race–conscious policies, social science research has been prevalent in gay–rights cases and has helped courts justify their opinions—dismissing the myths of homosexuality–a largely controversial topic between science and morality. In these cases, social science has been heavily cited in an effort to educate society and the court about a little–known societal phenomenon. [FN119] Indeed, using social science information in the modern legal era has increasingly been accepted to create change in society to dispel prevailing moral and societal norms to achieve consequential results. [FN120] Similar to gay–rights cases and some of the earlier race–conscious cases, the amicus briefs submitted in the ***Fisher*** case can provide valuable information to the Court. We urge the Court to incorporate social science into its decision of the ***Fisher*** case not only to better understand the value of a diverse education system, but also to better educate the public about the societal and educational benefits of diversity.

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[FN1]. 539 U.S. 306, 123 S.Ct. 2325, 156 L.Ed.2d 304 [177 Ed.Law Rep. [801]] (2003).

[FN2]. 539 U.S. 244, 123 S.Ct. 2411, 156 L.Ed.2d 257 [177 Ed.Law Rep. [851]] (2003).

[FN3]. 132 S.Ct. 1536, 182 L.Ed.2d 160 (2012).

[FN4]. 645 F.Supp.2d 587 [250 Ed.Law Rep. [298]] (W.D. **Tex**. 2009).

[FN5]. ***Fisher*** *v. Univ. of* ***Tex***., 631 F.3d 213 [264 Ed.Law Rep. [564]] (5th Cir. 2011).

[FN6]. ***Fisher*** *v. Univ. of* ***Tex***., 644 F.3d 301 (5th Cir. June 17, 2011).

[FN7]. *See* T.K. Daniel & Scott Greytak, *Requiem for Affirmative Action in Higher Education: Case Analysis Leading to* ***Fisher*** *v. University of* ***Texas*** *at Austin*, 274 ED. LAW REP. 539 (2012).

[FN8]. 551 U.S. 701, 127 S.Ct. 2738, 168 L.Ed.2d 508 [220 Ed.Law Rep. [84]] (2007).

[FN9]. Suzanne E. **Eckes**, *Race–Conscious Admissions Programs: Where Do Universities Go from Gratz and Grutter?* 33 J.L. & EDUC., 21, 23 (2004).

[FN10]. U.S. CONST. amend. XIV, § 1.

[FN11]. R. ROTUNDA & J. NOWAK, TREATISE CONSTITUTIONAL LAW § 18.2 at 208 (3d ed. 1999).

[FN12]. *See generally* K. SULLIVAN & G. GUNTHER, CONSTITUTIONAL LAW (17th ed. 2010).

[FN13]. *See id*.

[FN14]. *See id*.

[FN15]. *See id*.

[FN16]. *Mississippi University for Women v. Hogan*, 458 U.S. 718, 102 S.Ct. 3331, 73 L.Ed.2d 1090 [5 Ed.Law Rep. [103]] (1982).

[FN17]. *See id*.

[FN18]. *See id*.

[FN19]. *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227, 115 S.Ct. 2097, 132 L.Ed.2d 158 (1995).

[FN20]. *See Alexander v. Sandoval*, 532 U.S. 275, 280–81, 121 S.Ct. 1511, 149 L.Ed.2d 517 [149 Ed.Law Rep. [517]] (2011) (citing *Bakke*, 438 U.S. at 287).

[FN21]. 438 U.S. 265, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978) (“*Bakke*”).

[FN22]. *See id*.

[FN23]. *Id*. at 266.

[FN24]. *See id*.

[FN25]. *Id*. at 277 (opinion of Powell, J.)

[FN26]. *See* **Eckes,** *supra* note 9, at 23.

[FN27]. *Bakke v. Regents of Univ. of Cal*., 553 P.2d 1152, 132 Cal.Rptr. 680, 18 Cal.3d 34 (1976).

[FN28]. *See Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 277, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978).

[FN29]. *See id*. at 320.

[FN30]. *See id.* at 313.

[FN31]. *See id.* at 318.

[FN32]. After *Bakke* and before the *Grutter* and *Gratz* decisions, three federal courts addressed race–conscious admissions programs in universities. *See, e.g.*, *Hopwood v. **Texas*** 78 F.3d 932 [107 Ed.Law Rep. [552]] (5th Cir. 1996) (finding university's race–conscious admissions policy unconstitutional); *Smith v. Univ. of Wash. Law Sch*., 233 F.3d 1188 [149 Ed.Law. Rep. [347]] (9th Cir. 2000) (upholding university's race–conscious admissions policy); *Johnson v. Bd. of Regents of the Univ. of Ga*., 263 F.3d 1234 [156 Ed.Law Rep. [829]] (11th Cir. 2001) (finding university's race–conscious admissions policy unconstitutional).

[FN33]. *See Grutter v. Bollinger*, 539 U.S. 306, 123 S.Ct. 2325, 156 L.Ed.2d 304 [177 Ed.Law Rep. [801]] (2003).

[FN34]. *Id*. at 312.

[FN35]. *Id.* at 325 (citing *Bakke*, 438 U.S. at 315 (opinion of Powell, J.)).

[FN36]. *Id.* at 323 (citing *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. at 320 (1978) (opinion of Powell, J.).

[FN37]. *Id*. at 320–25.

[FN38]. *Id*. at 343.

[FN39]. *Id*.

[FN40]. *See id*. at 315.

[FN41]. *See id*. at 339.

[FN42]. *See id*. at 340.

[FN43]. *See* **Eckes**, *supra* note 9.

[FN44]. *Id*.

[FN45]. *See id*. at 340.

[FN46]. *Id*.

[FN47]. *Id*. at 342.

[FN48]. *Id*.

[FN49]. *Id*.

[FN50]. *See Gratz v. Bollinger*, 539 U.S. 244, 123 S.Ct. 2411, 156 L.Ed.2d 257 [177 Ed.Law Rep. [851]] (2003).

[FN51]. *Id*. at 250–60.

[FN52]. *See id*.

[FN53]. *See id*.

[FN54]. *See Grutter v. Bollinger*, 539 U.S. 306, 327, 123 S.Ct. 2325, 156 L.Ed.2d 304 [177 Ed.Law. Rep. [801]] (2003).

[FN55]. *See id*. at 328.

[FN56]. *See id*.; *see* **Eckes**, *supra* note 9.

[FN57]. Suzanne E. E *Public School Integration and the 'Cruel Irony' of the Decision in Parents Involved in Community Schools v. Seattle School District No. 1*, 229 ED. LAW REP. 1, 9 (2008).

[FN58]. The Civil Rights Project, *PICS*: *Joint Statement of Nine University–Based Civil Rights Centers*, http :// www. civil rights project. ucla. edu/ pol icy/ court/ volti nt_ joint_ full_ state ment. php.

[FN59]. *Parents Involved in Community Schools v. Seattle School School District No.* 1, 551 U.S. 701, 753, 127 S.Ct. 2738, 168 L.Ed.2d 508 [220 Ed.Law Rep. [84]] (2007).

[FN60]. Jennifer Koons. *Affirmative Action After O'Connor*. MEDILL NEWS SERVICE (Aug. 2006), http :// docket. me dill. north western. edu/ arch ives/ 003805 print. php.

[FN61]. *See* ***Eckes***, 229 ED. LAW REP. 1.

[FN62]. 551 U.S. 701, 127 S.Ct. 2738, 168 L.Ed.2d 508 [220 Ed.Law Rep. [84]] (2007).

[FN63]. *See id*.

[FN64]. *Id*.

[FN65]. *Id*., *See* ***Eckes***, 229 ED. LAW REP. 1.

[FN66]. *Id*. at 747–799.

[FN67]. *Id*. at 797.

[FN68]. *Id*. at 868.

[FN69]. *Id*. at 803.

[FN70]. *Id*. at 867.

[FN71]. U.S. Dep't. of Justice & U.S. Dep't of Educ., *Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools* (2011), http :// www2. ed. gov/ about/ off ices/ list/ ocr/ docs/ guid ance –ese –201 111. pdf.

[FN72]. *Id*. at 1.

[FN73]. *Id*.

[FN74]. U.S. Dep't. of Justice & U.S. Dep't of Educ., *The Use of Race in Postsecondary Student iAdmissions* (2011), http :// www2. ed. gov/ about/ off ices/ list/ ocr/docs/ guid ance– pse– 2011 11.ht ml.

[FN75]. *Id.*

[FN76]. *Id.*

[FN77]. ***Fisher*** *v. Univ. of* ***Tex***., 631 F.3d 213, 216 [264 Ed.Law Rep. [564]] (5th Cir. 2011).

[FN78]. **Tex**. Educ. Code § 51.803 (1997).

[FN79]. ***Fisher***, 631 F.3d at 235–37.

[FN80]. *Id.*

[FN81]. ***Fisher***, 645 F.Supp.2d at 612.

[FN82]. James E. Ryan, *The Limited Influence of Social Science Evidence in Modern Desegregation Cases*, 81 N.C. L. REV. 1660–1662 (2003).

[FN83]. *See* Brief of Scholars of Economics and Statistics as Amici Curiae in Support of Petitioners, **Fisher** v. Univ. of **Tex**., 132 S.Ct. 1536, 182 L.Ed.2d 160 (No. 11–345).

[FN84]. John R. Lott Jr., J. Mark Ramseyer, & Jeffrey Standen, *Peer Effects in Affirmative Action Evidence from Law Student Performance*, 31 INT'L REV. L. & ECON. 1 (2011).

[FN85]. Christine R. Logel et al., *Unleashing Latent Ability: Implications of Stereotype Threat for College Admissions*, 47 EDUC. PSYCHOLOGIST 42, 44 (Jan. 2012); G. M. Walton & G.L.Cohen, A *question of belonging: Race, social fit, and Achievement*, 92 J. PERSONALITY & SOC. PSYCHOL., 82, 87 (Jan. 2007); Pedro Carneiro, James J. Heckman, & Dimitriy V. Masterov, *Understanding The Sources of Ethnic And Racial Wage Gaps And Their Implications For Policy*, in HANDBOOK OF EMPLOYMENT DISCRIMINATION RESEARCH: RIGHTS AND REALITIES 117 (Laura Beth Nielsen & Robert L. Nelson eds., Springer 2005).

[FN86]. *See* Brief of Abigail Thernstrom et al. as Amici Curiae in Support of Petitioners, ***Fisher*** *v. Univ. of* ***Tex***., 132 S.Ct. 1536, 182 L.Ed.2d 160 (No. 11–345).

[FN87]. *See* Brief for Amicus Curiae of the Am. Ctr. For Law & Justice In Support of Petitioner at 5, ***Fisher*** *v. Univ. of* ***Tex***., 132 S.Ct. 1536, 182 L.Ed.2d 160 (No. 11–345).

[FN88]. *Id*. at 7.

[FN89]. *See* Brief for Amicus Curiae Current & Former Federal Civil Rights Officials in Support of Petitioner at 14, ***Fisher*** *v. Univ. of* ***Tex***., 132 S.Ct. 1536, 182 L.Ed.2d 160 (No. 11–345).

[FN90]. *See, e.g.*, Brief of Amicus Curiae Cal. Ass'n of Scholars et al in Support of Petitioner, ***Fisher*** *v. Univ. of* ***Tex***., 132 S.Ct. 1536, 182 L.Ed.2d 160 (No. 11–345).

[FN91]. *Id*. at 26–27.

[FN92]. *See* Brief of Pacific Legal Found. et al. as Amicus Curiae Supporting Petitioner 11–13, ***Fisher*** *v. Univ. of* ***Tex***., 132 S.Ct. 1536, 182 L.Ed.2d 160 (No. 11–345).

[FN93]. *See* Brief of the Southeastern Legal Found. as Amicus Curiae Supporting Petitioner, ***Fisher*** *v. Univ. of* ***Tex***., 132 S.Ct. 1536, 182 L.Ed.2d 160 (No. 11–345).

[FN94]. Nicholas Bowman, *College Diversity Experiences and Cognitive Development: A Meta–Analysis*, 80 REV. EDUC. RES. 4, 20 (2010).

[FN95]. Sylvia Hurtado, *The Next Generation of Diversity and Intergroup Relations Research*, 61 J. SOC. ISSUES 595, 600–607 (2005).

[FN96]. *See* Brief of the American Educational Research Association et al. as Amicus Curiae Supporting Respondents at 12, ***Fisher*** *v. Univ. of* ***Tex***., 132 S.Ct. 1536, 182 L.Ed.2d 160 (No. 11–345).

[FN97]. Thomas F. Nelson Laird, *College Students' Experiences with Diversity and Their Effects on Academic Self–Confidence, Social Agency, and Disposition Toward Critical Thinking*, 46 RES.HIGHER EDUC. 345 (2005).

[FN98]. *See* Thomas F. Pettigrew & Linda R. Tropp, *A Meta–Analytic Test of Intergroup Contact Theory*, 90 J. PERSONALITY & SOC. PSYCHOL., 751, 766–768 (2006).

[FN99]. Nicholas A. Bowman, *Promoting Participation in a Diverse Democracy: A Meta–Analysis of College Diversity Experiences and Civic Engagement*, 81 REV. EDUC. RES. 29, 46 (2011).

[FN100]. *See* Meera E. Deo, *The Promise of Grutter: Diverse Interactions at the University of Michigan Law School*, 17 MICH. J. RACE & L., 63, 97–103 (2011).

[FN101]. Uma M. Jayakumar, *Can Higher Education Meet the Needs of an Increasingly Diverse and Global Society: Campus Diversity and Cross–Cultural Workforce Competencies*,78 HARV. EDUC. REV., 615, 641–643 (2008).

[FN102]. *See* Brief of Amherst College et al. as Amicus Curiae Supporting Petitioner, **Fisher** v. Univ.of **Tex**., 132 S.Ct. 1536, 182 L.Ed.2d 160 (No. 11–345) citing Michael J. Chang et al., *The Educational Benefits of Sustaining Cross–Racial Interaction Among Undergraduates*, 77 J. HIGHER EDUC. 430 (2006).

[FN103]. *Id*.

[FN104]. *See* Brief Amici Curiae for Richard Sander & Stuart Taylor in Support of Neither Party, ***Fisher*** *v. Univ. of* ***Tex*** ., 132 S.Ct. 1536, 182 L.Ed.2d 160 (No. 11–345).

[FN105]. *See* Brief Amici Curiae of Equal Emp't Advisory Council in Support of Neither Party, ***Fisher*** *v. Univ. of* ***Tex***., 132 S.Ct. 1536, 182 L.Ed.2d 160 (No. 11–345).

[FN106]. *See* Joshua Dunn with Martin West, *Calculated Justice: Educational Research and the Courts*, *in* WHEN RESEARCH MATTERS 155–176, (Rick Hess ed., 2008); Diana C. Pullin & Julia M. Morgan, *Social Science and the Courts: Challenges and Strategies for Bridging Gaps Between Law and Research*, 39 EDUC. RESEARCHER 515–523 (2010); James E. Ryan, *The Limited Influence of Social Science Evidence in Modern Desegregation Cases*, 81 N.C. L. REV. 1659–1702 (2003); Kevin G. Welner, *K–12 Race–Conscious Student Assignment Policies: Law, Social Science, and Diversity*, 76 REV. OF EDUC. RESEARCH 349–382 (2006); *See* NAT'L ACAD. OF EDUC., RACE–CONSCIOUS POLICIES FOR ASSIGNING STUDENTS TO SCHOOLS: S AND THE SUPREME COURT CASES 8 (Robert L. Linn & Kevin G. Welner eds., 2007); *see also* Mark G. Yudof, *School Desegregation: Legal Realism, Reasoned Elaboration, and Social Science Research in the Supreme Court*, 42 L. & CONTEMP. PROBS. 57 (1978); Anne R. Oakes, *From Pedagogical Sociology to Constitutional Adjudication: The Meaning of Desegregation in Social Science Research and Law*, 14 MICH. J. RACE & L. 61 (2008); Sanjay Mody, Note, *Brown Footnote Eleven in Historical Context: Social Science and the Supreme Court's Quest for Legitimacy*, 54 STAN. L. REV. 793 (2002); Erika Frankenberg & Liliana M. Garces, *The Future of School Integration in American: The Use of Social Science Evidence in Parents Involved and Meredith: Implications for Researchers and Schools*, 46 U. LOUISVILLE L. REV. 703 (2008); Angelo Ancheta, *Revisiting Bakke and Diversity–Based Admissions: Constitutional Law, Social Science Research, and the University of Michigan Affirmative Action Cases*. The Civil Rights Project at Harvard University (2003).

[FN107]. Erwin Chemerinksy, *The Segregation and Resegregation of American Public Education: The Court's Role*, 81 N.C. L. REV. 1598–1620 (2003); Wendy Parker, *The Decline of Judicial Decision Making: School Desegregation and District Court Judges*, 81 N.C.L. REV. 1624–1659 (2003).

[FN108]. Ryan, *supra* note 82, at 1664.

[FN109]. 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).

[FN110]. *Grutter v. Bollinger*, 539 U.S. 306, 123 S.Ct. 2325, 156 L.Ed.2d 304 [177 Ed.Law Rep. [801]] (2003).

[FN111]. *Id*. at 331.

[FN112]. *See* Brief of Amici Curiae 3M at 5, Abbott Laboratories et al., Gratz v. Bollinger (6th Cir. 2001) (Nos.

01–1333, 01–1416, 01–1418); Brief of Profs. Amy Stuart Wells, Jomills Henry Braddock II, et al. at 8–29, Parents Involved, 551 U.S. 701, 127 S.Ct. 2738, 168 L.Ed.2d 508 [220 Ed.Law Rep. [84]] (Nos. 05–908, 05–915).

[FN113]. *Id*.

[FN114]. 551 U.S. 701, 807–69, 127 S.Ct. 2738, 168 L.Ed.2d 508 [220 Ed.Law Rep. [84]] (2007) (Breyer J., dissenting).

[FN115]. *Id*. at 761.

[FN116]. Scott Welch, *From Witness Box to the Hot Tub: How the "Hot Tub" Approach to Expert Witnesses Might Relax an American Finder of Fact*, 5 J. INT'L COM. L. & TECH. 154, 161 (2010).

[FN117]. *See* Ryan, *supra* note 82, at 1677.

[FN118]. *See id*.

[FN119]. *Id*. at 37.

[FN120]. *See* Patricia J. Falk, *The Prevalence of Social Science in Gay Rights Cases: The Synergistic Influences of Historical Context, Justificatory Citation, and Dissemination Efforts*, 41 WAYNE L.REV. 1 (1994).
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