# Utilitarian Diversity on Steroids (and its exceptions): the SFFA amici

Less than a decade after the Court upheld the use of race-conscious admission policies in *Fisher* (2016), affirmative action in higher education was challenged once again. The lawsuits were initiated by Students for Fair Admissions, Inc. (SFFA), a nonprofit organization based in Arlington, Virginia established by the same Edward Blum who was involved in the lawsuit against UT in the *Fisher* litigation. In November 2014, SFFA filed separate lawsuits against Harvard College and the University of North Carolina (UNC) (together the SFFA cases), arguing that their race-conscious admissions programs violated, respectively, Title VI of the Civil Rights Act of 1964,[[1]](#footnote-1) and the Equal Protection Clause of the Fourteenth Amendment.[[2]](#footnote-2) The initial lawsuit, directed at Harvard University, alleges that the university's admissions policy, which takes race into account, unfairly discriminates against Asian American applicants. SFFA claimed that Asian Americans are notably less likely to be accepted compared to white, Black, or Hispanic applicants with similar qualifications.[[3]](#footnote-3) The second lawsuit, filed against the University of North Carolina at Chapel Hill, which is the main public university in the state, asserts that the university's use of race as a factor in its undergraduate admissions process violates both Title VI and the Constitution. Unlike Harvard, UNC being a public university, is subject to the 14th Amendment's mandate of equal protection.[[4]](#footnote-4) SFFA argued that both Harvard's and UNC's policies do not serve a compelling state interest and are not narrowly tailored due to their rejection of workable race-neutral alternatives.[[5]](#footnote-5) The district courts, upheld both Harvard’s and UNC’s admission programs.[[6]](#footnote-6)

The Supreme Court granted certiorari agreeing to hear those cases in 2022. The timing here is important. Only six years had passed between the latest Fisher case was decided and the Court’s decision to hear the SFFA cases. Both in the Michigan cases and in the Fisher cases, the supporters of affirmative action were mainly arguing to try and convince the “swing Justice” on the Court. But, by 2022, Justice Kennedy had retired and there was no swing justice on the Court. The composition of the Court changed immensely. After the three appointments by president Trump, the Court was now controlled by a conservative super majority of six justices, and three liberal justices.[[7]](#footnote-7)

When it comes to affirmative action, the shift in the composition of the Court was crucial. By the time the Court agreed to hear the SFFA cases, it was clear that race-conscious admission policies to public and private universities are not going to last, at least not in any familiar form. Three justices—Roberts, Alito and Thomas—have gone on record previously as firmly opposing affirmative action in higher education.[[8]](#footnote-8) As for the other three conservative justices – Gorsuch, Coney Barrett and Kavanaugh, everyone anticipated, will agree. And even if only two of these three votes were to join their fellow conservative justices, race-based affirmative action in higher education eliminated or nearly so.[[9]](#footnote-9) Melissa Murray explained that “[t]hey really are in this sort of moment where they can do whatever they like” . . . “The decision to hear the admissions case suggests that 'they're just checking things off their list and affirmative action will be next.'”[[10]](#footnote-10)

In July 2022 the Supreme Court made an announcement that it will hear the two cases, and \_ \_\_\_ amicus curiae briefs were filled to the Court (how many for each side).[[11]](#footnote-11) If amicus curiae briefs have two roles—talking to the court and talking through the court and to the people—this article argues that the vast majority of amici brief submitted in support of race-conscious affirmative action in the SFFA cases, neglected their later role. Arguing to a supermajority conservative court, could have been liberating for the amici, allowing them to argue more broadly about the importance of affirmative action, instead of narrowly arguing to convince Justice Kennedy about the merits of race-conscious admission policies and their benefits for all students.[[12]](#footnote-12) In order to do that, the SFFA amici supporting the universities did not have to through away the diversity framework, but instead, they could have tried to re-signify it, much like the *Michigan* amici did. Somewhat paradoxically, since the outcome of the SFFA cases was largely expected, this article suggests that it could have been treated as an opportunity by the amici, a venue to remind their students, members, workers and the public, why affirmative action matters in the first place.

Yet, despite the transformation in the composition of the Court, the majority of amici supporting the universities, as well as respondents themselves, decided to stick to and even expand the utilitarian interpretation of diversity. As demonstrated below, the majority of the amici, followed the path of the *Fisher* amici briefs and emphasized the pedagogical and market-oriented benefits of diversity. This is true, with one notable exception: since SFFA argued that the Equal Amendment Cluse of the Fourteenth Amendment of the constitution, as it was interpreted in *Brown v Board of Education*, is “colorblind” and does not permit any racial classifications by educational institutions,[[13]](#footnote-13) the respondents and some of their amici, tried to refute this view by turning to history. Most dominantly, Harvard College, the respondent in one of the two SFFA cases, dedicated a section of their brief to “Text and History” and argued that “absolute neutrality has never been a universal constitutional principle, either at the time of ratification or in the Court's jurisprudence. The Congress that adopted the Fourteenth Amendment rejected the “absolutis[t]” view SFFA prefers (Br.51) and authorized numerous measures that benefited African Americans in the aftermath of the Civil War.”[[14]](#footnote-14) Similarly, UNC, argued that SFFA’s colorblindness view of the constitution “ignores the original meaning of the Fourteenth Amendment, defies this Court's longstanding jurisprudence, and overlooks the compelling benefits that flow from diverse institutions of higher learning.”[[15]](#footnote-15) But despite this turn to the history of racial discrimination in some of the briefs, the majority of the amici failed to tie this history to their interest in diversity, and largely erased the egalitarian roots and democratic aspirations of affirmative action.

Harvard open their brief by stating that “Harvard College seeks an exceptional student body diverse in many dimensions… diversity ‘lead[s] to greater knowledge’ for everyone, ‘as well as the tolerance and mutual respect that are so essential to the maintenance of our civil society.’ … To achieve that objective, Harvard individually evaluates… the ways applicants might contribute to one another's educational experience given their backgrounds, talents, interests, and perspectives.”[[16]](#footnote-16) Only later they assert that “a person's race-like their home state, national origin, family background, or interests-is part of who they are, and that in seeking the benefits of a diverse student body, universities may consider race as one among many factors provided they satisfy strict scrutiny.”[[17]](#footnote-17) Similarly, UNC, the respondent in the second case, opened their brief by stating that:

In choosing to pursue such diversity and its educational benefits, UNC embodies the nation's highest ideals and best traditions. On campus, diversity promotes the robust exchange of ideas, fosters innovation, and nurtures empathy and mutual respect. It also looks to the future, equipping students with the tools and experiences necessary for success in the modern world. In UNC's academic judgment, diversity is central to the education it aims to provide the next generation of leaders in business, science, medicine, government, and beyond.[[18]](#footnote-18)

UNC did also uniquely mention that there is a unique challenge in admitting represented minorities, and notes that as "a Southern flagship university that for most of its history excluded racial minorities from admission altogether – ‘continues to have much work to do.’” [[19]](#footnote-19) But it then also noted that this lack of representation is important because it “limits opportunities for exposure and learning.”[[20]](#footnote-20)

Other academic amici focused rather exclusively on the pedagogical and economic utility of diversity. Thirty-three private selective residential colleges made it clear in their amici brief that they value diversity because “[s]tudies consistently show that diversity-including racial diversity-meaningfully improves learning experiences, complex thinking, and non-cognitive abilities. Diversity also generates pedagogical innovations and decreases prejudice. These benefits are especially pronounced at liberal arts colleges and small universities, where smaller class sizes lead to greater engagement among diverse students.”[[21]](#footnote-21) MIT and Stanford articulated their particular interest in diversity in the science, technology, engineering, and mathematics (STEM) industry. They argued that there is an “absolute necessity of diversity in STEM educational programs and the national STEM workforce, on which the United States’ economy and role in the global advancement of science and technology depend.” Furthermore, according to these top institutions, it is “[n]ot only does diversity promote better outcomes for students in STEM, it contributes to better science. As such, American businesses at the forefront of innovation in STEM depend on the availability of a diverse cross-section of talented graduates from the nation’s most rigorous and elite institutions.”[[22]](#footnote-22) Similarly, for the association of American Medical Colleges, diversity in the education of physicians and other healthcare professions “s a medical imperative”… “diversity literally saves lives by ensuring that the Nation's increasingly diverse population will be served by healthcare professionals competent to meet its needs.”[[23]](#footnote-23) Brown and other elite institutions of higher education greatly emphasized how “[d]iversity fosters a more robust spirit of free inquiry and encourages dialogue that sparks new insights,” as well as “prepares Amici’s graduates to pursue innovation in every field.”[[24]](#footnote-24) Diversity for these and other academic amici, was a means to achieve their educational goals of producing a better educational experience for their students and better preparing their graduates to the ever changing global workforce.[[25]](#footnote-25) A group of law school deans categorized the interest in student body diversity as a matter, not as a matter of racial discrimination, but as a case about academic freedom.[[26]](#footnote-26)

In an amicus brief in support of the universities, the Biden administration primarily focused on the importance of diversity for the military.[[27]](#footnote-27) The brief does mention that “[t]he 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.”[[28]](#footnote-28) But instead of connecting these ideas about legitimacy to a larger vision of about the American democracy, it subjected it to national security interests in “overall readiness and mission accomplishment” of the military.[[29]](#footnote-29) Similarly, the Biden administration argued that diversity is a national interest 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’.”[[30]](#footnote-30) Rather uniquely, the Federal Bureau of Investigation the brief refer to, did recognize that 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.”[[31]](#footnote-31) Yet, it remains unclear whether diversity for them of an instrumental good that is required to preform a better job, or whether it was a good in itself as part of a democratic vision of our society and its institutions. Thus, while the Biden administration recognizes the “academic and civic benefits of racial diversity on university campuses,”[[32]](#footnote-32) it restrains from recognizing the broader democratic value of diversity that war recognized in *Grutter* and contains an obligation to the openness of all institutions and positions of leadership. Other public officials and civil society organization joined this approach and emphasized the importance of diversity, and in some cases its anti-stereotyping effects, for a greater good of better preparing students to the “workforce of the world economy”.[[33]](#footnote-33)

The strong trend of utilitarian diversity was amplified by professional and business amici. In a brief submitted by Microsoft and other technology companies, it was emphasized that “[r]acial and other diversity improves scientific endeavors and the innovation of new technologies. A racially diverse workforce also helps guard against the possibility that science and technology companies will be out of touch with their increasingly diverse and global customer base.”[[34]](#footnote-34) Another brief, by the HR policy Association added that “[a] Diverse Workforce is Essential for Successful Business Outcomes “ and that “[d]iverse teams constituting individuals from a wide variety of backgrounds and perspectives perform better than their homogenous counterparts, particularly in an increasingly global consumer market.”[[35]](#footnote-35) Major American business enterprises wrote that “[d]iverse workforces improve Amici’s business performance—and thus strengthen the American and global economies. Amici seek employees who have been educated at universities with exposure to a broad array of life experiences and viewpoints, and who can bring diverse perspectives and experiences to the workplace.”[[36]](#footnote-36)

*An Egalitarian Alternative.* The utilitarian business case for diversity was strong and dominant in the *SFFA* briefs. But, several amici took an alternative approach reinfusing the conversation about affirmative action with backward and forward looking egalitarian values. In the majority of those amici briefs, the objective of remedying past wrongs, presented as an alternative to the diversity rationale or simply fails to tie this goal to the diversity rationale. In that sense, those briefs revive the history of racial disparities in America and the role of affirmative action in it, but risk being left out of the conversation about the permissible interest in diversity. Most explicitly, A group of Black women law scholars assert that while diversity is a ”sufficient basis on which to re-affirm the constitutionality of race-conscious admissions programs,” there is a “far more compelling justification for race-conscious admissions programs [and that] is remedying the lasting and lived effects of centuries of racial discrimination against Black people and other historically underrepresented groups.”[[37]](#footnote-37) This group goes on to cite Justice Marshall’s opinion in Bakke to argue that “race-conscious admissions programs are constitutionally permissible to ‘redress the continuing effects of past discrimination.’”[[38]](#footnote-38) Other amici that presented an egalitarian of affirmative action treated, to a large degree, as a separate rationale for affirmative action. The Washington Bar Association and the Women’s Bar Association of the District of Columbia, for example, did not write much for or against diversity, but instead directly justified affirmative action as a remedial tool, arguing that in order “[t]o understand the importance of affirmative action, one must be careful to remember this country's history, which underscores the dire need for race-sensitive policies. The Fourteenth Amendment was put into place to correct the injustices perpetrated against Black Americans through centuries of enslavement and second-class citizenship.”[[39]](#footnote-39)

In a rather unique amici brief, a group of twenty-five Harvard Student and Alumni organizations rooted their argument for affirmative action in the history of the civil rights era:

In Brown v. Board of Education, this Court recognized that racial segregation in education “deprives [Black children] of equal status in the school community” and “stamps [them] with a badge of inferiority.”4 This same system of racial apartheid-and the badge of inferiority it placed upon Black students and other students of color-also existed in private educational institutions like Harvard. Following this Court's rejection of public school segregation as unconstitutional in Brown, Harvard and other private institutions followed suit and opened their doors to previously-excluded applicants. Yet, Students for Fair Admissions (“SFFA”) now seeks to turn Brown on its head, invoking that seminal ruling \*3 to ask the Court to turn back the clock and cause Harvard to be out of reach to many students of color who, due to persistent inequalities in K-12 educational opportunities and despite being eminently qualified, are not able to gain that competitive edge to assure their admission.[[40]](#footnote-40)

But, instead of leaving the history of racial discrimination and the efforts to ameliorate it divorced from the idea of diversity, they also emphasized that the “educational benefits of diversity” they argued, are “essential to a healthy democracy”[[41]](#footnote-41) and explain that the “absence of equal educational opportunities undermines democracy because it “allow[s] a subset of the population to either hoard or be deprived of the kinds of educational opportunities that allow for social mobility, better life outcomes, and the ability to participate equally in the social and economic life of the democracy.”[[42]](#footnote-42) A similar vision was articulates by HBCU in their brief, where they recapture the history of racial discrimination in higher education from slavey to our days, and connect it to the interest in diversity by stating that “student body diversity—remains as compelling today.: Because, [r]espondents and other top schools have yet to achieve that goal and thereby enable students of all races to participate fully and equally in academic life.” [[43]](#footnote-43)

The egalitarian alternative was powerful and it was eventually influential for the minority opinions of the SFFA case. However, they were a minority. The dominant values that amici attributed to diversity specifically and to affirmative action more broadly, were utilitarian. As the algorithmic analysis confirms. I used the *Keyness* function to identify the words that were unusually frequent in the \_\_\_ SFFA amici briefs, in comparison with the amicus brief submitted to the Court in the two previous affirmative action cases I examined.[[44]](#footnote-44) The words “Innovation” and “benefits” were unusually frequent in the SFFA amici supporting the universities, in comparison to both the Michigan and Fisher amici.[[45]](#footnote-45) Similarly, the collocates analysis showed that “benefits” was ranked as the most likely word to appear in proximity of sever word to diversity in the SFFA amici briefs.[[46]](#footnote-46) Other words likely to appear in proximity to diversity in the SFFA cases were “racial,” “educational,” “achieve,” “profession,” “innovation,” and “business.”.[[47]](#footnote-47) This analysis confirms that while a some voices made the egalitarian case for affirmative action, the overwhelming dominant plea for diversity made by the SFFA was a utilitarian one.

1. 78 Stat. 252, 42 U. S. C. §2000d et seq. Title provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” [↑](#footnote-ref-1)
2. According to the 14th amendment “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” [↑](#footnote-ref-2)
3. [↑](#footnote-ref-3)
4. [↑](#footnote-ref-4)
5. Brief of petitioner, p 23 [↑](#footnote-ref-5)
6. Reference the lower court cases. [↑](#footnote-ref-6)
7. https://www.scotusblog.com/2022/01/court-will-hear-challenges-to-affirmative-action-at-harvard-and-university-of-north-carolina/ (“The composition of the court has changed significantly since then: Although Justice Elena Kagan was recused from the Texas case because she had been involved in it as the solicitor general of the United States, Kennedy retired in 2018 and was replaced by Justice Brett Kavanaugh, while Justice Amy Coney Barrett succeeded Ginsburg, who died in 2020. It was therefore a much more conservative court that considered the latest petitions asking the justices to revisit the issue.”) [↑](#footnote-ref-7)
8. Refer to their opinions in the Fisher cases. [↑](#footnote-ref-8)
9. <https://www.insidehighered.com/blogs/leadership-higher-education/end-affirmative-action> (“Even if Roberts gets only two of these three votes, affirmative action will be a thing of the past in higher education admissions”) [↑](#footnote-ref-9)
10. Harvard Race Case Punctuates Supreme Court's Turn to Right, BLOOMBERG NEWS (Jan. 24, 2022), https://news.bloomberglaw.com/us-law-week/harvard-race-case-punctuatessupreme-courts-sharp-turn-to-right [https://perma.cc/T2GF-APQK]. See also Jonathan P. Feingold, Ambivalent Advocates: Why Elite Universities Compromised the Case for Affirmative Action, 58 HARV. C.R.-C.L. L. REV. 143, 146 (2023); Asees Bhasin & Gregory Curfman, Gutting Grutter: The Effect of the Loss of Affirmative Action on Diversity among Physicians, 20 IND. HEALTH L. REV. 1 (2023) (“While the Court has repeatedly upheld admissions programs similar to the ones being challenged in this lawsuit (as recently as 2016), these cases may come out differently due to the conservative supermajority of Justices that will be hearing these cases.”). See also: Stephanie Saul, If Affirmative Action Ends, College Admissions May Be Changed Forever, N.Y. TIMES, JAN. 15, 2023 [↑](#footnote-ref-10)
11. Cite this order: <https://www.supremecourt.gov/orders/courtorders/072222zr_bpm1.pdf>. Doing so, the court deviated from its initial plan to consider them together. This decision was not surprising and was made in order to allowed Justice Ketanji Brown Jackson, the newest member of the court, to participate in one of the cases. The case involves the examination of race in the undergraduate admissions process at the University of North Carolina. However, Justice Brown Jackson will recuse herself from a similar case involving Harvard University due to her recent completion of a six-year term on the university's board of overseers. The court's decision was conveyed through a brief order. The majority of the amici briefs were filled in both cases, and thus and in order to avoid repetition, this article analysis them together. [↑](#footnote-ref-11)
12. Allen Rostron, Affirmative Action, Justice Kennedy, and the Virtues of the Middle Ground, 107 NW. L. REV. COLLOQUY 74 (2012-2013) (explaining how the Fisher decision all revolved around Justice Kennedy, especially after his opinion in *Parents Involved*). [↑](#footnote-ref-12)
13. Brief of petitioner at 47 (“Brown is widely considered ‘the single most important and greatest decision in this Court's history.’ . . . The holding of Brown, as this Court has explained, is that the Constitution denies ‘any authority ... to use race as a factor in affording educational opportunities.’ . . . Yet because of Grutter, universities exercise that authority every day. Because Brown is our law, Grutter cannot be. Just as Brown overruled Plessy's deviation from our “colorblind” Constitution, Plessy . . . this Court should overrule Grutter's.”) [↑](#footnote-ref-13)
14. Brief for Respondent, Harvard. p. 23 [↑](#footnote-ref-14)
15. Brief by University Respondents, UNC, 27. For a brief dedicated to the remedial history of the Fourteenth Amendment, see Brief of Professors of History and Law as Amici Curiae in Support of Respondents, 2 (“as demonstrated by the Fourteenth Amendment's text and historical context, the Reconstruction Framers understood the Amendment to bar States from enacting and enforcing laws that subordinated people based on race and to permit as constitutional actions designed to ameliorate the conditions of members of a subordinated race.”) [↑](#footnote-ref-15)
16. Brief for Respondent, Harvard. p. 1 [↑](#footnote-ref-16)
17. Id. At 2 [↑](#footnote-ref-17)
18. Brief by University Respondents, UNC, 1 (they also brought voices of members of their community to vindicate the ways in which diversity contributes to better educational outcomes. See for example: “leading chemistry professor and entrepreneur observed that diversity provides “fertile ground for innovation” in his research lab and wards against “groupthink” that stifles new ideas.”). id. at 5. [↑](#footnote-ref-18)
19. Id. at 7 (citing from\_\_\_\_) [↑](#footnote-ref-19)
20. Id. at 7. [↑](#footnote-ref-20)
21. Brief of Amherst,… at et. 3, 5-13. [↑](#footnote-ref-21)
22. BRIEF FOR MASSACHUSETTS INSTITUTE OF TECHNOLOGY, STANFORD UNIVERSITY, INTERNATIONAL BUSINESS MACHINES CORP., AND AERIS COMMUNICATIONS, INC. AS AMICI CURIAE IN SUPPORT OF RESPONDENTS, p.11 [↑](#footnote-ref-22)
23. **Brief for Amici Curiae Association of American Medical Colleges et al. in Support of Respondents 3-4** [↑](#footnote-ref-23)
24. Brown and other universities (“Diversity fosters a more robust spirit of free inquiry and encourages dialogue that sparks new insights. Diversity encourages students to question their own assumptions, to test received truths, and to appreciate the complexity of the modern world. Diversity prepares Amici’s graduates to pursue innovation in every field, to be active and engaged citizens equipped to wrestle with the great questions of the day, and to expand humanity’s knowledge and accomplishments.”) [↑](#footnote-ref-24)
25. For more examples see: BRIEF OF THE AMERICAN EDUCATIONAL RESEARCH ASSOCIATION, ET AL. AS AMICI CURIAE IN SUPPORT OF RESPONDENTS 10 (“Student Body Diversity Leads to Educational Benefits such as Improvements in Cognitive Abilities, Critical Thinking, and Self-Confidence”); Deborah Cohen and 67 additional amici curiae 9 (“Scholarly research supports the conclusion that all students benefit from racial and ethnic diversity on college campuses and demonstrates that those benefits outlast a student’s time on a college campus and have proven positive impacts on American business and our society”); Brief for the University of Michigan as Amicus Curiae in Support of Respondents7-8 (“exchange of ideas and viewpoints “is livelier, more spirited, and simply more enlightening and interesting when students have the greatest possible variety of backgrounds.”); Brief Amici Curiae of the American Council on Education and 40 Other Higher Education, at 14 (“Student diversity, including racial and ethnic diversity, improves learning outcomes and promotes academic success.”) [↑](#footnote-ref-25)
26. Brief of Amici Curiae Deans of U.S. Law Schools on Behalf of Respondents, 3 (“When Justice Powell wrote the lead opinion for this Court in Regents of the University of California v. Bakke, he did not see it as a case about racial discrimination under either the Fourteenth Amendment or the 1964 Civil Rights Act.3 Instead, he saw it as a case about academic freedom and a university's autonomy under the First Amendment.”) [↑](#footnote-ref-26)
27. US amici brief 12 (“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.”; Brief for Admissions and Testing Professionals as Amici Curiae Supporting Respondents, 13 (“If universities are to prepare future leaders, they must equip students for the diversity in decision-making that they will experience in the workplace and elsewhere”) [↑](#footnote-ref-27)
28. Id. at 13 [↑](#footnote-ref-28)
29. Id. at 13 [↑](#footnote-ref-29)
30. Id. at 19 (citing from The White House, Government-Wide Strategic Plan To Advance Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce 3 (Nov. 2021)). [↑](#footnote-ref-30)
31. Id. at 19 [↑](#footnote-ref-31)
32. Id. at 5/ [↑](#footnote-ref-32)
33. Brief of Southern Governors as Amici Curiae in Support of Respondents, check page(“ Many young people arrive at college having had limited exposure to people of different races, from different places, and with different lived experiences. And they may have implicit assumptions about how those people think and act. College provides an opportunity to displace those assumptions and understand diverse experiences, perspectives, and ideas. Students learn to accept and appreciate traditions and backgrounds different than their own. By broadening their horizons in this way, students become better prepared to join the workforce of the world economy.”); BRIEF OF ADM. CHARLES S. A .. et el, 2 ( Thirty-five top former military leaders, including four chairmen of the Joint Chiefs of Staff write that “[t])he importance of maintaining a diverse, highly qualified officer corps has been beyond legitimate dispute for decades. History has shown that placing a diverse Armed Forces under the command of homogenous leadership is a recipe for internal resentment, discord, and violence. By contrast, units that are diverse across all levels are more cohesive, collaborative, and effective.”); Brief of Amici Curiae the American Civil Liberties Union, American Civil Liberties Union of Massachusetts, and American Civil Liberties Union of North Carolina Legal Foundation in Support of Respondents, 6 (“student body diversity - including racial diversity - is essential to our pedagogical objectives and institutional mission: “[i]t enhances the education of all of our students, it prepares them to assume leadership roles in the increasingly pluralistic society into which they will graduate, and it is fundamental to the[ir] effective education”) [↑](#footnote-ref-33)
34. Brief for Amici Curiae Applied Materials, Inc., et al, p 3-4 [↑](#footnote-ref-34)
35. Brief for Amicus Curiae HR Policy Association in Support of Respondents, at 4 [↑](#footnote-ref-35)
36. BRIEF FOR MAJOR AMERICAN BUSINESS ENTERPRISES AS AMICI CURIAE SUPPORTING RESPONDENTS, 1 [↑](#footnote-ref-36)
37. Black women law scholars, 22-23 [↑](#footnote-ref-37)
38. Id. at 23-24. [↑](#footnote-ref-38)
39. Brief of the Washington Bar Association and the Womenŋs Bar Association of the District of Columbia as Amici Curiae in Support of Respondents, 2-3 ( [↑](#footnote-ref-39)
40. Brief of Amici Curiae 25 Harvard Student and Alumni Organizations in Support of Respondent President and Fellows of Harvard College Janai, 2-3 [↑](#footnote-ref-40)
41. ID. at 17 [↑](#footnote-ref-41)
42. Id at 4-5. [↑](#footnote-ref-42)
43. BRIEF FOR AMICI CURIAE HBCU LEADERS AND NATIONAL ASSOCIATION FOR EQUAL OPPORTUNITY IN HIGHER EDUCATION IN SUPPORT OF RESPONDENTS, 22 (they also argues that “[t]he attainment of a diverse student body remains as compelling an interest today as it was when this Court upheld the holistic admissions analysis in Grutter. That interest is particularly compelling for elite historically White institutions such as Respondents, which continue to be the most viable portals—though not the sole portals, thanks in part to HBCUs—into the highest levels of American life”) Id. at 23. See also [↑](#footnote-ref-43)
44. See supra [↑](#footnote-ref-44)
45. Rank and numbers [↑](#footnote-ref-45)
46. [↑](#footnote-ref-46)
47. [↑](#footnote-ref-47)