Nos. 05-908 & 05-915

In the Supreme Court of the United States

PARENTS INVOLVED IN COMMUNITY SCHOOLS,
Petitioner,

v.

SEATTLE SCHOOL DISTRICT NO. 1, *et al.*,
Respondents.

CRYSTAL D. MEREDITH, Custodial Parent and Next Friend of Joshua Ryan McDonald,
Petitioner,

v.

JEFFERSON COUNTY BOARD OF EDUCATION, *et al.*,
Respondents.

On Writs of Certiorari to the United States Courts of Appeal for the Ninth and Sixth Circuit, Respectively

BRIEF OF AMICI CURIAE AMERICAN COUNCIL ON EDUCATION AND 20 OTHER HIGHER EDUCATION ORGANIZATIONS IN SUPPORT OF RESPONDENTS

MICHAEL P. BOUDETT
DEAN RICHLIN
ROBERT E. TOONE*
BANCROFT LITTLEFIELD JR.
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, Massachusetts 02110
(617) 832-1000

* Counsel of Record for Amici Curiae

AMICI ON THIS BRIEF

American Council on Education
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
Association of American Colleges and Universities
Association of American Law Schools
Association of American Universities
Association of Community College Trustees
Association of Governing Boards of Universities and Colleges
Association of Jesuit Colleges and Universities
The College Board
Council for Christian Colleges and Universities
Hispanic Association of Colleges and Universities
National Association for College Admission Counseling
National Association of College and University Business Officers
National Association of State Universities and Land Grant Colleges
National Association of Student Personnel Administrators
United Negro College Fund
The Women's College Coalition

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INTEREST OF AMICI CURIAE[1]

Amici curiae are associations of colleges, universities, educators, trustees, and other representatives of higher education in the United States. Amici represent public, independent, large, small, urban, rural, denominational, non-denominational, graduate, and undergraduate institutions and faculty. American higher education institutions enroll 15 million students.

Amicus American Council on Education ("ACE") represents all sectors of American higher education. Its approximately 1800 members include a substantial majority of colleges and universities in the United States. Since its founding in 1918, ACE has sought to promote high standards in higher education, in the belief that a strong higher education system is the cornerstone of a democratic society. 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. The Addendum contains information on the other amici on this brief.

For decades amici have worked to achieve student body diversity. While there are important differences between higher education and the elementary and secondary school settings at issue in these cases, a broad consensus exists among educators at all levels that diversity is essential to their mission and that government should defer to good-faith efforts to attain its educational benefits. Amici also believe that programs that promote racial and ethnic diversity in K-

[1] No counsel for a party authored this brief in whole or in part. No person or entity, other than the amici, their members, or their counsel made a monetary contribution for the preparation or submission of this brief. Letters reflecting the parties' consent to the filing of this brief have been filed with the Clerk.

12 education advance their efforts to achieve excellence in higher education.

SUMMARY OF ARGUMENT

In *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978), and *Grutter v. Bollinger*, 539 U.S. 306 (2003), this Court recognized the substantial educational benefits of student diversity and noted the longstanding tradition of governmental forbearance with respect to the academic judgments of administrators and faculty. For three decades, the nation's colleges and universities have pursued these educational benefits in good faith — and in reliance on the Court's rulings — by including race and ethnic origin as diversity-enhancing factors in their admissions policies.

Similar educational benefits result from the promotion of student diversity in primary and secondary schools. Social science confirms that diversity in the K-12 classroom allows students to develop their minds through exposure to new perspectives, experiences, and the give-and-take that leads to critical thought. It helps students to discovery the falsity of racial stereotypes, including the mistaken assumption that all members of a particular race share the same beliefs. It prepares them for work in integrated environments and the global economy, and it strengthens their desire and ability to participate in public affairs. The efforts of local officials to achieve these educational benefits are entitled to the same kind of deference afforded to the educators' judgments in *Bakke* and *Grutter*.

Diversity in K-12 education also advances excellence in higher education. It increases the overall pool of applicants for colleges and universities, including students with the potential to contribute most to the exchange of ideas at that level. Students who attend diverse K-12 schools are better prepared for the demands of higher education, and are more likely to attend desegregated colleges, thus counteracting the self-perpetuating nature of racial segregation. The promo-

tion of K-12 diversity is critical to the goal of attaining the benefits of diversity in higher education through means that are neutral as to race.

ARGUMENT

I. RACIAL AND ETHNIC DIVERSITY IS CRITICAL TO THE SUCCESS OF AMERICA'S EDUCATIONAL MISSION.

A. This Court Has Recognized the Educational Benefits of Student Diversity.

In upholding the compelling interest of the University of Michigan Law School in promoting student diversity, this Court recognized that substantial educational benefits follow from diversity in higher education. *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003). It acknowledged the extensive social science research showing that "student body diversity promotes learning outcomes, and 'better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals.'" *Id.* at 330. The Court thus reaffirmed its earlier holding that universities have "a substantial interest that legitimately may be served by a properly devised admissions program involving the competitive consideration of race and ethnic origin." *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 320 (1978) (Part V-C, opinion of Powell, J.); *see id.* at 272 (Brennan, White, Marshall, Blackmun, J.J., joining Part V-C).

Relying on the constitutional analysis in *Bakke*, *Grutter*, and *Gratz v. Bollinger*, 539 U.S. 244 (2003), the nation's colleges and universities have included race and ethnicity among the traditional range of diversity-enhancing factors used in their admissions policies. *See Grutter*, 539 U.S. at 323. They have done so in the strong belief — shared by leaders of higher educational institutions of every type, faculty and administration — that student diversity, including racial and ethnic diversity, advances goals that are essential to higher education. *See, e.g.*, ACE Bd. of Direc-

tors, *Statement on Affirmative Action and Diversity* (May 25, 1995); American Ass'n of Community Colleges, *Statement on Inclusion* (Apr. 12, 1997); American Ass'n of State Colls. and Univs., *Access, Inclusion and Equity: Imperatives for America's Campuses* 32 (1997); American Ass'n of Univ. Professors, *Affirmative Action*, 83 Academe 38 (July-Aug. 1997); Council of Graduate Schools, *Building an Inclusive Graduate Community: A Statement of Principles*, 30 Communicator 1 (June 1997); Association of Am. Univs., *On the Importance of Diversity in University Admissions*, N.Y. Times, Apr. 24, 1997, at A27 (stating that without diversity "the quality and texture of . . . education . . . will be significantly diminished" and the institutions' role hindered).

B. Educators Who Seek Diversity's Benefits Are Entitled to Deference.

The Court in *Grutter* described its decision as "in keeping with our tradition of giving a degree of deference to a university's academic decisions, within constitutionally prescribed limits." 539 U.S. at 328 (citations omitted). While invidious racial discrimination is always subject to court intervention, *see, e.g.*, *Sweatt v. Painter*, 339 U.S. 629 (1950), the principle of educational autonomy, grounded in the First Amendment, gives educators broad latitude to make judgments regarding "the selection of its student body," and "'good faith' on the part of a university is 'presumed' absent 'a showing to the contrary.'" *Grutter*, 539 U.S. at 329 (quoting *Bakke*, 438 U.S. at 312, 318-19).

The deference demonstrated in *Grutter* exemplifies the longstanding tradition of governmental forbearance with respect to the academic judgments of college and university administrators and faculty. From the nation's founding to the present, courts have chosen to give the institutions and their faculties more, not less, latitude to make judgments about how to conduct education. *See* Martin Trow, *Federalism in American Higher Education*, *in Higher Learning in*

America 1980-2000 (Arthur Levine ed., 1993); *see also* Derek Bok, *Higher Learning* 14 (1986) (American universities are accorded "greater freedom from government supervision than higher education enjoys in any major country in the world"). This Court has exercised such forbearance in the understanding that academic judgments — as these are, given diversity's link to outcome and performance — "require 'an expert evaluation of cumulative information and [are] not readily adapted to the procedural tools of judicial or administrative decisionmaking.'" *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 226 (1985) (quoting *Board of Curators of Univ. of Mo. v. Horowitz*, 435 U.S. 78, 98-90 (1978)).

This Court has applied similar principles of deference to the complex pedagogical decisions made by local school officials. As the district court observed in *McFarland*, "Educating the community's children is not optional. It is essential to all facets of this community's growth and future." *McFarland v. Jefferson County Pub. Sch.*, 330 F. Supp. 2d 834, 851 n.32 (W.D. Ky. 2004). This Court has thus emphasized that local officials are entitled to substantial latitude in determining what kind of educational policies best suit the needs of the children in their community. *See, e.g.*, *Missouri v. Jenkins*, 515 U.S. 70, 131 (1995) (Thomas, J., concurring) (describing autonomy of school districts "a vital national tradition") (citation omitted). The principles of local control and judicial deference foster "experimentation, innovation, and a healthy competition for educational excellence." *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 50 (1973). *See generally* Kevin Brown, *The Constitutionality of Racial Classifications in Public School Assignments*, 29 Hofstra L. Rev. 1, 68-69 (2000) (observing that Court has shown increased deference when applying constitutional rights "in light of the special environment of public education").

It is evident that the assignment plans under review reflect decades of deliberative efforts by the respective school districts to promote academic achievement through student body diversity. These efforts have entailed the collection and evaluation of cumulative information — including observation of classroom dynamics, cognitive processes, and other specialized knowledge — for which educators are best qualified. *See Ewing*, 474 U.S. at 226. It is also undisputed that the officials' efforts to achieve diversity have been made in good faith, with the intent of benefiting students of all races rather than benefiting or burdening one particular group. *See Parents Involved in Cmty. Sch. v. Seattle Sch. Dist., No. 1*, 426 F.3d 1162, 1195 (9th Cir. 2005) (Kozinski, J., concurring) ("Not only does a plan that promotes the mixing of races deserve support rather than suspicion and hostility from the judiciary, but there is much to be said for returning primacy on matters of educational policy to local officials.").

Respect for the institutional competence and judgment of educators, along with a recognition of the well-established educational benefits of student diversity, counsels in favor of the same kind of deference this Court afforded the law school in *Grutter*.

C. Student Diversity is a Compelling Governmental Interest at All Levels.

As recognized in *Grutter*, 539 U.S. at 328-33, there is a broad consensus among educators in the United States that student diversity is essential to their mission. Diversity enables students to participate in the global economy. It prepares them for the rights and responsibilities of citizenship. It fosters "the examined life" by which students may define their own values and determine their futures.

While *Bakke*, *Grutter*, and *Gratz* focused on admissions programs at the university level, substantial benefits also follow from the promotion of diversity in primary and

secondary education. Amici urge the Court to recognize diversity as a compelling government interest at all levels of the nation's educational system, including public K-12 schools, so that the 63 percent of Americans who do not obtain a college degree, *see* U.S. Census Bureau, *Educational Attainment in the United States* 3 (June 2004), may realize its benefits too.

1. Diversity Promotes Academic Achievement.

In *Grutter* this Court upheld the university's judgment that "diversity will, in fact, yield educational benefits." 539 U.S. at 329. "In seeking the 'right to select those students who will contribute the most to the "robust exchange of ideas,"'" it wrote, "a university seeks 'to achieve a goal that is of paramount importance in the fulfillment of its mission.'" *Id.* at 324 (quoting *Bakke*, 438 U.S. at 313). Numerous expert reports and studies have documented the educational benefits that result from student body diversity, including the promotion of "cross-racial understanding," dismantling of racial stereotypes, enabling students "to better understand persons of different races," and making classroom discussion "livelier, more spirited, and simply more enlightening and interesting." *Id.* at 330.

It is clear that these same educational benefits result from multiracial diversity in primary and secondary schools. The social science research is extensive. *See* Janet W. Schofield, *Review of Research on School Desegregation's Impact on Elementary and Secondary School Students*, *in Handbook of Research on Multicultural Education* 597, 610 (James A. Banks ed., 2001); Maureen T. Hallinan, *Diversity Effects on Student Outcomes: Social Science Evidence*, 59 Ohio St. L.J. 733, 741-42 (1998); Rita E. Mahard & Robert L. Crain, *Research on Minority Achievement in Desegregated Schools*, *in The Consequences of School Desegregation* 103, 111, 113 (Christine H. Rossell & Willis D. Hawley eds., 1983).

Diversity advances academic achievement because it contributes to the process of learning. Education involves far more than transmission of desiccated knowledge from teacher to student. The very word "educate" derives from the Latin "educe," "to draw out." Ideas must be "utilised, or tested, or thrown into fresh combinations." Alfred North Whitehead, *The Organization of Thought, Educational and Scientific* 4 (1974). "There is only one subject-matter for education, and that is Life in all its manifestations." *Id.* at 13. *See also* John Dewey, *Democracy and Education* 5-6 (Free Press 1966) (1916) ("[O]ne has to assimilate, imaginatively, something of another's experience in order to tell him intelligently of one's own experience.").

A classroom occupied by students from diverse backgrounds exposes each to a broader array of vantage points and experiences. A precept of developmental psychology is that we learn by formulating, revising, and refining conceptions of the world. Peter B. Pufall, *The Development of Thought: On Perceiving and Knowing*, *in* Robert Shaw & John Bransford, *Perceiving Acting, and Knowing: Toward an Ecological Psychology* 173-74 (1977). We learn when shaken by new facts, beliefs, experiences, and viewpoints. The student assimilates the new data so that they fit the existing conception, or revises the conception to accommodate the new data. This "disequilibration," as Jean Piaget called it, and the subsequent restoration of cognitive balance, force learners to refine their thinking. Piaget taught that "disequilibration" experiences have greatest impact when they come from "social interaction." Jean Piaget, *Piaget's Theory*, *in* 1 *Carmichael's Manual of Child Psychology* (P.H. Mussen ed., 3d ed. Wiley 1970). A student, confronted by a peer who has a new or unexpected way of looking at the world, meets that perspective as an equal, and can explore and absorb it more fully than if merely told about it in, for example, a teacher's lecture. *See, e.g.*, Diane N. Ruble, *A Phase Model of Transitions: Cognitive and Motivational*

Consequences, 26 Advances in Experimental Social Psych. 163, 171 (1994).

These bedrock principles of developmental psychology, to which educators at all levels subscribe, teach that exposing students to a broad array of life experiences and perspectives is essential to learning. Racial and ethnic diversity allows students of all races to develop their minds through exposure to new perspectives, experiences, and the give-and-take that leads to critical thought. *See, e.g.*, Michal Kurlaender & John T. Yun, The Civil Rights Project, Harvard Univ., *The Impact of Racial and Ethnic Diversity on Educational Outcomes: Cambridge, MA School District* 2 (2002) (finding that students in diverse schools "increased their level of understanding of diverse points of view, and enhanced their desire to interact with people of different backgrounds in the future").

The educational value of diversity derives not from a false assumption that all members of one race think alike, or that race is a proxy for viewpoint. *See Grutter*, 539 U.S. at 333. Rather, diversity enables students to discover the falsity of such stereotypes: *i.e.*, that there is in fact a broad range of viewpoints and experiences within minority communities. *See* Jonathan R. Alger, *The Educational Value of Diversity*, 83 Academe 20, 21 (Jan.-Feb. 1997) ("For example, by seeing firsthand that all black or Hispanic students do not think alike, white students can overcome learned prejudices that may have arisen in part from a lack of direct exposure to individuals of other races."). At the same time, because race still affects how students are treated and perceived by others, students of different races and ethnic origins bring a broad range of experiences to the classroom. The interchange of these experiences allows students to learn from each other.

2. Diversity Prepares Students for Work in the Global Economy.

The emerging global economy requires workers who are able to function effectively in highly diverse settings. A 1999 study by the Department of Labor concluded that this skill is essential for primary and secondary school students to succeed in U.S. businesses. Secretary's Comm'n on Achieving Necessary Skills, U.S. Dep't of Labor, *Skills and Tasks for Jobs: A SCANS Report for America 2000*, at 1-3 to 1-4, 2-6 (1999). Congress has similarly found that it is in the nation's best interests to prepare "all students to function well in a technologically oriented and a highly competitive economy comprised of people from many different racial and ethnic backgrounds." No Child Left Behind Act of 2001, 20 U.S.C. § 7231(a)(4)(B) (2006).

In *Grutter* the Court acknowledged the strong preference of employers for workers whose skills have been developed "through exposure to widely diverse people, cultures, ideas, and viewpoints." 539 U.S. at 330-31. A diverse learning environment, it observed, better prepares students "for an increasingly diverse workforce and society." *Id.* at 330.

Because the majority of U.S. workers are not college graduates, the economic need for diversity in K-12 education is also critical. It is well established that public education is a "principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment." *Plyler v. Doe*, 457 U.S. 202, 223 (1982).

Research shows that diversity in the K-12 classroom better prepares students to function in workplaces with diverse customers, clients, co-workers, and business partners. Students educated in integrated schools are more likely to work in integrated work environments as adults. *See* Amy S. Wells & Robert L. Crain, *Perpetuation Theory and the Long-Term Effects of School Desegregation*, 64 Rev. Educ. Res.

531 (1994); Jomills H. Braddock II & James M. McPartland, *Social-Psychological Processes That Perpetuate Racial Segregation: The Relationship Between School and Employment Desegregation*, 19 J. Black Stud. 267, 286 (1989); *see also* Marvin P. Dawkins & Jomills H. Braddock II, *The Continuing Significance of Desegregation: School Racial Composition and African American Inclusion in American Society*, 63 J. of Negro Educ. 394, 403 (1994). "School racial composition has a strong, statistically significant, and positive effect on the likelihood that Blacks will have White coworkers and that Whites will have Black coworkers." William T. Trent, *Outcomes of School Desegregation: Findings From Longitudinal Research*, 66 J. Negro Educ. 255, 256 (1997).

3. Diversity Strengthens Democratic Values and Civic Participation.

This Court has rightly described public education as "the very foundation of good citizenship," *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954), and the promotion of democratic values has always been a primary objective of education in the United States. The Founders advocated common schools to bring together the nation's young and instill a sense of national community. *See* Noah Webster, *On the Education of Youth in America* (1790), *in Essays on Education in the Early Republic* 66 (Frederick Rudolph ed., 1965); Carl F. Kaestle, *Pillars of the Republic: Common Schools and American Society 1780-1860*, at 7 (Eric Foner ed. 1983) (quoting Benjamin Rush). "An inclination join'd with an Ability to serve mankind, one's Country, Friends and Family," wrote Franklin, "should be the great Aim and End of all learning." Benjamin Franklin, *Proposals Relating to the Education of Youth in Pennsylvania* 30 (1749, reprint 1931).

In the context of higher education, the Court has "repeatedly acknowledged the overriding importance of preparing

students for work and citizenship, describing education as pivotal to 'sustaining our political and cultural heritage' with a fundamental role in maintaining the fabric of society." *Grutter*, 539 U.S. at 331 (quoting *Plyler*, 457 U.S. at 221); *see also id.* at 324 ("Justice Powell emphasized that nothing less than the '"nation's future depends upon leaders trained through wide exposure" to the ideas and mores of students as diverse as this Nation of many peoples.'") (quoting *Bakke*, 438 U.S. at 313).

Like institutions of higher learning, elementary and secondary schools have a critical role in sustaining our political and cultural heritage. They serve as "a most vital civic institution for the preservation of a democratic system of government, and as the primary vehicle for transmitting the values on which our society rests." *Plyler*, 457 U.S. at 221 (internal quotation marks and citations omitted); *see also Mueller v. Allen*, 463 U.S. 388, 395 (1983) ("An educated populace is essential to the political and economic health of any community . . . .").

Teachers in elementary and secondary schools seek to develop students' ability not only to understand and develop their own views on important public issues, but also to engage in the deliberative aspects of democracy. They teach children to interact with others peacefully, listen with an open mind, and persuade, so as to achieve collective solutions to public problems. Student diversity enhances the teaching of citizenship by broadening classroom discussion and exposing students to perspectives borne of different life experiences. Diversity takes students "out of the narrow circle of personal and family selfishness . . . accustoming them to the comprehension of joint interests, the management of joint concerns — habituating them to act from public or semi-public motives and guide their conduct by aims which unite instead of isolating them from one an-

other." John Stuart Mill, *On Liberty*, *in Three Essays* 134 (Oxford Univ. Press 1975) (1859).

In particular, this Court has noted, attending diverse schools helps to prepare "minority children for citizenship in our pluralistic society while, we may hope, teaching members of the racial majority to live in harmony and mutual respect with children of minority heritage." *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 472-73 (1982). This observation finds strong support in academic research. Studies show that interpersonal interaction in desegregated schools reduces racial prejudice and stereotypes and improves students' citizenship values and their ability to succeed in a racially diverse society in their adult lives. *See* Derek Black, Comment, *The Case for the New Compelling Government Interest: Improving Educational Outcomes*, 80 N.C. L. Rev. 923, 951-52 (2002). Childhood interracial contact in schools encourages toleration, breaks down stereotypes, and decreases racial prejudice — particularly during students' "formative years." Peter B. Wood & Nancy Sonleitner, *The Effect of Childhood Interracial Contact on Adult Antiblack Prejudice*, 20 Int'l J. of Intercultural Rel. 1, 14-15 (1996). Diverse public schools lead to a greater sense of civic and political engagement and an increased desire to live and work in multiracial settings as adults. *See* Janet W. Schofield, *School Desegregation and Intergroup Relations: A Review of the Literature*, 17 Rev. Educ. Res. 335, 335-409 (1991); Lee Sigelman & Susan Welch, *The Contact Hypothesis Revisited: Black-White Interaction and Positive Racial Attitudes*, 71 Soc. Forces 781 (1993); Amy S. Wells et al., *How Desegregation Changed Us: The Effects of Racially Mixed Schools on Students and Society* 15-18 (1994).

Diversity in the public school classroom, as well as on the college campus, eradicates the barriers that keep students from knowing others and, as a result, learning more about

themselves. It strengthens students' ability to interact with others from different backgrounds, and better prepares them to serve as future voters, jurors, school board members, and engaged participants in public affairs. It is an essential step toward realizing "the dream of one Nation, indivisible." *Grutter*, 539 U.S. at 332.

II. THE PROMOTION OF DIVERSITY AT THE K-12 LEVEL ADVANCES EXCELLENCE IN HIGHER EDUCATION.

Amici also support efforts to promote student diversity in K-12 education because they advance excellence in higher education.

A. K-12 Diversity Leads to Higher College Attendance.

First, diversity in K-12 schools increases the overall pool of applicants for colleges and universities, including students with the potential to "contribute the most to the 'robust exchange of ideas'" at that level. *See Grutter*, 539 U.S. at 324 (quoting *Bakke*, 438 U.S. at 313). Research has shown that African American students who attend diverse K-12 schools have a higher college attendance rate than those who do not. Michael A. Boozer et al., *Race and School Quality Since* Brown v. Board of Education, 1992 Brooking Papers Econ. Activity (Microeconomics) 269, 301-06; Robert L. Crain & Rita E. Mahard, *School Racial Composition and Black College Attendance and Achievement Test Performance*, 51 Soc. Educ. 81, 81 (1978). In addition, both black and white students who develop cross-racial friendships tend to have higher educational aspirations than students with only friends of same race. *See* Maureen T. Hallinan & Richard A. Williams, *Students' Characteristics and the Peer Influence Process*, 63 Soc. Educ. 122 (1990).

Studies have further documented that black and white students who attend diverse K-12 schools are more likely to attend desegregated colleges. Jomills H. Braddock II, *The*

Perpetuation of Segregation Across Levels of Education: A Behavioral Assessment of the Contact-Hypothesis, 53 Soc. Educ. 178, 184-85 (1980). Student diversity thus helps to break down "the self-perpetuating cycle of racial segregation in America." *Id.* at 185; *see generally* James E. Ryan, *Schools, Race, & Money*, 109 Yale L.J. 249, 301-08 (1999) (summarizing research showing that "desegregation of schools leads to desegregation in later life — in college, in social situations, and on the job") (citations omitted). Because higher educational achievement correlates with higher socioeconomic status, the children of minorities who have received the educational benefits of diversity "are more apt to begin school at the same starting point as their nonminority classmates." Trent, *supra*, at 257.

B. K-12 Diversity Better Prepares Students for College.

Students who receive the educational benefits of diversity in elementary and secondary schools are also better prepared to handle the demands of higher education. As discussed in Section I, students educated in diverse learning environments are exposed to and assimilate a broader range of viewpoints and experiences. They better understand the falsity of stereotypes and are better equipped to succeed in a racially diverse society. They have a greater sense of civic and political engagement. Each of these attributes strengthens a student's capacity to learn and contribute to the college experience. Not surprisingly, studies show that students who attended diverse K-12 schools are more likely to receive higher grades in college, Crain & Mahard, *supra*, at 98-99, and to graduate, Robert L. Crain et al., *Finding Niches: Desegregated Students Sixteen Years Later* 11-12, 51 (Rand Corp. Report No. R-3243-NIE, Jan. 1985).

Indeed, some long-term benefits of diversity appear to be uniquely potent in elementary and secondary schools. In the recent litigation addressing the constitutionality of a school

assignment plan in Lynn, Massachusetts, the district court noted the benefits of interracial exposure on younger, more impressionable students. One expert in the case described racial stereotyping as "a 'habit of mind' that is difficult to break once it forms" and emphasized the need to inculcate racial tolerance before students become "locked into racialized thinking." *Comfort v. Lynn Sch. Comm.*, 283 F. Supp. 2d 328, 356 (D. Mass. 2003). Similarly, Justice Scalia has suggested that such lessons are best taught early in life, "in institutions ranging from Boy Scout troops to public-school kindergartens." *Grutter*, 539 U.S. at 347 (Scalia, J., dissenting).

The effect of K-12 diversity on college performance is similar to the effects that the Court found significant in *Grutter*. Just as employers and military leaders depend on the promotion of diversity in the college setting to achieve their professional and national security objectives, *see id.* at 330-31, colleges and universities rely on lower-level schools to prepare students of all races and ethnic backgrounds for the demands of higher education. The educational benefits of student diversity are integral to that preparatory process.

C. K-12 Diversity Contributes to Realizing the Court's Vision of Full Equality.

At the conclusion of its opinion in *Grutter*, the Court observed that a "core purpose of the Fourteenth Amendment was to do away with all governmentally imposed discrimination based on race." 539 U.S. at 341-42 (quoting *Palmore v. Sidoti*, 466 U.S. 429, 432 (1984)). Noting that the number of minority law school applicants with high grades and test scores had increased in the 25 years since *Bakke*, the Court expressed its expectation that "25 years from now" colleges and universities will no longer need race-conscious admission programs to further the compelling governmental interest in obtaining the educational benefits that follow from student body diversity. *Id.* at 343.

Amici share the Court's hope that the next generation will bring about conditions that allow diversity in higher education to be achieved through entirely race-neutral means. As Dr. King realized, however, "the arc of the moral universe is long," and there is no guarantee that, absent deliberate efforts at all levels of society, such a state of justice will materialize on its own in the next 22 years.

The reality is that even as our own nation grows increasingly diverse, its public schools are becoming increasingly segregated. In fact, virtually all of the nation's largest school districts have shown lower levels of interracial exposure since 1986, "and in some districts, these declines are sharp." *See* Erica Frankenberg & Chungmei Lee, The Civil Rights Project, Harvard Univ., *Race in American Public Schools: Rapidly Resegregating School Districts* 4 (2002). The resegregation of K-12 schools inhibits the educational benefits that result from student body diversity. Students educated in such schools simply do not stand on a level playing field with those who have learned alongside peers from other racial groups. *See Grutter*, 539 U.S. at 345 (Ginsburg, J., concurring) (noting "current reality" that many minority children attend non-diverse schools and "encounter markedly inadequate and unequal educational opportunities").

If race-conscious admission policies in colleges and universities are to become obsolete, local officials should be granted the latitude to promote student diversity in elementary and secondary schools now. The school assignment plans under review reflect the broad consensus among educators that meaningful interracial contact leads to the dismantling of racial stereotypes, good citizenship, and the development of critical thought, whereas the ill effects of segregation are self-perpetuating. By promoting diversity in primary and secondary education, they also give colleges and universities a broader array of applicants who are equipped

to face the demands of higher education, thus easing pressure on them to attain a diverse student population through race-conscious admissions policies. *See* Goodwin Liu, *Brown, Bollinger, and Beyond*, 47 How. L.J. 705, 755 (2004). Finally, the plans advance the nation's sacred commitment, now a half century old, that educational opportunity be made "available to all on equal terms." *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954). For these reasons, amici urge that the judgments below be affirmed.

CONCLUSION

Government has a compelling interest in attaining the educational benefits that result from student body diversity, and substantial deference is due to the judgment of educators who pursue them.

Respectfully submitted,

MICHAEL P. BOUDETT
DEAN RICHLIN
ROBERT E. TOONE
BANCROFT LITTLEFIELD JR.
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, MA 02210
(617) 832-1000

Counsel for Amici Curiae

Dated: October 2006

ADDENDUM: AMICI ON THIS BRIEF

- American Council on Education: See description at page 1 of brief.
- American Association of Community Colleges. Represents 1,100 two-year institutions.
- American Association of State Colleges and Universities. Represents over 400 state colleges and universities.
- American Association of University Professors. Represents some 44,000 faculty members and research scholars; defends academic freedom and the free exchange of ideas in higher education.
- American College Personnel Association. Serves student affairs educators and administrators.
- American Dental Education Association. Represents all of the dental schools in the United States and Canada.
- Association of American Colleges and Universities. Represents more than 1,000 accredited colleges and universities.
- Association of American Law Schools. Represents 164 law schools and shares with the American Bar Association responsibility for accrediting American law schools.
- Association of American Universities. Represents 62 public and private major research universities.
- Association of Community College Trustees. Represents over 6,000 board members who govern community, technical, and junior colleges.
- Association of Governing Boards of Universities and Colleges. Serves some 30,000 trustees, regents, and other senior administrators responsible for 1,700 colleges, universities, and independent schools.

- Association of Jesuit Colleges and Universities. Represents the 28 Jesuit institutions of higher education in the United States.
- The College Board. Represents more than 5,000 schools, colleges, universities, and other educational organizations.
- Council for Christian Colleges and Universities. Represents 129 Christian liberal arts colleges and graduate schools.
- Hispanic Association of Colleges and Universities. Represents more than 270 Hispanic-serving institutions and associate member institutions in the states and Puerto Rico.
- National Association for College Admission Counseling. Represents, and promotes ethics among, admission officers and school counselors.
- National Association of College and University Business Officers. Represents chief administrative and financial officers at more than 2,100 colleges and universities.
- National Association of State Universities and Land Grant Colleges. The nation's oldest higher education association, represents approximately 210 public universities and colleges enrolling 3.1 million students in all 50 states.
- National Association of Student Personnel Administrators. Serves student affairs administrators at all levels.
- United Negro College Fund. Provides financial aid to students and represents 39 private, accredited four-year historically black colleges and universities.
- The Women's College Coalition. Represents women's colleges and universities in the United States and Canada.