No. 11-345

IN THE

Supreme Court of the United States

ABIGAIL NOEL FISHER,

Petitioner,

v.

UNIVERSITY OF TEXAS AT AUSTIN, *et al.*,

Respondents.

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

BRIEF OF DR. ROBERT D. PUTNAM AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF THE AMICUS CURIAE

Dr. Robert D. Putnam is the Peter and Isabel Malkin Professor of Public Policy at the Kennedy School of Government at Harvard University.[1] A recipient of the Johan Skytte Prize, one of the world's highest accolades for a political scientist, Dr. Putnam has conducted extensive research on ethnic and racial diversity, and education. Dr. Putnam has consulted widely with national leaders, including the last three American presidents and the last three British prime ministers, on issues relating to the social sciences, and has authored 14 books and 96 articles on these issues.[2] He is the former president of the American Political Science Association, a member of the National Academy of Sciences, and a Fellow of the British Academy.

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[1] In letters lodged with the Clerk of the Court, Counsel for the Petitioners and Respondents have granted blanket consent for the filing of *amicus* briefs in this case in accordance with this Court's Rule 37.3(a). *Amicus* submitting this brief hereby represents that no counsel for any party authored this brief in whole or in part. Additionally, no party or counsel for a party – or any person other than *amicus* and his counsel – made a monetary contribution intending to fund the preparation or submission of this brief.

[2] Dr. Putnam is the author of *E Pluribus Unum: Diversity and Community in the Twenty-first Century, the 2006 Johan Skytte Prize Lecture; Education, Diversity, Social Cohesion and "Social Capital"*; and *Education and Social Capital*. His books include *Bowling Alone: The Collapse and Revival of American Community*; *Better Together: Restoring the American Community*; and *American Grace: How Religion Divides and Unites Us*.

Dr. Putnam has conducted a nationwide study on the effects of a more diverse and multicultural society, finding that on balance, diversity is an important social asset. This conclusion reaffirms Dr. Putnam's views, based upon his experience as a professor of social sciences for over 40 years, that diversity in higher education not only has substantial benefits for all students but also facilitates greater learning.

Dr. Putnam did not seek to become involved in this case, but because his findings on diversity were inaccurately and selectively described in the *amicus curiae* brief submitted by Abigail Thernstrom, Stephan Thernstrom, Althea K. Nagai, and Russell Nieli (collectively the "Thernstrom *amici*"), he respectfully submits this brief to clarify the record. Indeed, contrary to suggestions in the Thernstrom *amici* brief, Dr. Putnam's research supports the compelling interest of seeking to attain diversity in our Nation's institutions of higher education.

SUMMARY OF ARGUMENT

The academic work at the center of this brief is Dr. Putnam's essay, *E Pluribus Unum: Diversity and Community in the Twenty-first Century, the 2006 Johan Skytte Prize Lecture*, 30 Scandinavian Political Studies 137 (2007) ("*E Pluribus Unum*"), the very title of which reflects our Nation's objective "to create a novel 'one' out of a diverse 'many.'" The Thernstrom *amici* have twisted Dr. Putnam's essay and used it to argue against the University of Texas at Austin's ("UT") use of race-conscious admissions policies to achieve diversity in its student body, and to capture the benefits flowing to all students from

such diversity. Dr. Putnam's essay does not support their conclusion.

Quite to the contrary, Dr. Putnam's extensive research and experience confirm the substantial benefits of diversity, including racial and ethnic diversity, to our society. In his essay, Dr. Putnam concluded that, while increased diversity may present challenges in the short to medium term, greater diversity can lead to significant benefits to society in the medium to long term. These benefits are manifest in higher education, as Dr. Putnam's more than 40 years of experience as a professor at Harvard University and the University of Michigan demonstrate.

The Thernstrom *amici* selectively cite Dr. Putnam's research and focus on only one of the three findings that Dr. Putnam makes in his essay. In so doing, the Thernstrom *amici* present a distorted view of Dr. Putnam's work. They fail to acknowledge his other points: most importantly, that diversity has considerable benefits and that the most effective method to reduce any short term disadvantages of diversity is to create a wider sense of "we." The tools for doing so include programs like the race-conscious admissions policy that UT has implemented.

ARGUMENT

I. Dr. Putnam's research and experience support the holding in *Grutter v. Bollinger* that the attainment of a diverse student body is a compelling state interest.

Dr. Putnam's study examines the important challenges and significant opportunities facing all

advanced countries in the transition to a more diverse and multicultural society. *See E Pluribus Unum* at 144. The evidence that Dr. Putnam reviewed in his essay demonstrated that increased diversity in the United States and other advanced nations is inevitable and that, while this fact may present challenges in the short to medium term, increased diversity can benefit society in the medium to long term by including a broader range of groups within what it means to be, for example, an American. *See id.* at 138-39.

This reality is reflected in Dr. Putnam's long experience as a professor. A diverse student body is essential to effective learning and in-class discussion of the social issues, such as race relations and urban poverty, which are addressed in Dr. Putnam's courses. A realistic discussion of these issues would be far less valuable without students from a wide array of backgrounds, including diverse racial and ethnic origins. Moreover, the value of diversity extends to learning in other academic fields, such as mathematics and science. Research has shown that broad diversity can produce improved problem-solving. This diversity is critical in higher education and, as this Court stated in *Grutter*, provides great benefit to students entering "today's increasingly global marketplace." *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003). Accordingly, Dr. Putnam's research and experience support this Court's holding in *Grutter* – and the Respondents' position in this case – that "student body diversity is a compelling state interest that can justify the use of race in university admissions." *Id.* at 325.

A. Dr. Putnam's essay made three major points about diversity.

E Pluribus Unum discusses three broad points, which are clearly laid out in the introduction. *See E Pluribus Unum* at 138-39. First, "[i]ncreased immigration and diversity are not only inevitable, but over the long run they are also desirable. Ethnic diversity is, on balance, an important social asset, as the history of [the United States] demonstrates." *Id.* at 138. Second, "[i]n the short to medium run, however, immigration and ethnic diversity challenge social solidarity and inhibit social capital." *Id.* Third, "[i]n the medium to long run, on the other hand, successful immigrant societies create new forms of social solidarity and dampen the negative effects of diversity by constructing new, more encompassing identities." *Id.* at 138-39. Accordingly, "the central challenge for modern, diversifying societies is to create a new, broader sense of 'we.'" *Id.* at 139.

The first point, that increased diversity is both inevitable and desirable, is based on analysis of immigration trends in the United States and five European countries – Ireland, Germany, Sweden, France and the United Kingdom. *Id.* An increase in diversity brings several benefits to society. For example, increased diversity tends to enhance creativity, as reflected in the large percentages of immigrants who have won Nobel Prizes, become members of the National Academy of Sciences, and won artistic honors such as Academy Awards and Kennedy Center awards. *Id.* at 140. Other research has shown that diversity contributes to greater collective creativity in work groups. *Id.* (citing

Sheila S. Webber & Lisa M. Donahue, *Impact of Highly and Less Job-related Diversity on Work Group Cohesion and Performance: A Meta-Analysis*, 27(2) J. Mgmt. 141 (2001); C. O'Reilly, et al., *Group Demography and Innovation: Does Diversity Help?*, *in* 1 Research in the Mgmt. of Groups and Teams (Elizabeth Mannix & Margaret Neale eds., 1997); K.Y. Williams & C.A. O'Reilly, *Demography and Diversity in Organizations: A Review of 40 Years of Research*, *in* 20 Research in Org. Behavior (Barry M. Staw & Larry L. Cummings, eds., 1998)).

The second part of *E Pluribus Unum* focuses on the challenges resulting from diversity in the short to medium term. *Id.* at 138. In examining these challenges, Dr. Putnam analyzed the "Social Capital Community Benchmark Survey" of 2000, which contained a sample size of 30,000 people. *Id.* at 144. The sample included a "representative national sample of 3,000" and smaller samples in 41 different communities nationwide. *Id.* The study found that, at the time, increased diversity triggered both lower inter-racial trust and trust in people of the respondent's own race. *See id.* at 147-48. Dr. Putnam stated that "[d]iversity seems to trigger *not* in-group/out-group division, but anomie or social isolation." *Id.* at 149.

The third finding of *E Pluribus Unum* shows that in the medium to long term, diversity leads to many positive results. *Id.* at 138-39. Because notions of "diversity" are based on "socially constructed identities," the adaptation to diversity over time requires Americans to develop a more encompassing sense of "we." Race-conscious admissions policies, such as those used at UT, help to facilitate this

adaptation in the area of higher education by fostering in its students a broader sense of what it means to be a UT student, and ultimately, a UT alumnus.

These results also have been observed in other American institutions. The integration of the United States Army has progressed over the last 30 years, to the point where studies in the 1990s found that "the average American soldier has many closer inter-racial friendships than the average American civilian of the same age and social class." *Id.* at 161 (citations omitted). Similar experiences arise in the context of religion. While religion has become less important as a line of social division in America, religion remains personally important to individuals. *See id.* at 160 ("[T]hough most Americans know their own religious affiliation, for younger Americans that affiliation is less salient socially.").

In short, far from finding only that diversity in the short term can produce "overwhelmingly negative" effects, Thernstrom Br. at 13, the point advanced in *E Pluribus Unum* is that "in the short run there is a tradeoff between diversity and community, but that over time wise policies (public and private) can ameliorate that tradeoff." *E Pluribus Unum* at 164. As Dr. Putnam concluded, "[t]he task of becoming comfortable with diversity will not be easy or quick, but it will be speeded by our collective efforts and in the end well worth the effort." *Id.* at 165.

B. Dr. Putnam's more than 40 years of experience as a university professor reaffirm his views on the benefits of diversity in higher education.

The university campus setting precisely illustrates Dr. Putnam's point about the medium to long term effects of diversity. As this Court stated in *Grutter*, a diverse student body promotes "'cross-racial understanding,' helps to break down racial stereotypes, and 'enables [students] to better understand persons of different races.'" 539 U.S. at 330 (citation omitted). Dr. Putnam's teaching experience demonstrates the importance of diversity in higher education.

Dr. Putnam has taught at Harvard University, and before that at the University of Michigan, for more than 40 years. His teaching focuses on contemporary social issues in America, including race relations, urban poverty, and religious diversity. The presence of students from diverse backgrounds fosters realistic exchanges during in-class discussion, and leads to more effective learning. *Id.* (holding the educational benefits of diversity "are 'important and laudable,' because 'classroom discussion is livelier, more spirited, and simply more enlightening and interesting' when the students have 'the greatest possible variety of backgrounds.'"); *Fisher v. Univ. of Tex. at Austin*, 631 F.3d 213, 219 (5th Cir. 2011) (citation omitted).

The type of classroom discussion Dr. Putnam relies on would be significantly impaired in the absence of students from a wide range of backgrounds, including diverse racial and ethnic

origins. Indeed, the lack of a diverse student body would reduce the educational benefits for students of all races. A less diverse student body would diminish exposure to a broader range of perspectives and make all students less prepared to adapt to an increasingly diverse workplace.

The need for broad diversity, including racial and ethnic diversity, in higher education is equally strong in other disciplines, including mathematics and science. For example, research has demonstrated that better, faster problem-solving is produced by increased diversity, especially intellectual diversity. *See, e.g.*, Scott E. Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools and Societies* (2007).

As this Court stated in *Grutter*, "numerous studies show that student body diversity promotes learning outcomes, and 'better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals.'" 539 U.S. at 330 (citations omitted). This premise has long been accepted by the Court. Indeed, quoting Justice Powell's controlling opinion in *Regents of the University of California v. Bakke*, the Court of Appeals stated below that student body diversity

> often brings not just excitement, but valuable knowledge as well. "[A] student with a particular background – whether it be ethnic, geographic, culturally advantaged or disadvantaged – may bring to a [university] experiences, outlooks, and ideas that enrich the training of its student body

> and better equip its graduates to render with understanding their vital service to humanity."

Fisher, 631 F.3d at 219 (quoting *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 314 (1978) (Powell, J.)).

A successful adaptation to the reality that the United States is inevitably becoming more diverse will require society as a whole to create "a new, broader sense of 'we.'" *E Pluribus Unum* at 139. Such a strengthening of shared identities depends upon the existence of "more opportunities for meaningful interaction across ethnic lines where Americans (new and old) work, *learn*, recreate, and live." *Id.* at 164 (emphasis added). Accordingly, Dr. Putnam's research and teaching experience confirm that UT has a compelling interest in a diverse student body and attaining the educational benefits that flow from diversity.

II. The Thernstrom *amici* brief misuses Dr. Putnam's research.

The Thernstrom *amici* brief argues that racial and ethnic diversity in higher education is not a compelling state interest, contending that the increased contact between racial groups on campuses that results from race-conscious admissions policies, even under the parameters of *Grutter*, undermines race relations. The Thernstrom *amici* cite to one of Dr. Putnam's findings to support its argument, while omitting his conclusions that the medium to long term gains of diversity are achieved through increased racial integration and interaction, and that diversity provides many benefits to society.

A. The Thernstrom *amici* brief omits that ultimate gains from diversity are achieved through increased interracial interaction.

The Thernstrom *amici* attempt to use Dr. Putnam's research to emphasize that more diverse settings are characterized by lower social solidarity. Thernstrom Br. at 11 ("[The more contact [people] have with [members of other ethno-racial] groups . . . the more suspicious they are of them."). Dr. Putnam's study was a "comparative static" analysis, that is, a comparison of communities in the United States *at a single point in time*. *See E Pluribus Unum* at 158. As Dr. Putnam notes in his essay, the research survey did not offer statistical evidence on the "dynamic" effects of diversity "over long periods of time within a single place." *Id.* at 158-59. Such a statistical analysis to measure long term effects has not been available, and is one that social scientists have only begun to undertake. *Id.* at 159. Instead, Dr. Putnam relied on historical analysis to measure the long term effects of diversity.

The Thernstrom *amici* mischaracterize Dr. Putnam's research studies by emphasizing only the short term effects of diversity, while ignoring the long term effects. *See* Thernstrom Br. at 13. Ignoring the long term effects is not only intellectually dishonest, it also disserves this Court whose decisions operate in a long-term world. Based upon historical research, Dr. Putnam found that over time, policies designed to encourage shared identity across ethnic groups *reduce* intra-group "social distance" and *increase* social solidarity. *E Pluribus Unum* at 159; *see supra* Part I.A.

For example, another research survey examined whether making friends with a person of another religion leads to a more positive assessment of various religious groups. *See* Robert D. Putnam & David E. Campbell, *American Grace: How Religion Divides and Unites Us* 526-34 (Simon & Schuster, 2010). Dr. Putnam found that "as people build more religious bridges," by making friends with people of another religion, "they become warmer toward people of many different religions," not just those religions to which their friends belong. *Id.* at 533. In the long term, "an increase in interpersonal religious bridging will continue to have a similar effect, smoothing tensions among people of different religions." *Id.*

The same concept applies to race. In the medium to long term, as people have more contact with members of other ethno-racial groups, they will trust people of all ethnicities and races more, and increase social solidarity. *See E Pluribus Unum* at 138-39. People will "adapt[ ] over time, dynamically, to . . . diversity, [which] requires the reconstruction of social identities . . . of the newly more diverse society as a whole." *Id.* at 159-60. They will construct a new, more encompassing identity. *Id.* at 139.

Since increased diversity in this country is inevitable, the social effects of diversity in the medium to long term are significant. "[R]etaining social cohesion in the context of increased diversity is one of the pressing issues of our time." Robert D. Putnam, *Diversity, Social Capital, and Immigrant Integration: Introductory Remarks*, 98 Nat'l Civic Rev. 3, 3 (2009). If the United States does not take affirmative steps to adapt to the reality of a more

diverse society, "the reweaving of our communities may take half a century, judging from our past experience." *Id.*

B. The Thernstrom *amici* brief ignores the many social benefits of diversity outside of the "contact" hypothesis.

The Thernstrom *amici* also fail to acknowledge the many social benefits of diversity existing apart from the challenged "contact" hypothesis. That hypothesis posits that "[a]s we have more contact with people who are unlike us, we overcome our initial hesitation and ignorance and come to trust them more." *E Pluribus Unum* at 141. As the Court recognized in *Grutter*, an admissions policy such as the one used by the University of Michigan Law School "promotes 'cross-racial understanding,' helps to break down racial stereotypes, and 'enables [students] to better understand persons of different races.'" *Grutter*, 539 U.S. at 330. The Thernstrom *amici* seek to minimize these benefits by linking them with the contact hypothesis. *See* Thernstrom Br. at 9-10.

Dr. Putnam's study demonstrates that these educational benefits may occur outside of the contact hypothesis. When "social distance is small," and "there is a feeling of common identity, closeness, and shared experiences," such as in a classroom, students of different races and ethnicities will cultivate relationships with each other. *E Pluribus Unum* at 159. As a result, these students not only will come to trust those individual students more, but also will trust students of all other races and ethnicities more. Over time, they will construct a new, more

encompassing understanding of the embodiment of a UT student, for example. *See id.* Hence, through shared experiences, not solely contact, individuals from diverse backgrounds obtain greater trust and relationships, benefitting themselves and the larger society.

In addition, broad diversity, including racial and ethnic diversity, in higher education creates other powerful benefits, such as fostering collective creativity in workgroups, and "produc[ing] much better, faster problem-solving." *Id.* at 140. The Thernstrom *amici* ignore these benefits of diversity that were part of Dr. Putnam's work.

C. Race-conscious admissions policies such as the ones at UT are effective in increasing interpersonal contact and reducing social distance.

UT's policies foster the small social distance necessary to encourage a shared identity across ethnic groups. Policies that promote interpersonal contacts among members of diverse ethnic groups are among the most effective at reducing social distance. Such policies have led to a decrease in the United States Army's inter-ethnic tensions, the increase of interfaith American relationships, and a renewed historical identity as a nation of immigrants.[3] *See id.*

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[3] As these examples demonstrate, a broad view of diversity is beneficial. Another such area that can lead to a broader sense of community is diversity of economic (*i.e.*, class) backgrounds. Although recent research by Dr. Putnam and others has sought to draw more attention to class divisions and

(Continued …)

The United States Army's affirmative action and anti-discrimination policies provide a clear example of how affirmative action policies foster a new shared identity. *See id.* at 161. Over thirty years ago, race relations in the military were tense. Deadly attacks of fragmentation hand grenades among soldiers of different races were frequent enough that a term was developed for it: "fragging." *See id.* Recent studies now show that the "average American soldier has many closer inter-racial friendships than the average American civilian of the same age and social class." *Id.* An emphasis on shared identities across racial lines among the officer corps played a key role in the now relatively color-blind institution. *See id.*; *see also Grutter*, 539 U.S. at 331 ("[H]igh-ranking retired officers and civilian leaders of the United States military assert that, 'based on [their] decades of experience,' a 'highly-qualified, racially diverse officer corps . . . is essential to the military's ability to fulfill its principle mission to provide national security.'") (citation omitted).

The benefits of diversity have also been realized in America's religious community. The common wisdom among sociologists of American religion was that "11:00 am Sunday is the most segregated hour in the week." *E Pluribus Unum* at 161 (internal quotation marks omitted). Over the last 50 years,

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economic inequality, this does not lessen the compelling state interest in achieving diversity, including racial and ethnic diversity. *See* Robert D. Putnam, Requiem for the American Dream? Unequal Opportunity in America, Address at the Aspen Ideas Festival (June 29, 2012).

however, many churches, especially evangelical megachurches and Catholic parishes, have become substantially more racially integrated. *See id.* This racial integration is, at least in part, due to "the construction of religiously based identities that cut across (while not effacing) conventional racial identities." *Id.*

A century ago, immigrants of different "races" entered the country, including Italians, Polish Catholics, Russians, and others who did not identify as Anglo Saxons. *Id.* at 162. These immigrants' cultures "permeated the broader American cultural framework, with the Americanization of St. Patrick's Day, pizza, and 'Jewish' humour." *Id.* "In some ways 'they' became like 'us', and in some ways our new 'us' incorporated 'them.'" *Id.* This new identity was due, at least in part, to policies aimed at incorporating new immigrants, such as community centers, athletic fields, playgrounds and schools. *Id.*

In short, policies that seek a broad diversity, including racial and ethnic diversity, in educational institutions, such as those in use at UT, hold great promise in overcoming any potential short-run negative effects of diversity identified in the Thernstrom *amici* brief. A nation that is inevitably and increasingly diverse benefits from policies that promote social solidarity and trust through shared experiences and creation of a more inclusive social identity. This is the important lesson from Dr. Putnam's work, "namely to create a novel 'one' out of a diverse 'many.'" *Id.* at 165.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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