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IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

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No. 19-2005

STUDENTS FOR FAIR ADMISSIONS, INC.,

*Plaintiff-Appellant,*

PRESIDENT AND FELLOWS OF HARVARD COLLEGE,

*Defendant-Appellee.*

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On Appeal from the United States District Court for the District of Massachusetts  
Case No. 1:14-cv-14176-ADB

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**BRIEF OF THE NATIONAL ASSOCIATION OF BASKETBALL  
COACHES, WOMEN'S BASKETBALL COACHES ASSOCIATION,  
GENO AURIEMMA, JAMES A. BOEHEIM, JOHN CHANEY,  
TOM IZZO, MICHAEL W. KRZYZEWSKI, JOANNE P. MCCALLIE,  
NOLAN RICHARDSON, BILL SELF, SUE SEMRAU, ORLANDO  
"TUBBY" SMITH, TARA VANDERVEER, ROY WILLIAMS,  
JAY WRIGHT, AND 326 ADDITIONAL CURRENT OR FORMER  
COLLEGE HEAD COACHES AS *AMICI CURIAE*  
IN SUPPORT OF APPELLEE AND AFFIRMANCE**

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, counsel for *Amici Curiae* certifies as follows:

- The National Association of Basketball Coaches has no parent corporation, and no company holds 10 percent or more of its stock.
- The Women's Basketball Coaches Association has no parent corporation, and no company holds 10 percent or more of its stock.

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**INTEREST OF AMICI CURIAE<sup>1</sup>**

The National Association of Basketball Coaches (NABC) represents thousands of coaches from around the country and from every level of basketball. Started in 1927, the NABC has tracked this nation’s evolution on race and diversity, and has made particular efforts in recent years to ensure that leadership in athletic departments reflects the considerable diversity of their teams. The Women’s Basketball Coaches Association (WBCA) represents thousands of women and men who coach women’s and girls’ basketball on every competitive level of the sport. The WBCA has worked to expand educational, professional, and athletic opportunities for female players of all races and backgrounds since its founding in 1981. Both organizations have long supported affirmative action in universities and opposed ballot initiatives prohibiting any consideration of race in the admissions process, including through amicus submissions. *E.g., Fisher v. Univ. of Tex. at Austin*, 136 S. Ct. 2198 (2016). NABC and WBCA are joined by 339 coaches, listed in the Appendix.

*Amici* and their members have a strong interest in ensuring that universities can promote diversity on campus by taking account of race as part of an holistic and

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<sup>1</sup> All parties have consented to the filing of this brief. No counsel for any party authored this brief in whole or in part, and no party, counsel, or person other than *Amici*, their members, and their counsel contributed money to fund the preparation or submission of this brief.

individualized admissions inquiry. Coaches see each day the value that diversity and broadened perspectives give student athletes and the entire campus community, and therefore appreciate the opportunities that a diverse academic environment affords their players. Coaches experience firsthand the educational advantages their players receive from exposure to teammates and other students from diverse backgrounds, and they see their players take the lessons learned from living, studying, and playing in that environment to communities beyond the confines of campus.

Sports teams are often among the most diverse groups on campus, and coaches recognize the dangers of allowing athletics to become a diverse island in an otherwise homogeneous student body, isolating athletes from the broader university community. Student athletes are just that: students and athletes. While student athletes have athletic talents, they have other talents too, and they engage with students from across the university in class, through extracurriculars, and in dining halls and dormitories.

Finally, coaches understand the unique role athletics play in bringing together students, staff, faculty, and community members from diverse backgrounds. *Amici* therefore offer their perspective as the Court considers this important case.

## INTRODUCTION

The Supreme Court has long recognized the crucial educational benefits that come from diversity on campus. And for good reason: diverse groups collaborate better and offer expanded perspectives, and diverse educational institutions benefit both underrepresented and non-underrepresented students alike, better preparing their entire student bodies for success in this increasingly diverse society.

In this brief, *Amici* highlight the experiences of former and current student athletes at Harvard and elsewhere to illustrate how exposure to diversity through participation in collegiate athletics has expanded perspectives, taught valuable leadership skills, prepared student athletes for their future careers, and laid the groundwork for diversity and inclusion at the highest levels of government, business, the military, and many other fields—the very benefits of diversity that the Supreme Court has long recognized and endorsed.

It is precisely because of experiences like these that the Court has repeatedly reaffirmed that promoting diversity is a compelling interest that can justify considering race in admissions as part of an individualized, holistic evaluation of each applicant. That is the admissions program Harvard has enacted. As the District Court found in its careful, fact-bound opinion, Harvard’s admission program allows for consideration of race to promote diversity on campus, but only alongside many

other factors as part of an individualized inquiry into the strengths of each applicant. Plaintiff has provided this Court no basis to question the District Court’s fact-finding or deviate from clear Supreme Court precedent upholding admissions programs materially indistinguishable from Harvard’s.

## ARGUMENT

### **I. The Supreme Court Has Repeatedly Reaffirmed The Importance Of Diversity On College Campuses, Which Harvard’s Program Is Narrowly Tailored To Promote.**

Harvard’s admissions program involves the permissible use of race as part of an holistic, individualized assessment of each applicant to serve the university’s compelling interest in promoting campus diversity, which is precisely the sort of program the Supreme Court has repeatedly (and recently) upheld. At this stage of the case, the applicable legal principles are well settled: the Supreme Court has long recognized that “student body diversity is a compelling state interest that can justify the use of race in university admissions.” *Grutter v. Bollinger*, 539 U.S. 306, 325 (2003); *see also Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978) (plurality op.) (“[T]he attainment of a diverse student body . . . clearly is a constitutionally permissible goal for an institution of higher education.”). As the Court has explained, the promotion of “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 (quotation marks and brackets omitted).

Moreover, “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 (internal quotation marks omitted). Finally, a diverse student body ensures that “the path to leadership [is] visibly open to talented and qualified individuals of every race and ethnicity,” which, in turn, ensures that “[a]ll members of our heterogeneous society [may] have confidence in the openness and integrity of the educational institutions that provide this training.” *Id.* at 332.

Thus, as long as an admissions program does not operate as a racial quota, but rather appropriately considers race as part of an individualized assessment of each applicant, it can satisfy strict scrutiny. For example, the Court upheld the use of race in admissions at the University of Michigan Law School because race was one “soft factor” that admissions officers considered in determining whether to admit each student. *Id.* at 313-14. And most recently, in *Fisher v. University of Texas at Austin*, 136 S. Ct. 2198 (2016), the Court upheld the constitutionality of the University of Texas’s use of race in undergraduate admissions. Because the university had carefully documented the educational benefits it sought to achieve through promoting student-body diversity, it considered race only as part of an individualized inquiry, and alternative race-neutral approaches to achieving these benefits had

proven unsuccessful, the university's admissions program satisfied strict scrutiny. *Id.* at 2214.

The District Court here faithfully applied these principles and concluded, based on a careful review of the extensive trial record, that Harvard's admissions program is narrowly tailored to serve the university's compelling interest in promoting student-body diversity. The court found that Harvard had amply justified its pursuit of diversity to improve educational outcomes for students, and it listed "student living assignments, the available extracurricular opportunities, and Harvard's athletics programs" as specific examples of Harvard's demonstrated commitment to diversity. ADD7-8. Moreover, the Court noted that Harvard's admissions program, which provides for "individualized consideration of each and every applicant," is materially indistinguishable from the Michigan Law School program upheld in *Grutter*. ADD108 (quoting *Grutter*, 539 U.S. at 334).

As the remainder of this brief will demonstrate, the educational benefits of student-body diversity that the Supreme Court identified and the District Court applied are far from speculative or theoretical. *Amici* have observed these benefits firsthand, because college sports teams are often among the most diverse communities on university campuses. As of 2019, 61% of men's basketball players were non-white, as were 49% of women's basketball players. For Division I teams, the percentages are even higher: 77% of men's Division I basketball players and

68% of women’s Division I basketball players were non-white. NCAA, *Sport Sponsorship, Participation and Demographics Search* [Coach and Student-Athlete Data by Sport] (2019), <http://www.ncaa.org/about/resources/research/ncaa-demographics-database>. These numbers show that college sports teams anticipate and reflect the increasing diversity of the Nation’s population and workforce, which continue toward a “majority-minority” makeup. U.S. Census Bureau, 2017 National Population Projections Tables: Main Series, <https://www.census.gov/data/tables/2017/demo/popproj/2017-summary-tables.html>.

Given the particular diversity of student-athletics programs, it is hardly surprising that “student athletes in general have significantly greater engagement with diversity than their non-athlete peers.” Ty M. Cruce & Thomas F. Nelson Laird, *What’s the Score? Diverse Experiences Among Collegiate Athletes and Non-Athletes* 15 (2009), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.169.5840&rep=rep1&type=pdf>. This means that student athletes are more likely to experience the educational benefits of racially diverse interactions, “including intellectual and social self-confidence, openness to diversity, critical thinking, and problem-solving.” *Id.* at 4; *see also* Lisa Wolf-Wendel et al., *There’s No “I” in “Team”*: *Lessons from Athletics on Community Building*, 24 *Rev. Higher Educ.* 369, 369–70 (2001). Examining the experiences of student athletes thus provides valuable qualitative insight into the crucial benefits that flow from exposure to

diversity—benefits that admissions programs like Harvard’s seek to provide for all students, not just student-athletes.

## **II. The Historical And Current Experience Of Student Athletes Demonstrates The Educational Benefits Of Diversity.**

For over a half century, student athletes have been at the forefront of our most important cultural and political conversations. They have been leaders during their time at college, where they have taken brave and outspoken positions on racial equality, and they have been leaders after graduation as well, using lessons learned in college to inform how they shape policy and run businesses. This leadership continues today, and it is made possible by the diverse culture student athletes encounter within their teams and on campus.

A. Diversity in college athletics has played a pivotal role in American history. Only a few decades ago, many major university athletic programs were open only to white athletes. For example, the Southeastern Conference (“SEC”) did not have an African-American basketball player until 1967, when Perry Wallace joined Vanderbilt’s team. Liz Entman, *Perry Wallace, pioneer who integrated SEC basketball, has died*, Vanderbilt News (Dec. 4, 2017), <https://news.vanderbilt.edu/2017/12/04/perry-wallace-pioneer-who-integrated-sec-basketball-has-died/>. Wallace’s experience was far from easy, and was sometimes frightening: he and his teammates faced “rabid hostility” from fans at other southern campuses, including protests, thrown bottles, and racial slurs. *Id.* Despite this adversity, Wallace became

captain of the team, received an SEC Sportsmanship award, and was named the most popular man on campus his senior year. *Id.* After graduating from Vanderbilt with an engineering degree in 1970, Wallace went to law school at Columbia, and from there had a distinguished career practicing law at DOJ and at EPA's National Advisory Council for Environmental Policy and Technology; teaching at Howard, the University of Baltimore, and American University's Washington College of Law; and serving as a securities and commercial arbitrator. *Id.*

Pioneers like Wallace had a profound effect on their teammates and the whole country. By playing alongside minority student athletes, white student athletes began questioning and resisting discriminatory practices they may previously have accepted or ignored. In 1956, for example, the Harvard basketball team agreed to play in a winter holiday tournament in New Orleans. Bill Pennington, *In 1956, a Racial Law Repelled Harvard's Team*, N.Y. Times (Mar. 14, 2012), [https://www.nytimes.com/2012/03/15/sports/ncaabasketball/in-1956-a-racial-law-soured-harvard-on-a-trip-to-new-orleans.html?\\_r=2](https://www.nytimes.com/2012/03/15/sports/ncaabasketball/in-1956-a-racial-law-soured-harvard-on-a-trip-to-new-orleans.html?_r=2). But the Louisiana legislature passed "anti-mixing" legislation barring interracial athletic events and imposing segregated seating at games. *Id.* Although the Harvard team at the time was all-white, the team's center for the previous three seasons, Bob Bowman, was black. *Id.* As Philip Haughey, a senior on the team at the time, recalled, "[O]ur reaction was, 'So Bob wouldn't have been able to come?'" There was no debate after that.

We weren't going. Yes, we were now an all-white team, but if that was their attitude, then no one was going." *Id.* It was, as another player on the team put it, "the right decision, just on principle." *Id.* One historian observed that "Harvard's rebuke, which was resistance from a notable place, exerted the kind of public pressure that began to hem in the South in ways it did not expect." *Id.*

The Harvard team's behavior was no anomaly. Other integrated teams similarly pushed back against discriminatory practices. In 1958, the University of Buffalo football team was invited to the first bowl game in its history—the Tangerine Bowl in Orlando, where the team was to play Florida State. Eric Neel, *All Or Nothing*, ESPN, <https://www.espn.com/espn/eticket/story?page=buffalo58>. The invitation had a condition, however. The team's two African-American players would not be allowed to take the field, because the bowl stadium's leaseholder banned interracial games. *Id.* The university administration put the decision whether to participate in the hands of the players. *Id.* According to those players, "there was no discussion"—the team unanimously agreed not to participate. *Id.* That unanimity came from the fact that players like Joe Oliveiro, a first-generation college student from an all-white, Italian-American suburb of Buffalo, had experienced the "revelation" of an integrated sports team, where he came to feel "like a citizen of some bigger place." *Id.*

B. Still today, exposure to diversity helps to transform student athletes into outspoken advocates for racial equality. After Colin Kaepernick, then the quarterback for the San Francisco 49ers, began kneeling during the national anthem to protest racially-charged police brutality, student athletes at colleges across the country took up the gesture and began kneeling, raising their fists, or locking arms during the national anthem. Alexandra Vollman, *College Athletes Speak Out*, Insight Into Diversity (Nov. 15, 2017), <https://www.insightintodiversity.com/college-athletes-speak-out/>. Their actions have generated controversy and attention, including sharp criticism from the President of the United States. And while some university administrators have reacted negatively to the demonstrations—some schools have removed protestors from their teams, and others have instituted policies requiring that all athletes and staff stand during the anthem—many teams have expressed solidarity with teammates who want to take a stand. *Id.*

The debates that this advocacy has spawned have had profoundly positive effects for student athletes and their teams. For instance, when UCLA soccer player Kaiya McCullough approached Amanda Cromwell, the coach of the UCLA women's soccer team, about the possibility of kneeling during the national anthem at a September 28, 2017 game, Cromwell began a discussion with the entire team about how to support McCullough. *Id.* The team collectively decided to come out to the field with arms locked and to kneel before the anthem; those who wanted to

remain kneeling during the anthem could kneel, and those who wanted to stand could stand. *Id.* McCullough, who identifies as a black woman, was “overwhelmed” by the team’s response, and the team continued to follow the same inclusive and respectful approach moving forward. *Id.* The experience of listening and coming to understand different perspectives has changed the ways that UCLA women’s soccer players view their teammates and their broader role in the community: members of the team have, for example, expanded their community outreach through work with inner-city families and the Los Angeles Police Department. *Id.*<sup>2</sup>

C. Harvard itself has benefitted from this legacy of leadership and advocacy from its diverse student athletes. Schuyler Bailar, a 2019 graduate and Korean-American swimmer, is a perfect example. Bailar was a nationally ranked swimmer recruited to join the women’s swim team at Harvard in 2013. After graduating from high school, Bailar came out as transgender and transitioned during a gap year. Bailar did not want to give up his dream of swimming in college and prepared to swim for the women’s team despite his desire to finally live his authentic self. But his supportive coaches gave him the choice to instead join the men’s team,

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<sup>2</sup> Student athletes have also been leaders in other important cultural conversations. Like the first athletes of color to integrate college teams in the last century, out LGBTQ+ student athletes are now at the forefront of a national conversation about the increasing visibility and acceptance of the LGBTQ community. *See, e.g.,* Cyd Zeigler, *These 8 LGBTQ NCAA athletes shared their diversity on Twitter yesterday*, *Outsports* (Oct. 2, 2018), <https://www.outsports.com/2018/10/2/17925896/college-athlete-college-sports-inclusion-lgbt-twitter>.

which he accepted despite knowing that it would likely mean he would not find himself a conference champion or atop Harvard's record board. David Freed & Jake Meagher, *Schuyler Bailar, First D1 Transgender Swimmer, Joins Harvard's Men's Team*, Harv. Crimson (June 28, 2015), <https://news.harvard.edu/gazette/story/2019/05/ncaas-first-openly-transgender-swimmer-schuyler-bailar-finds-his-real-self-and-flourishes-at-harvard/>.

Not only did Bailar exceed his own expectations—he finished among the top 15% in the NCAA, and his team won three Ivy League titles—he became a leader on campus, eventually earning the prestigious Harvard Director's Award for leadership, service, and excellence on campus. Timothy Farrell, *Harvard Graduate and Transgender Swimmer Schuyler Bailar Looks to the Future*, University Athletic Association, <https://spark.adobe.com/page/IFAP5VK2L4tu3/> (last accessed May 20, 2020). Indeed, Bailar's leadership has advanced diversity and inclusion efforts both on and off campus—even before graduating he became an internationally celebrated speaker and inclusion advocate while earning a degree in cognitive neuroscience and evolutionary psychology. *See, e.g., A Conversation with Schuyler Bailar*, Wichita State Univ. (Sept. 12, 2019), <https://wichita.campuslabs.com/engage/event/4874929>.

D. The unique ways that participation in college sports can promote cross-racial understanding and cooperation has left its mark on politicians from both sides

of the aisle and has guided their approach to policy. Former Senator Bill Bradley has written and spoken eloquently about how experiencing racial diversity as a basketball player at Princeton shaped his career. Asking himself “[w]hy, of all the places in America, is that ideal” of racial harmony “closest to being achieved on a basketball court,” he came to realize:

it’s because the community of a team is so close that you have to talk with one another; the travel is so constant that you have to interact with one another; the competition is so intense that you have to challenge one another; the game is so fluid that you have to depend on one another; the high and low moments are so frequent that you learn to share them; the season is so long that it brings you to mutual acceptance. That is not to say that no racists have ever survived a multiracial team experience with their prejudices intact, but my guess is that the numbers are few.

Bill Bradley, *Values of the Game* 78–79 (1998).

Later, Bradley’s experience as a student athlete helped him understand the dynamics and mission of the U.S. Senate:

After I was in the Senate about five months, I was sitting in the Democratic cloakroom at about 11 o’clock at night—we were having late votes. . . . I thought to myself, “You know, this isn’t a lot different than the Knick locker room.” At core, both are a matter of getting different people from different backgrounds with different experiences and different personal agendas to agree on a shared goal and work toward it. That process defines both teamwork and the public interest.

Bill Bradley, *Hall of Fame Enshrinement Speech* (May 2, 1983),

<https://www.youtube.com/watch?v=uNt1wo5ekiE> (starting at 12:55).

Similarly, in his eulogy for President Gerald Ford—another star student athlete—President George W. Bush drew a direct parallel between the lessons Ford learned from his college team and the choices he made as a leader. As Bush observed, Ford’s character and leadership, which allowed him to help heal the nation after the trauma of President Nixon’s resignation, first manifested when he was on the University of Michigan football team. *President Bush’s Eulogy for Gerald R. Ford*, N.Y. Times (Jan. 2, 2007), <https://www.nytimes.com/2007/01/02/washington/02cnd-ford-bush.html>. While Ford was at Michigan, Georgia Tech came to play in Ann Arbor. *Id.* But Georgia Tech refused to participate if Willis Ward, an African-American player on the Michigan team, took the field. Ford, Bush recalled, was enraged when the Michigan administration agreed to this condition, and only participated in the game after Ward specifically asked him to play. *Id.* As Bush observed, Ward never forgot Ford’s principled position, and Ford did not forget it, either: “three decades later he proudly supported the Civil Rights Act and the Voting Rights Act in the United States Congress.” *Id.*

Of course, the positive impacts of diverse interactions through university athletics programs are not limited to racial diversity alone. These experiences have helped shape the careers of women in leadership roles across the country—particularly for those who find themselves at the intersection of numerous underrepresented groups. Jodi Gillette, who played basketball for Dartmouth and is

a member of the Standing Rock Sioux, served under President Obama as the Nation's first Native American deputy associate director of the Office of Intergovernmental Affairs. Dirk Olin, *Native Intelligence*, Dartmouth Alumni Magazine (May-June 2010), <https://dartmouthalumnimagazine.com/articles/native-intelligence>. She chose Dartmouth "because of its reputation for recruiting and retaining Native American students," and she excelled on and off the court: she was elected president of Native Americans at Dartmouth and was a Rockefeller Center intern. *Id.* As part of the Obama administration, she worked tirelessly to improve communication and relations between American Indians and the federal government. *Id.*

Loretta Reynolds, who played on the women's varsity basketball team at the U.S. Naval Academy, has gone on to become one of three women ever to be promoted to the rank of Lieutenant General in the Marine Corps. John R. Miles, *Bold Leader Spotlight: Lieutenant General Loretta 'Lori' Reynolds, USMC*, Bold Business (Oct. 18, 2018), <https://www.boldbusiness.com/human-achievement/bold-leader-spotlight-lieutenant-general-lori-reynolds-usmc/>. She has tied her success directly to her experience as a student athlete: "The things I learned on the basketball court absolutely helped me as a young Marine officer, in terms of being part of a team, leading the team, never letting the team down. The Marine Corps is all about team work; everyone doing their part for the team mission." *Id.*

For women in the business world, experience in college athletics has turned out to be virtually a rite of passage. Many of America's most prominent female business leaders—Meg Whitman, CEO of Quibi and former CEO of Hewlett Packard; Indra Nooyi, a member of Amazon's board and former CEO of PepsiCo; and Lynn Elsenhans, board member of Saudi Aramco and former CEO of Sunoco—were college athletes. Abigail Hess, *If you want to be a CEO later, play sports now*, CNBC (Jan. 11, 2017), <https://www.cnbc.com/2017/01/11/want-to-be-a-ceo-later-play-sports-now.html>. Indeed, a study by Ernst & Young showed that 94% of women holding C-Suite positions had played sports. *Why female athletes make winning entrepreneurs* 1, Ernst & Young, [https://assets.ey.com/content/dam/ey-sites/ey-com/en\\_gl/topics/entrepreneurship/ey-why-female-athletes-make-winning-entrepreneurs.pdf](https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/entrepreneurship/ey-why-female-athletes-make-winning-entrepreneurs.pdf).

These are far from isolated or cherrypicked examples. Student athletes recognize and appreciate the advantages they gained from exposure to diversity: “on average, college athletes perceive[] that they had an important opportunity to learn from racial diversity, and that this learning benefited their education.” Scott Hirko, *Do College Athletes Learn from Racial Diversity in Intercollegiate Athletics? A Study of the Perceptions of College Athletes From the State of Michigan* 26 (2007), <https://files.eric.ed.gov/fulltext/ED502288.pdf> (unpublished dissertation). It is not an exaggeration, then, to say that the culture of diversity in college athletics has had,

and continues to have, a direct and powerfully positive influence on the Nation's culture, economy, laws, and politics.

### **III. Campus Diversity Remains Crucial Both For Student Athletes And For The Broader Campus Community.**

The advantages of exposure to diversity are reason enough to uphold the limited use of race in admissions as part of an individualized, holistic inquiry. Just as important, however, is the risk of isolating diversity to specific corners of the campus, such as athletics programs. Although athletics programs are often uniquely diverse components of the university community, the benefits of diversity would be lost if athletics programs were to become the *sole* truly diverse component. Not only would the rest of the campus be cut off from the benefits of diversity the Supreme Court has recognized, but students from underrepresented backgrounds (including student athletes) would begin to feel isolated and stigmatized, reinforcing negative racial stereotypes. And, of course, students who graduate without being exposed to diversity throughout their educational experiences would find themselves ill-prepared to excel in the diverse, modern workforce.

A. The risks of restricting campus diversity to student athletics are well-documented. The NCAA, after conducting extensive interviews with faculty, administrators, coaches, and students, as well as canvassing data from 911 athletics administrators representing 258 NCAA Division I athletics departments, observed that “[a] number of people in our research, both within and outside the athletics

department, spoke to the importance of the athletics department, its members, and the activities being fully integrated into the fabric of the university.” NCAA, *Diversity in Athletics: An Assessment of Exemplars and Institutional Best Practices* 16 (2009), <https://www.ncaa.org/sites/default/files/DiversityInAthletics2009.pdf>. The study concluded that the benefits of diversity in athletic teams and in the greater campus community were deeply “interconnected[]”:

What happens in the broader campus community is likely to impact people’s reactions to the athletics department and their likelihood of supporting campus sport events. Students in our research continually pointed to the connection between the diversity culture on the campus and what they perceived to be the diversity culture in the athletics department. For instance, students believed that strained race relations within the university community were emblematic of the racial dynamics within the athletics department. And, this interconnectedness worked the other way, too, such that students were more likely to be involved with athletic events when they believed that the university had a progressive diversity culture.

*Id.* at 22. A college athletics program’s diversity is only as strong as the diversity of the university as a whole, and *vice versa*.

When universities are prevented from cultivating diversity across the whole student body, the results can be disastrous. After voters in California passed Proposition 209, a ballot measure forbidding the consideration of race in admissions, the number of minority admits at UCLA plummeted to the point where, of the 4,852 freshmen arriving on campus in the fall of 2006, only 96 were black—the lowest number of black freshmen since 1973, and just 2% of the student body of a university

located in a county that was 9.8% African American. Rebecca Trounson, *A Startling Statistic at UCLA*, L.A. Times (June 3, 2006), <https://www.latimes.com/archives/la-xpm-2006-jun-03-me-ucla3-story.html>. This small group of incoming black students was quickly branded the “infamous 96.” Erika Hayasaki, *A voice for diversity at UCLA*, L.A. Times (Dec. 3, 2006), <https://www.latimes.com/archives/la-xpm-2006-dec-03-me-freshman3-story.html>. Twenty of these black freshmen were athletes, and those who were not—such as D’Juan Farmer, a pre-med student from Compton—were regularly assumed to be by their peers. *Id.*

The UCLA community was “shocked” by the paucity of black matriculants, and university administrators declared the situation a “crisis.” Trounson, *supra*. The university’s provost acknowledged that “the quality of our education experience is absolutely affected, as well as our obligation to the citizens of this state.” *Id.* And black freshmen like Farmer, worried that the “unwelcoming stereotypes about the campus [would] lead to a bigger drop in the number of black freshmen next year,” organized protests against Proposition 209. Hayasaki, *supra*.

UCLA’s experience vividly illustrates the need for diversity *both* in athletic teams *and* in the larger campus community. When student athletes are among the only diverse students on campus, they lack other role models and minority peers with different interests and talents. This creates a “self-fulfilling prophecy whereby fellow students, professors, counselors, and collegiate sports fans assume that the

African-American athlete is on campus only for sport participation and not to obtain an education or to excel in academics.” Earl Smith, *Race, Sport, and the American University*, 17 *J. Sport & Soc. Issues* 206, 210 (1993). In other words, as the Supreme Court has recognized, diversity *within*, as well as among, racial groups is essential. *See Gratz v. Bollinger*, 539 U.S. 244, 277 (2003) (O’Connor, J., concurring). Otherwise, all members of the campus community—minority and non-minority alike—are denied the opportunity to experience a fully diverse student body, which may in turn lead them consciously or subconsciously to accept the stereotypes that can accompany isolation of minority students to one part of student life.

This is particularly true for individuals who find themselves at the intersection of numerous marginalized groups—women of color, like Jodi Gillette, and transgender men of color, like Schuyler Bailar, cannot (and should not be expected to) separate their racial identity from the other underrepresented aspects of their identity. They benefit from seeing all aspects of their identity succeed. That is precisely why a “whole person,” holistic review like Harvard’s is so important.

2. The harms of restricting diversity to specific corners of campus can linger post-graduation. Now more than ever, students must be prepared to succeed in a diverse workforce. Diversity has repeatedly proven to be a crucial ingredient of the most successful businesses. As a report in the Harvard Business Review notes,

“Striving to increase workplace diversity is not an empty slogan—it is a good business decision.” Heidi Grant & David Rock, *Why Diverse Teams Are Smarter*, Harv. Bus. Rev. (Nov. 4, 2016), <https://hbr.org/2016/11/why-diverse-teams-are-smarter>. Diverse businesses outperform their peers: a McKinsey survey showed that “public companies . . . in the top quartile for ethnic and racial diversity in management were 35% more likely to have financial returns above their industry mean, and those in the top quartile for gender diversity were 15% more likely to have returns above the industry mean.” *Id.* (citing Vivian Hunt et al., *Why diversity matters*, McKinsey & Company (Jan. 2015), <https://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters>).<sup>3</sup>

Here, too, the importance of diversity in businesses and organizations is not limited to racial and ethnic diversity. A global analysis of 2,400 companies showed that “organizations with at least one female board member yielded higher return on equity and higher net income growth than those that did not have any women on the board.” *Id.* (citing Press Release, Credit Suisse (July 31, 2012), <https://www.credit-suisse.com/about-us-news/en/articles/media-releases/42035-201207.html>).

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<sup>3</sup> See also Vivian Hunt et al., *Delivering Through Diversity*, McKinsey & Company (Jan. 2018), [https://www.mckinsey.com/~media/mckinsey/business%20functions/organization/our%20insights/delivering%20through%20diversity/delivering-through-diversity\\_full-report.ashx](https://www.mckinsey.com/~media/mckinsey/business%20functions/organization/our%20insights/delivering%20through%20diversity/delivering-through-diversity_full-report.ashx); Dieter Holger, *The Business Case for More Diversity*, Wall St. J. (Oct. 26, 2019), <https://www.wsj.com/articles/the-business-case-for-more-diversity-11572091200>.

Further research suggests that diverse businesses perform better because they work “smarter.” *Id.* “Nonhomogenous” groups—whether diverse jury pools or diverse financial-analyst groups—focus more precisely on the facts before them than comparable homogenous teams. *Id.* Diverse teams achieve this greater precision in part because members check each other’s biases and provide different, independent perspectives on the facts, so that as a group they “process information more carefully.” *Id.* They are also more innovative. A study of British firms found that companies with diverse leadership “were more likely to develop new products than those with homogenous leadership.” *Id.* This type of innovation and effective problem solving is more important than ever, as we find ourselves in a global health and economic crisis that, to defeat, will require us to invent new medical, economic, technological, and educational solutions—and having diverse teams best positions us as a Nation to do this.

#### **IV. Harvard’s Approach Is Well-Tailored To Meet The Pedagogical Needs Of All Harvard Students, Including Harvard Student Athletes.**

The District Court singled out Harvard’s athletics program as an example of the university’s commitment to diversity. *See* ADD7-8. And for good reason: diversity in Harvard’s athletics program has substantial benefits for student athletes and for the university more generally. Adopting Plaintiff’s position would threaten to undermine those advantages, leaving all Harvard students worse off.

Harvard's sports teams embody the University's deep commitment to the importance of a diverse as well as rigorous education. Harvard's Director of Athletics, Bob Scalise, has "prioritized integrating the aspects of diversity and inclusion" into Harvard's athletics program. *Athletics for the 21st Century*, Harv. Gazette (Sept. 16, 2019), <https://news.harvard.edu/gazette/story/2019/09/evolution-of-the-student-athlete-experience-at-harvard-examined/>. In an interview, Scalise highlighted exposure to people "from all different backgrounds, different races and religions, political views, sexual orientations, all on the same team working together to achieve a common purpose," as "a really important part of an education for our young people." *Id.*

Harvard's men's and women's basketball teams vividly illustrate the benefits of Harvard's commitment to diversity. Since arriving on Harvard's campus, men's head basketball coach Tommy Amaker has made diversity and inclusion hallmarks of his program. When hiring Coach Amaker, Harvard knew of his public advocacy for inclusion and affirmative action going back to at least 2006, when he spoke out against a Michigan ballot initiative prohibiting any consideration of race in university admissions.<sup>4</sup> While at Harvard, Coach Amaker has recruited many highly successful black athletes, changing the image of Harvard's basketball program,

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<sup>4</sup> See OneUnitedMichigan, *One United Michigan: Tommy Amaker* (Nov. 2, 2006), <https://www.youtube.com/watch?v=j2CaJp5j5H0>.

which had previously been dominated by white players. David Tannenwald, *Higher Education: How Basketball Coach Tommy Amaker Has Transformed Harvard*, SB Nation (Mar. 6, 2014), <https://www.sbnation.com/longform/2014/3/6/5474320/harvard-basketball-tommy-amaker-profile-ncaa-tournament-2014>. According to one commenter, “[t]he racial and socioeconomic diversity of the team has made an impression on many at Harvard,” including on minority students who otherwise might have felt isolated on Harvard’s campus. *Id.*

Former NBA star Jeremy Lin has praised Amaker’s leadership, calling Amaker “the ultimate game changer for the Harvard basketball program” and attributing Lin’s own success to Amaker, who he said “turned everything around.” Amir Mamdani, *Remembering Where He Came From: Five Minutes with Jeremy Lin*, Harv. Crimson (Feb. 8, 2019), <https://www.thecrimson.com/article/2019/2/8/mbb-jeremylinfeature19/>. Lin is an excellent example of how Harvard’s whole-person review benefits students, including Asian-American students. A graduate of Palo Alto High School in northern California, Lin graduated with a 4.2 (4.0 scale) GPA and a 1430 SAT score (1600 scale)—impressive academic marks, to be sure, but among students admitted at Harvard, these scores are average, and well below the 1530 SAT average among Harvard’s Asian-American students. Julie Park, *Race on Campus: Debunking Myths with Data* 86 (2018).

Had Lin simply been a strong basketball player, he would have scored well along the athletic rating, but that would not have guaranteed his admission to Harvard. Through Harvard's whole-person review process, however, Lin was able to demonstrate talents and potential in multiple areas, including his experience as a child of immigrants, and admissions reviewers were able to identify the various ways he could contribute to the university's mission. And he did so both during and after graduation, including by making a million-dollar donation to the college after he signed with the Brooklyn Nets—much of it directed towards the college's financial aid program. Mamdani, *supra*. Lin continues to make a difference today, recently penning a passionate article pleading for *all* to fight racism and xenophobia as Asians and Asian-Americans are targeted due to the COVID-19 pandemic. Jeremy Lin, *The Darkness Has Not Overcome It*, *The Players' Tribune* (Apr. 13, 2020), <https://www.theplayerstribune.com/en-us/articles/jeremy-lin-darkness-has-not-overcome-it>.

Coach Amaker's focus on diversity has helped his players become better students, people, and leaders. One former Harvard basketball player described the experience of playing for Coach Amaker this way:

He teaches us just as much about becoming responsible, well-rounded young men as he teaches us about the game of basketball. He consistently lectures us about the necessity of putting academics ahead of basketball and the importance of not just doing well in the world, but also doing good in the world.

Robbie Feinberg, *Written Senior Perspective*, Gocrimson.com, [https://gocrimson.com/Written\\_Senior\\_Perspectives/2019/Robbie\\_Feinberg](https://gocrimson.com/Written_Senior_Perspectives/2019/Robbie_Feinberg). This player called “tour[ing] the Martin Luther King Jr. Memorial in D.C.” a highlight of his time on the Harvard basketball team. *Id.*

Coach Amaker’s contributions to diversity and inclusion extend beyond the basketball court. Under his leadership, the diversity of Harvard’s men’s basketball program has contributed substantially to promoting the inclusion and acceptance of diverse communities within Harvard and greater Boston.

Coach Amaker has participated in a “breakfast club of local black leaders, many of whom felt having a black men’s basketball coach sent a valuable message about inclusion.” Tannenwald, *Higher Education, supra*. As one participant explained, “It’s extraordinarily significant for students to be able to see that no aspect of Harvard is foreclosed to anybody.” *Id.* Former U.S. Senator Mo Cowan described “a swelling of pride” in Boston’s “black community,” because Coach Amaker was “in the midst of doing something that perhaps they perceived as near impossible”: creating a diverse and successful men’s basketball program as the black head coach at arguably the most elite school in the nation. *Id.*

The importance of diversity and inclusion is just as apparent in the Harvard women’s basketball program. The head coach, Kathy Delaney-Smith, spent the early years of her career fighting tooth and nail for equal treatment for women’s

athletics, as Congress had promised in passing Title IX. *See* David L. Tannenwald, *An Authentic Act* (Feb. 5, 2019), Harv. Magazine, <https://harvardmagazine.com/2019/02/kathy-delaney-smith-confronts-gender-issues-in-womens-basketball>.

Coach Delaney-Smith continues those efforts today, pushing for pay equity and for equal treatment of men’s and women’s programs in the Ivy League. *Id.*

But Coach Delaney-Smith has faced another challenge throughout her career: instilling an atmosphere of acceptance and inclusion within her team. *Id.* When Coach Delaney-Smith first arrived at Harvard in the early 1980s, her team was in the midst of what she called a “homophobic war.” *Id.* She “vowed to be judgment-free,” she “brought in counselors recommended by the University,” and she made the team take part in “role playing exercises,” but these efforts failed to produce substantial results. *Id.*

What ultimately made a difference was challenging players to think beyond their own experiences by exposing them to people from diverse backgrounds—an effort Coach Delaney-Smith has continued throughout her tenure. One team member described a team visit to a former player who lived with her female partner. On the bus, Coach Delaney-Smith challenged her players to think about gay marriage. *Id.* One team member described herself at the time as “so young and naïve and not really ever having to engage with those kinds of issues in my life before.” *Id.* For her, the trip was a “great conversation and wonderful weekend”—

exposure to people with diverse perspectives and new ideas had opened her eyes to issues she had never previously confronted. *Id.*

Through the admissions process Plaintiff challenges, Harvard seeks to provide these benefits of diversity to all students, athletes and otherwise. Given the many systemic barriers that underrepresented minority applicants face in the admissions process—and the unfair advantages that wealthy applicants are able to gain in the admissions process, as exemplified by the “Varsity Blues” admissions scandal—it is hardly surprising that race-conscious admissions remains necessary at Harvard and elsewhere to promote campus diversity. For example, standardized tests like the ACT and SAT have long been known to disadvantage underrepresented minority students—indeed, two lawsuits were filed just last year challenging the University of California’s use of these standardized tests in admissions as illegal discrimination. *See Advocates File Suit Against University of California for Discriminatory Use of Sat/Act In Admissions*, Public Counsel (Dec. 10, 2019), <http://www.publiccounsel.org/stories?id=0283>.

Plaintiff improperly urges the Court to reject Harvard’s holistic admissions program. But the District Court carefully documented Harvard’s compelling interest in promoting diversity, as well as Harvard’s narrowly tailored consideration of race as part of an individualized, holistic inquiry. Adopting Plaintiff’s position would effectively prevent any school from considering race in admissions—no matter how

strong its interest in promoting diversity, and no matter how individualized the inquiry. A decision in Plaintiff's favor would therefore deprive future generations of the crucial educational advantages of exposure to diversity, which would leave students, universities, and our country far worse off.

**CONCLUSION**

The District Court's judgment should be affirmed.

Respectfully submitted,

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**APPENDIX**

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**CURRENT AND FORMER COACHES JOINING NABC AND WBCA AS  
*AMICI CURIAE*\***

Lennie Acuff  
Stephen Alford  
Matt Allen  
H. Tommy Amaker  
Geno Auriemma  
Jeremy Ballard  
Scott Ballard  
Carrie Banks  
Anthony M. Barbee  
Meg Barber  
Suzy Barcomb  
Chad Baruch  
Bob Battisti  
Roy Beekman  
Bruce Blair  
James A. Boeheim  
Jim Boone  
Michael Brey  
Charlie Brock  
Honey Brown  
Richard Douglas Bruno  
Jamal Brunt  
Keith Bunkenburg  
Michael Buonaguro  
Shane Burcar  
Cynthia-Katherine Calhoun  
Christian Caputo  
Jackie Carson  
Butch Carter

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\* The individual *amici* listed on the cover page and in this appendix are participating in their individual capacity and not on behalf of any affiliated college or university.

Warren Caruso  
John Chaney  
Terrance Tyrone Chatman  
Jamion Christian  
Sherri Coale  
William Coen  
Cheryl Cole  
Allison Coleman  
Paul Combs  
Michael Connors  
Joseph Conroy  
Cara Consuegra  
Michael Cronin  
Scott Cross  
Jeff Culver  
Patrick J. Cunningham  
Brandon Curran  
James E. Dafler  
Jason Damjanovic  
Kia Damon-Olson  
Mark Dannhoff  
Linc Darner  
Evans Davis  
Kermit Davis  
Kevon Davis  
Michele Davis  
Johnny Dawkins  
Travis DeCuire  
Mike DeGeorge  
Derrick DeWitt  
Bruce Dick  
Marquette Dickens  
Dave Dickerson  
Denise Dillon  
James Dixon  
Samuel Dixon  
Cameron Dollar  
Steve Donahue  
Mike Donnelly  
Mark Downey

Oliver Drake  
Bernard Driscoll  
Blake DuDonis  
Brian Dunne  
Michele Durand  
Mickey Durham  
Timothy Eatman  
Jay Eck  
Mark Edwards  
Angel Elderkin  
A. Walter Esdaile  
Roy Beekman Estep  
Mary Ethridge  
Steven W. Evans  
Joseph Farroba  
William Fenlon  
Bill Fennelly  
Jorge Fernandez  
Beck Flanagan  
Bob Fontana  
Steven Forbes  
Shawn Forrest  
Lisa Fortier  
Matthew L. Furjanic, Jr.  
Andrew Garcia  
Scott Garson  
Peter Gaudet  
Jayson Todd Gee  
Patricia Glispin  
Robert T. Goodrow  
Andrea Gorski  
Marwan Goubara  
Peter J. Goyco  
Anthony Grant  
Michael Grant  
Gregory Robert Grantham  
JD Gravina  
Michael Gray  
Seth Greenberg  
Brian Gregory

Alonzie Griffin III  
Joe Griffin  
Jerod Haase  
Caitlin Hadzimichalis  
Nathan Hager  
William Hahn  
J. Leonard Hamilton  
Maco Hamilton  
Pete Hamilton  
Jim Haney  
Darnell Haney  
LJ Harrington  
Booker Harris  
Sampson O. Harris  
Velaida Harris  
Eric Henderson  
Steve Henson  
Steve Hettinga  
Howard Hewitt  
Paul Hewitt  
Lew Hill  
Louis Hinnant  
Thomas Jeffrey Hironaka  
Matthew Hixenbaugh  
Dylan Howard  
Juwana Howard  
Ben Howland  
Elizabeth Hudy  
Kristin Huffman  
Brian Hutchins  
Kip Ioane  
Lance C. Irvin  
Tom Izzo  
Jamaal Jackson  
Michael D. Jarvis  
Dixie Jeffers  
Kelvin Jefferson  
Michael Johnson  
Torino Johnson  
Johnny Jones

Charles Jones, Jr.  
Jeffrey A. Jones  
Mike Jones  
LaVall Jordan  
Michael Jordan  
Ryan Kadlubowski  
Timothy Estabrook Kaine  
Daniel Joseph Kaspar  
Sean Kearney  
Billy Kennedy  
Kellie Kennedy  
Pat Kennedy  
Jessica Kern  
Katie Kollar  
Ryan W. Koudele  
KJ Krasco  
Jerome Krause  
Robert Krimmel  
Jennifer Kroll  
Paula Krueger  
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James William Lake  
Matthew Langel  
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Matthew Lewis  
Scott Lombardi  
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William R. Minton  
Jesse Miramontez  
Dennis Michael Mishko  
Margaret Mohr  
James Mooney  
Stephen L. Moore  
Kirsten Moore  
Al Morales  
John George More  
Brian Morehouse  
Michael Morrell  
Porter Moser  
Joseph Mullaney  
Chanel Murchison  
Eric Musselman  
Niecee Nelson  
Cam Newbauer  
Tae Norwood

Elizabeth O'Boyle  
Dennis O'Donnell  
Eric Olen  
Dean D. Oliver  
Nima Omidvar  
Jack Owens  
Matt Painter  
Andy Partee  
David Patrick  
Trina Patterson  
Bruce Pearl  
Raegan Pebley  
Harry Perretta  
Michael Perry  
Jerry Petitgoue  
Nate Philippe  
Jerry Pimm  
Tasha Pointer  
Joseph Powers  
Alexander Reed Pribble  
Robert Pryor III  
Sandra Pugh  
Semeka Randall Lay  
Todd Raridon  
Eric Wendell Reveno  
Thomas Riach  
Nolan Richardson  
Mark Richmond  
Theodore, L Riverso  
Jennifer Rizzotti  
Steve Robinson  
Norman J. Rodriguez  
Noel Roman  
Lorenzo Romar  
Shanan Rosenberg  
Thomas E. Rose  
Jeff Santarsiero  
Darren Savino  
Samuel Scholl  
Mike Schrage

Earl Schunk  
Bill Self  
Tiffani Selhorst  
Bennie Seltzer  
Sue Semrau  
Lindsay Sharman  
Alaura Sharp  
Aubrey Shelton  
Nicole Shelwick  
Chris Shepard  
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Terrance Smith  
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**CERTIFICATE OF COMPLIANCE**

I hereby certify that this document complies with the type-volume limitations of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 6,497 words excluding the parts of the document exempted by Rule 32(f).

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Dated: May 21, 2020

*/s/ Jaime A. Santos*

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