

Nos. 20-1199 & 21-707

IN THE
Supreme Court of the United States

STUDENTS FOR FAIR ADMISSIONS, INC.,

Petitioner,

v.

PRESIDENT AND FELLOWS OF HARVARD COLLEGE,

Respondent.

STUDENTS FOR FAIR ADMISSIONS, INC.,

Petitioner,

v.

UNIVERSITY OF NORTH CAROLINA, ET AL.,

Respondents.

**On Writs Of Certiorari To The
United States Courts Of Appeals For The First
And Fourth Circuits**

**BRIEF FOR MAJOR AMERICAN BUSINESS
ENTERPRISES AS *AMICI CURIAE*
SUPPORTING RESPONDENTS**

RUTHANNE M. DEUTSCH
DEUTSCH HUNT PLLC
300 New Jersey Avenue
NW, Suite 900
Washington, DC 20001

*Counsel for Designated
Amici Curiae*

MICHAEL R. DREEBEN
Counsel of Record
O'MELVENY & MYERS LLP
1625 Eye Street, NW
Washington, DC 20036
(202) 383-5300
mdreeben@omm.com

*[Additional counsel listed on
inside cover]*

HEATHER WELLES
NATALIE D. CAMASTRA
KELLY KAMBOURELIS
O'MELVENY & MYERS LLP
400 South Hope Street,
18th Floor
Los Angeles, CA 90071

MELISSA C. CASSEL
O'MELVENY & MYERS LLP
Two Embarcadero Center,
28th Floor
San Francisco, CA 94111

*Counsel for Designated
Amici Curiae*

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INTEREST OF *AMICI CURIAE*¹

Amici are business stakeholders in the American and global economies. Amici operate across a range of industries—including technology, finance, healthcare, and others—and collectively serve millions of clients and consumers each year. Amici also collectively employ more than 4 million people worldwide.

Diverse workforces improve Amici’s business performance—and thus strengthen the American and global economies. Amici seek employees who have been educated at universities with exposure to a broad array of life experiences and viewpoints, and who can bring diverse perspectives and experiences to the workplace. An essential part of the diversity Amici seek is racial and ethnic diversity. Given these priorities, Amici have a significant interest in how universities consider and admit applicants: they rely on the nation’s schools to educate and train their future workers. Amici know first-hand the truth of Justice Powell’s statement in *Regents of University of California v. Bakke*, 438 U.S. 265, 312 (1978), that “the Nation’s future depends upon leaders trained” in American universities. The capacity of universities to admit racially and ethnically diverse student bodies thus has deep importance to Amici.

¹ A full list of amici curiae is provided in the Appendix. No counsel for any party has authored this brief in whole or in part, and no entity or person, other than amici curiae or their counsel, has made a monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

Since *Bakke*, the business community has consistently filed amicus briefs urging this Court to reaffirm the importance of student-body diversity on college campuses. See Brief for Fortune-100 and Other Leading American Businesses as Amici Curiae, *Fisher v. Univ. of Texas (Fisher I)*, No. 11-345 (asking the Court to reaffirm the “significance of diversity in higher education to America’s largest business”); Brief of Small Business Owners and Associations as Amici Curiae, *Fisher v. Univ. of Texas (Fisher I)*, No. 11-345 (arguing that “diversity is increasingly essential to the success of small businesses in this country”); Brief for Fortune-100 and Other Leading American Businesses as Amici Curiae, *Fisher v. Univ. of Texas (Fisher II)*, No. 14-981 (urging the Court’s “continued recognition of diversity as a compelling state interest”); Brief for Dupont, IBM, Intel, and the National Action Council for Minorities in Engineering, *Fisher v. Univ. of Texas (Fisher II)*, No. 14-981 (explaining that “any decision by this Court which would foreclose university admissions officers from thinking about race (and gender) ... would deal a serious blow to [STEM] businesses and their efforts to remedy th[e] critical problem [of historic underrepresentation of racial minorities and women in the STEM disciplines]”); Brief of General Motors Corporation as Amici Curiae, *Grutter v. Bollinger*, No. 02-241 (arguing that the “future of American business” “depends on” universities’ ability “to select racially and ethnically diverse student bodies”); Brief of 65 Leading Businesses as Amici Curiae, *Grutter v. Bollinger*, No. 02-241 (arguing that “diversity in higher education” plays a “crucial role” “in preparing students to be the leaders this country needs in business”); Brief of Media Companies as Amici

Curiae, *Grutter v. Bollinger*, No. 02-241 (arguing similarly); Brief of Exxon Mobil Corporation as Amicus Curiae, *Grutter v. Bollinger*, No. 02-241 (same); Brief of BP America Incorporated as Amicus Curiae, *Grutter v. Bollinger*, No. 02-241 (same); Brief of MTV Networks as Amicus Curiae, *Grutter v. Bollinger*, No. 02-241 (same).

The Court has relied on amicus briefs—including those submitted by members of the business community—to “bolster” its conclusion that diversity in education constitutes a “compelling” state interest. *See, e.g., Grutter v. Bollinger*, 539 U.S. 306, 330 (2003) (“[M]ajor American businesses have made clear that the skills needed in today’s increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints.”) (citing Briefs for 3M *et al.* and General Motors Corp. as Amici Curiae); *see also id.* at 329-31 (finding compelling interest “substantiated” by amici and citing briefs for military officers, businesses, and educational research association). The Court carried this point through to its most recent decision in *Fisher II*, noting that the University of Texas’s explanation that it sought to “prepar[e] students to function in an increasingly diverse workforce and society” was “a ‘reasoned, principled explanation’” supporting the conclusion that fostering a diverse educational environment continued to be a compelling interest. 579 U.S. 365, 382 (2016) (quoting *Fisher I*, 570 U.S. 297, 310 (2013)) (other internal quotation marks omitted).

The interests the Court and amici identified in those cases have grown in importance. Today, Amici

understand that acknowledging, supporting, and promoting the benefits of diversity—specifically including racial and ethnic diversity—among their workforces is essential to meet client needs, achieve business goals, and strengthen relationships both internally and with the communities Amici serve. Amici rely on universities to identify and educate candidates who can fulfill those goals. Accordingly, although they do not take a position on the constitutionality of the specific practices at issue here, Amici—some of the largest companies in America—now reiterate to this Court that the government’s interest in promoting student-body diversity on university campuses remains compelling from a business perspective.

SUMMARY OF THE ARGUMENT

Attaining a student body that is both highly qualified and broadly diverse remains a compelling constitutional interest. An essential aspect of that diversity is racial and ethnic diversity. That interest has not faded since this Court decided *Grutter* in 2003. If anything, it has grown stronger, as Amici know from first-hand experience.

I. Racial and ethnic diversity enhance business performance. Research and experience demonstrate that racial diversity improves decision-making by increasing creativity, communication, and accuracy within teams. Experience in a diverse university environment prepares students to interact with and serve racially diverse client and customer bases and to work with people of all backgrounds. The result is a business community more aligned with the public, increased profits, and business success. Reflecting

those performance benefits, American businesses have invested substantially in diversity, equity, and inclusion initiatives that are designed, in part, to promote internal racial and ethnic diversity.

II. Amici and other businesses cannot achieve those goals alone. They depend on universities to recruit, admit, and train highly qualified, racially and ethnically diverse students to become the employees and business leaders of the future. Numerous studies support the conclusion that cross-racial interactions and engagement during university contribute to essential job-related skills. These include critical thinking, problem solving, and the ability to work cooperatively. All students benefit from exposure to others of different racial and ethnic backgrounds.

III. This Court has historically relied on the perspective of the business community in defining the compelling interest supporting diversity in higher education. Amici submit this brief to inform the Court that the interest in promoting student-body diversity at America's universities has, if anything, grown in importance since this Court decided *Grutter* in 2003. Petitioner's arguments to the contrary are misguided and incorrect.

ARGUMENT

I. RACIAL AND ETHNIC DIVERSITY ENHANCES BUSINESS PERFORMANCE

There is no doubt that people of all races and ethnic backgrounds deserve a seat at every table and that increasing racial and ethnic diversity throughout Amici's workforces is the right thing to do. Although Amici believe that this is reason enough to seek out

racially and ethnically diverse employees and to promote diverse leaders, this brief explains a wide variety of research-backed, tangible ways in which racial and ethnic diversity improves business. Empirical studies confirm that diverse groups make better decisions thanks to increased creativity, sharing of ideas, and accuracy. And diverse groups can better understand and serve the increasingly diverse population that uses their products and services. These benefits are not simply intangible; they translate into businesses' bottom lines. For these reasons, it is no surprise that companies are investing substantially in diversity initiatives—a concrete acknowledgment of the value of a racially diverse workforce and leadership structure to business success.

A. Diverse Teams Make Better Decisions

Successful companies rely on teams that collaborate to make better decisions. And empirical research demonstrates that racially diverse teams make better decisions. Diversity “encourages the search for novel information and perspectives, leading to better decision-making and problem-solving,” and exposure to diversity “can change the way you think.” Katherine W. Phillips, *How Diversity Makes Us Smarter*, *Sci. Am.* (Oct. 1, 2014).² These benefits are “not just wishful thinking.” *Id.* Empirical research backs up what Amici know to be true from experience: racial diversity improves creativity, the flow of ideas and information, and the accuracy of information used to generate ideas and

² <https://www.scientificamerican.com/article/how-diversity-makes-us-smarter/>.

solutions.

Creativity and innovation. Amici have seen firsthand how racial diversity improves creativity and innovation within their teams. Empirical research on the positive impact of racial diversity on creativity in brainstorming, product development, and storytelling backs up these experiences.

Companies with pro-diversity policies are more innovative, even in periods of economic downturn. Roger C. Mayer et al., *Do Pro-Diversity Policies Improve Corporate Innovation?*, 47 *Fin. Mgmt.* 617 (2018). Drawing from new product announcements, researchers found that companies with “a range of policies and characteristics” that indicate strength in diversity (including racial, ethnic, ability, and LGBT+ diversity) were positively associated with the “number of new product announcements per R&D dollar spent by a firm.” *Id.* at 618. The study also found that the “positive effect of pro-diversity policies on innovative efficiency is stronger during recessions, including the 2008 financial crisis, suggesting that building a reputation of pro-diversity and a culture of inclusion pays off” long-term. *Id.*

Another study illustrating this principle asked small groups to brainstorm ideas to draw more tourists to the United States, and groups with the highest levels of racial diversity generated ideas that judges deemed “significantly more feasible . . . and more effective . . . than the ideas produced by the homogenous groups.” Poppy L. McLeod et al., *Ethnic Diversity and Creativity in Small Groups*, 27 *Small Grp. Res.* 248, 256-57 (1996). The researchers attributed these results, in part, to racially diverse

members' "knowledge of different cultures." *Id.* at 257.

Research on the effects of exposure to varied groups explains the association between ethnic diversity and creativity. One example is a study in which white undergraduate students watched a slideshow—either about Chinese culture, American culture, American *and* Chinese cultures in juxtaposition, or American-Chinese fusion culture—before writing a Cinderella story for Turkish children. Angela Ka-yee Leung et al., *Multicultural Experience Enhances Creativity: The When and How*, 63 *Am. Psych.* 169, 173-74 (2008). Researchers found that those who had watched the slideshow juxtaposing American and Chinese cultures or the slideshow depicting American-Chinese fusion culture wrote more creative stories than other participants—providing “direct evidence for the *causal* role of exposure to a foreign culture in creative performance.” *Id.* at 174. Researchers also found that these creative benefits remained five to seven days later, when they were contacted again with a different creativity test. *Id.*

The experience of business leaders confirms that diversity, including racial and ethnic diversity, promotes the exchange of different perspectives that is central to innovation. One leader has explained that his “work as a scientist and as an entrepreneur” confirmed that nothing has a greater impact on innovation “than a diverse set of individuals driving toward a common goal to make a difference”; that “homogeneity creates subtle barriers to engagement, making it difficult for an outsider to break into the conversation”; and that “diversity of experience—which can arise from ethnic, cultural, socioeconomic,

professional, and experiential differences—provides fertile ground for innovation.” UNCJA 1574-75 (declaration of Joseph DeSimone, Founding Director of the University of North Carolina’s Chapel Hill Institute for Nanomedicine, Chief Executive Officer of Carbon3D, and recipient of the National Medal of Technology and Innovation).³

Communication. Racially diverse groups also exchange ideas and information more frequently and effectively than racially homogenous groups, leading to more vigorous discussions and idea generation.

Exemplifying these outcomes is a study of three-person groups of undergraduate students given packets of evidence in a mock homicide investigation and asked to determine the guilty party. See Katherine Phillips et al., *Surface-Level Diversity and Decision-Making in Groups: When Does Deep-Level Similarity Help?*, 9 Grp. Processes & Intergrp. Rels. 467, 472 (2006). Each packet of evidence contained 42 clues dispersed over various pieces of evidence, but unbeknownst to the groups, the 12 clues critical for solving the case were divided among the three members and thus required the members to share information for the best results. *Id.* Groups that were racially diverse spent more time discussing the evidence, perceived more unique information, and ultimately performed better than racially homogenous groups. *Id.* at 475-77. The researchers opined that individuals expect differences in thinking when part

³ This brief refers to the Joint Appendix from *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, No. 20-1199, as “HJA,” and the Joint Appendix from *Students for Fair Admissions, Inc. v. University of North Carolina*, No. 21-707, as “UNCJA.”

of a racially diverse group, prompting introduction of unique information in group discussion and more careful consideration of that information. *Id.* at 479. In the researchers' view, individuals in racially homogenous groups may be more reluctant to raise new information due to pressure to conform and the emphasis on in-group similarities. *Id.* at 478.

A study of racially diverse versus racially homogenous mock juries—with jurors recruited from an actual jury pool—mirrored these results. See Samuel R. Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations*, 90 *J. Personality & Soc. Psych.* 597, 600 (2006). In this study, mock juries with four white and two Black jurors spent significantly more time in discussion and canvassed more case facts than juries composed of six white jurors. *Id.* at 604-05. These results stemmed not only from Black members' contributions, but also from the ways in which white members thought about issues and behaved within the group. *Id.* at 605. Further, white members in racially diverse juries had different pre-deliberation judgments and were more open to race-related discussion than their counterparts in the all-white juries. *Id.* at 603, 605, 607. Racial diversity improved the quality of all participants' contributions. *Id.* at 603, 610. Follow-up research conducted last year similarly found that racially diverse juries performed better than racially homogenous mock juries composed of either all white or all Black jurors. Amanda N. Bergold & Margaret B. Kovera, *Diversity's Impact on the Quality of Deliberations*, *Personality & Soc. Psych. Bull.* 1, 7 (2021) ("Our results demonstrate that diversity improved

deliberations at the jury level, so jurors from underrepresented groups were not simply adding different perspectives but also contributing at a higher level than they were in nondiverse juries.”); *see also* Sarah E. Gaither et al., *Mere Membership in Racially Diverse Groups Reduces Conformity*, 9 Soc. Psych. & Personality Sci. 402 (2018).

Accuracy. Increased creativity and improved information-sharing also increase accuracy. For example, despite the tendency of the racially diverse mock juries just mentioned to share more information *overall* during their discussions, members of those juries made *fewer* inaccurate statements than the all-white juries. Sommers, *supra*, at 605. Moreover, any inaccurate statements were more likely to be corrected when made within a racially diverse jury. *Id.*

A study comparing the results of ethnically diverse or ethnically homogenous traders in simulated markets based in Southeast Asia and North America also demonstrated improved accuracy for racially diverse groups. Sheen S. Levine et al., *Ethnic Diversity Deflates Price Bubbles*, 111 PNAS 18,524 (2014). Participants were able to view other traders in their markets and note the ethnicities present, and they could see each other’s trading activity on their computer screens. *Id.* at 18,525. The study found that traders in ethnically homogenous markets were “significantly less accurate” in making pricing decisions “and thus more likely to cause price bubbles.” *Id.* at 18,526. “Traders in homogenous markets [were] more likely to accept offers that are above true value,” which the researchers believed supported “the notion that traders in homogenous markets place undue confidence in the decisions of others” and “are more

likely to spread others' errors by accepting inflated offers." *Id.* at 18,527.

B. American Businesses Must Be Prepared To Serve Diverse Consumers And Business Partners

Diverse teams are increasingly important to American companies as the racial and ethnic diversity of the U.S. population and consumer base alike continues to grow. Now more than ever, companies must attract, retain, and elevate a racially diverse workforce to better serve a diverse marketplace of consumers.

U.S. Census data shows that the overall racial and ethnic diversity of the United States increased substantially from 2010 to 2020. During that time, the non-Hispanic white population decreased 8.6%, while the Black and African American population increased 5.6%, the Asian American population increased 35.5%, and the Hispanic and Latino population (of any race) increased 23%.⁴ And the country's multiracial population now measures 33.8 million people. *Id.* Being able to relate to people of other racial and ethnic backgrounds has accordingly grown in importance, as U.S. Census data indicates that the U.S. Diversity Index—*i.e.*, “the chance that two

⁴ Nicholas Jones et al., *2020 Census Illuminates Racial and Ethnic Composition of the Country*, U.S. CENSUS BUREAU (Aug. 12, 2021), <https://www.census.gov/library/stories/2021/08/improved-race-ethnicity-measures-reveal-united-states-population-much-more-multiracial.html>. Some of these changes may be attributed to “improvements to the design of the two separate questions for race and ethnicity, data processing and coding,” since the 2010 Census, “which enabled a more thorough and accurate depiction of how people prefer to self-identify.” *Id.*

people chosen at random will be from *different* racial or ethnic groups”—“has increased to 61.1% in 2020 from 54.9% in 2010.”⁵

Increased racial diversity in the workplace has followed suit. According to the U.S. Bureau of Labor Statistics, in 2020, the national workforce was 77% white, 18% Hispanic (of any race), 13% Black, and 6% Asian American⁶—compared to 81% white, 15% Hispanic (of any race), 12% Black, and 5% Asian American in 2011.⁷ Leading businesses need to ensure that their own workforces and leadership reflect this increasing racial diversity.

Prominent among those needs is the reality that the American consumer base likewise reflects increased diversity. Using data from sources like the U.S. Census Bureau and the U.S. Bureau of Economic Analysis, the University of Georgia’s Selig Center for Economic Growth reported in 2021 that the buying power of Asian American, Black American, and Native American consumers “has exploded over the past 30 years.” J. Merritt Melancon, *Consumer*

⁵ Eric Jensen et al., *The Chance That Two People Chosen at Random Are of Different Race or Ethnic Groups Has Increased Since 2010*, U.S. Census Bureau (Aug. 12, 2021), <https://www.census.gov/library/stories/2021/08/2020-united-states-population-more-racially-ethnically-diverse-than-2010.html> (emphasis added).

⁶ *Labor Force Characteristics by Race and Ethnicity, 2020*, U.S. Bureau of Labor Statistics (Nov. 2021), <https://www.bls.gov/opub/reports/race-and-ethnicity/2020/pdf/home.pdf>.

⁷ *Labor Force Characteristics by Race and Ethnicity, 2011*, U.S. Bureau of Labor Statistics (Aug. 2012), https://www.bls.gov/opub/reports/race-and-ethnicity/archive/race_ethnicity_2011.pdf.

Buying Power Is More Diverse Than Ever, UGA TODAY (Aug. 11, 2021).⁸ That buying power was estimated at \$3 trillion (17.2% of the nation’s total buying power) in 2020—up from \$458 billion (10.6%) in 1990. *Id.* While the total U.S. buying power increased 55% between 2010 and 2020, Asian Americans’ buying power grew by 111%, Latino and Hispanic Americans’ buying power by 87%, Native Americans’ by 67%, and Black Americans’ by 61%. *Id.*

This pattern has accelerated in recent decades. In 2015, the millennial age group (then aged 18 through 34) was only 55.8% white. William H. Frey, *Diversity Defines the Millennial Generation*, Brookings (June 28, 2016).⁹ This represents a decline from 63% white in 2000 and 73% white in 1990. *Id.* This makes millennials “the most diverse generational cohort in U.S. history[.]” Kasey Lobaugh et al., *The Consumer Is Changing, But Perhaps Not How You Think*, Deloitte Insights (May 29, 2019).¹⁰ And although the overall U.S. consumer base is already “barely 50 percent white,” that “number is likely to continue shrinking,” Lobaugh, *supra*, and market experts expect that Americans’ buying power will continue to diversify across racial and ethnic groups.¹¹

⁸ <https://news.uga.edu/selig-multicultural-economy-report-2021/>.

⁹ <https://www.brookings.edu/blog/the-avenue/2016/06/28/diversity-defines-the-millennial-generation/>.

¹⁰ <https://www2.deloitte.com/us/en/insights/industry/retail-distribution/the-consumer-is-changing.html>.

¹¹ See Shelley Stewart III, *Marketing to the Multifaceted Black Consumer*, McKinsey (May 10, 2022), <https://www.mckinsey.com/business-functions/growth-marketin-g-and-sales/our-insights/marketing-to-the-multifaceted-black-consumer> (predicting that Black consumers’ collective economic

Success in business in America today therefore requires understanding and communicating effectively with this increasingly racially diverse population. And according to the Harvard Business Review, diversity across a company's workforce of both inherent traits, such as ethnicity, and acquired experiences, such as comfort interacting with people of different backgrounds, improves business outcomes. See Sylvia A. Hewlett et al., *How Diversity Can Drive Innovation*, Harv. Bus. Rev. (Dec. 2013).¹² This same logic speaks to why American businesses must continue to increase racial and ethnic diversity at all levels of business.

The record in this case reinforces these conclusions. As Peter Henry, the ninth Dean of New York University's Leonard N. Stern School of Business and member of the Boards of Directors of Citigroup, Inc. and General Electric, explained: "Businesses must interact with diverse clients and customers, and business people benefit substantially from exposure to every dimension of diversity—race, ethnicity, religion, political, undergraduate major, interests, and so forth. Business men and women are increasingly in positions in which their clients or customers come from different backgrounds." UNCJA 1580. In Mr. Henry's view, "it is a significant competitive handicap if these business men and women have not been in an educational environment exposing them to people from diverse backgrounds."

power will increase from \$910 billion in 2019 to \$1.7 trillion in 2030—in part due to the higher educational levels of Black Americans and loyalty to brands that align with their values).

¹² <https://hbr.org/2013/12/how-diversity-can-drive-innovation>.

Id. This Court’s statement in 2003 that “the skills needed in today’s increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints” is therefore even more true today. *Grutter*, 539 U.S. at 330.

C. **Diverse Teams Lead To Increased Profits And Business Success**

Social scientists have also found evidence supporting what Amici know to be true from experience: that businesses that prioritize diversity in their workforce and leadership experience more financial success. For instance, one meta-analysis found that “racial diversity is associated with increased sales revenue, more customers, greater market share, and greater relative profits.” Cedric Herring, *Does Diversity Pay?: Race, Gender, and the Business Case for Diversity*, 74 *Am. Soc. Rev.* 208, 208 (2009); *see also* Cedric Herring, *Is Diversity Still a Good Thing?*, 82 *Am. Soc. Rev.* 868 (2017) (updating and reinforcing this analysis). By contrast, a separate, more recent study concluded that venture-capital investment partners who shared the *same* ethnicity enjoyed 26.4% to 32.2% *less* success in their investments. Paul Gompers & Silpa Kovvali, *The Other Diversity Dividend*, *Harv. Bus. Rev.* (July-Aug. 2018).¹³ Research further supports that “shareholders value diversity favorably.” Kimberly M. Ellis & Phyllis Y. Keys, *Workforce Diversity and Shareholder Value: A Multi-Level Perspective*, 33 *Rev. Quantitative Fin. & Acct.* 191, 209-10 (2015) (finding positive associations between shareholder value and “total workforce heterogeneity,” “percent of minorities

¹³ <https://hbr.org/2018/07/the-other-diversity-dividend>.

among the top paid workers in [a] firm,” and “percent of minority new hires”).

Racial diversity in leadership is vital too. In a 2019 study, companies in the top quartile for ethnic and cultural diversity on executive teams exhibited significant financial benefits, “with a 36 percent higher likelihood of outperformance on EBIT [earnings before interest and taxes] margin.” McKinsey & Co., *Diversity Wins: How Inclusion Matters* 20 (2020).¹⁴ This was an improvement from the 2017 and 2014 iterations of the survey, which showed 33% and 35% higher likelihood of outperformance, respectively. *Id.*; see also Prasad Vemala et al., *Does Diversity in The Boardroom Add Value to a Firm?*, 18 Am. J. Mgmt. 79, 85 (2018) (finding that the “higher the ethnicity diversity on the board, [the] greater the firm performance”); Loren Henderson et al., *Business Wealth and the Composition of Ownership Teams in New Firms: The Role of Homophily and Diversity*, 17 J. Bus. Diversity 103, 108 (2017) (finding that “racial diversity in ownership teams is associated with greater net worth in business startups relative to homophilous ownership teams”). And Amici’s own experience corroborates those insights: racial diversity among employees and leaders strengthens their companies.

Similar results have been reached in research that studied ethnic diversity in combination with other types of diversity. For example, the Hewlett study discussed *supra* found that at firms with racially and

¹⁴ <https://www.mckinsey.com/~/media/mckinsey/featured%20insights/diversity%20and%20inclusion/diversity%20wins%20how%20inclusion%20matters/diversity-wins-how-inclusion-matters-vf.pdf>.

gender diverse leaders, employees were 45% more likely to indicate market share growth in the preceding year, and 70% more likely to indicate that the firm had captured a new market. *See also* Niclas L. Erhardt et al., *Board of Director Diversity and Firm Financial Performance*, 11 Corp. Governance 102 (2003) (finding positive association between percentage of women and racial minorities on boards of directors and return on investment).

**D. American Businesses Have
Therefore Invested Substantially In
Diversity, Equity, And Inclusion
Initiatives**

Recognizing the transformational impact of racial and ethnic diversity for the potential of their enterprises, American businesses are making historic and long-term investments in diversity, equity, and inclusion programs (“DE&I”). These investments allow both workers and businesses to realize the benefits of diversity by fostering workplace environments that are supportive of diverse backgrounds, experiences, and perspectives. DE&I programs are now “a given” among leading businesses, with 97% of top global enterprises reporting formal DE&I strategies at their companies. ForbesInsight, *Global Diversity and Inclusion: Fostering Innovation Through A Diverse Workforce* 11 (2011).¹⁵ And American businesses are deepening their investments in DE&I. As of early 2020, more than a third (39%) of Fortune 500 companies reported having a diversity executive with a title of director or higher.

¹⁵ https://www.forbes.com/forbesinsights/innovation_diversity/.

Stephanie Tonneson, *Has Corporate America Reached a Diversity Tipping Point?*, ZoomInfo (June 23, 2020).¹⁶ These investments underscore the critical importance of racial and ethnic diversity to the American business community.

II. AMERICAN BUSINESSES RELY ON UNIVERSITIES TO CREATE A PIPELINE OF DIVERSE LEADERS EQUIPPED WITH THE SKILLS TO THRIVE IN THE GLOBAL MARKETPLACE

While the benefits of diversity are real and tangible—and corporate DE&I programs seek to maximize those benefits—Amici do not recruit applicants in a vacuum. To succeed, these DE&I efforts depend on university admissions programs that lead to graduates educated in racially and ethnically diverse environments. Only in this way can America produce a pipeline of highly qualified future workers and business leaders prepared to meet the needs of the modern economy and workforce. This tradition of using education as an engine of economic growth stretches back to the Nation’s great land-grant institutions.¹⁷ It is equally important today to sow the seeds for business leadership, engineering expertise, innovation in computers and technology, sophisticated consultants, vibrant service industries,

¹⁶ <https://zoominfo.medium.com/has-corporate-america-reached-a-diversity-tipping-point-fabe8ff6f07c>.

¹⁷ Genevieve H. Croft, Cong. Research Serv., No. R45897, *The U.S. Land-Grant University System: An Overview* (2019); Scott Key, *Economics or Education: The Establishment of American Land-Grant Universities*, 67 *J. Higher Ed.* 196, 198-99, 216 (1996).

and much more. Only through an integration of America's educational pathways with the needs of business can our economy flourish and achieve its greatest potential.

Specifically, Amici rely on universities such as Harvard, the University of North Carolina, and a host of other institutions to provide the highest levels of educational excellence, which is achieved through a racially and ethnically diverse environment. A university education drives today's economy: approximately half of occupations in the United States require at least post-secondary education. See Elka Torpey, *Projected Openings in Occupations That Require a College Degree*, U.S. Bureau of Labor Statistics (Sept. 2021).¹⁸ And Amici depend on universities to ensure that these students are equipped with the skills to lead in today's increasingly diverse and globally interconnected workplaces, markets, nation, and world. Empirical research overwhelmingly supports the conclusion that diverse university environments promote the cognitive growth and leadership skills that are highly valued by Amici and across the American economy. Prohibiting universities nationwide from considering race among other factors in composing student bodies would

¹⁸ <https://www.bls.gov/careeroutlook/2021/article/projected-openings-college-degree.htm>; see also Nat'l Ass'n of Colleges & Employers, *2019 Recruiting Benchmarks Survey Report Executive Summary* (2019), <https://naceweb.org/uploadedFiles/files/2019/publication/executive-summary/2019-nace-recruiting-benchmarks-survey-executive-summary.pdf> (finding that 58% of all full-time, entry-level hires of U.S. businesses responding to survey were recent college graduates).

undermine businesses' efforts to build diverse workforces.

A. Students Trained In Diverse University Environments Gain The Skills Needed To Lead In Today's Global Marketplace

"[S]trong evidence" supports the insight, confirmed by Amici's experience, that university students who study and interact with diverse peers, and particularly with racially and ethnically diverse peers, exhibit enhanced cognitive development necessary for a wide range of skills highly valued in today's economy. Nicholas A. Bowman, *College Diversity Experiences and Cognitive Development: A Meta-Analysis*, 80 *Rev. Educ. Res.* 4, 22 (2010). Numerous studies have shown that cross-racial interactions and engagement during university contribute to essential job-related skills and competencies such as critical thinking, problem-solving, and the ability to work cooperatively. *E.g.*, Sylvia Hurtado, *Linking Diversity and Educational Purpose: How Diversity Affects the Classroom Environment and Student Development*, in *Diversity Challenged: Evidence on the Impact of Affirmative Action* 187, 196-98 (Gary Orfield ed., 2001).¹⁹

Students of all racial backgrounds benefit from

¹⁹ See also Thomas F. Nelson Laird, *College Students' Experiences with Diversity and Their Effects on Academic Self-Confidence, Social Agency, and Disposition Toward Critical Thinking*, 46 *Res. Higher Educ.* 365, 377-82 (2005); Eric Day Gurin et al., *Diversity and Higher Education: Theory and Impact on Educational Outcomes*, 72 *Harv. Educ. Rev.* 330, 351-58 (2002).

diverse university environments. Empirical research shows that studying with someone from a different racial and ethnic background improves key employment-related competencies for all students. One study found that such experiences benefit students' self-reported intellectual and vocational skills and functioning as a member of the team, with white students reporting the most pronounced gains in several key areas. Shouping Hu & George D. Kuh, *Diversity Learning Experiences and College Student Learning and Development*, 44 *J. College Student Dev.* 320, 327-32 (2003). Another study found that attending a racially and ethnically diverse university significantly and positively correlated to the development of post-college cross-cultural workforce competencies for white students from both segregated and integrated neighborhoods, and to the development of leadership skills for white students from segregated neighborhoods. Uma Jayakumar, *Can Higher Education Meet the Needs of an Increasingly Diverse Society? Campus Diversity and Cross-Cultural Competencies*, 78 *Harv. Educ. Rev.* 615, 632 (2008). These conclusions are unsurprising; students drawn from various racial, ethnic, socio-economic, gender, and geographic backgrounds—to name a few elements of diversity considered in a holistic process—have different lived experiences as Americans and bring those varied experiences with them to the classroom and the workplace.

As suggested by the above discussion, though, the empirical research underscores the specific importance of *racial* diversity on university campuses. Of the various diversity experiences at universities, interactions with peers of different races

are more strongly linked with cognitive growth than are interactions with peers who exhibit other forms of diversity, “which suggests the particular educational importance of fostering a racially diverse student body.” Bowman, *supra*, at 22. And because *college* exposure to diversity has been shown to be more important than pre- or post-college exposure for developing pluralistic skills, “the skills of perspective-taking and conflict negotiation required in today’s diverse society and global marketplace may best be nurtured in the college context.” Jayakumar, *supra*, at 642.

These studies also confirm that the representation of racially and ethnically diverse students on university campuses matters. Empirical research supports that, for white students, merely *attending* a racially and ethnically diverse university correlated positively with long-term workplace competencies. Jayakumar, *supra*, at 632. And even those researchers who conclude that the quality of interracial contact on university campuses is most important acknowledge that representation is essential to ensuring opportunities for meaningful cross-racial interaction. Hurtado, *supra*, at 198; *see also, e.g.*, Sylvia Hurtado, Univ. of Mich. Ctr. Stud. Higher & Postsecondary Educ., *Preparing College Students for a Diverse Democracy: Final Report to the U.S. Department of Education, Office of Educational Research and Improvement, Field Initiated Studies Program* 23 (2003).

Business leaders and educators alike understand that diversity in university classrooms facilitates the development of skills and perspectives necessary to help workers and businesses succeed. For example,

leading economist Peter Henry, who, as an undergraduate student at the University of North Carolina, Chapel Hill, experienced “first-hand” the “importance in higher education of exposure to diversity across many dimensions, including race,” explained: “Diversity of perspective is not just a nice thing for companies. [It] is a critical competitive consideration in the business world Building a diverse classroom experience is how to turn out the most informed critical thinkers. Classroom diversity is crucial to producing employable, productive, value-adding citizens in business.” UNCJA 1580-82.

Confirming the research and views of business leaders, individual students and alumni in these cases testified to the importance of racial and ethnic diversity to their own educational experiences. *E.g.*, HJA 938-40, 942, 955-58 (testimony from multiple students to this effect). As one student put it: “I think dismantling the race-conscious admissions policy would really rob students of that critical part of education where you learn from and with people who are different from you and have different experiences from you.” HJA 971. Another explained, “being around students from different ethnoracial backgrounds made me a more critical thinker and a more independent thinker.” HJA 910.

Accordingly, while Amici value and promote diversity broadly speaking, they also specifically value on-campus experience with racial diversity. Such experiences promote cognitive growth and help develop the skills needed to thrive in the modern American economy.

B. American Businesses Work Hand-In-Hand With Universities To Recruit Next Generation Business Leaders

As university students prepare to graduate and enter the workforce, American businesses collaborate with universities to recruit talent that will help those businesses succeed. Business recruitment on university campuses is widespread. A 2019 survey of 275 firms across many industries found that more than 75 percent conducted on-campus interviews, and nearly 60 percent of full-time entry-level college hires were initially interviewed on campus. Russell Weinstein, *Employer Geography, Campus Recruiting, and Post-Graduation Outcomes*, Nat'l Ass'n of Colleges & Employers (Nov. 1, 2019).²⁰ And of course, companies hire many additional recent college graduates through other recruiting methods.

Businesses rely on university relations and recruiting to promote the diversity of their talent. When selecting target universities at which to recruit, employers cite the diversity of the student body along with other considerations such as the quality of the individual academic programs. Nat'l Ass'n of Colleges & Employers, *2019 Recruiting Benchmarks Survey Report Executive Summary* (2019).²¹ In a 2021 survey of American businesses, 88.4% of employers reported

²⁰ <https://www.naceweb.org/job-market/trends-and-predictions/employer-geography-campus-recruiting-and-post-graduation-outcomes> (citing National Association of Colleges & Employers 2014 reporting).

²¹ <https://www.naceweb.org/uploadedfiles/files/2019/publication/executive-summary/2019-nace-recruiting-benchmarks-survey-executive-summary.pdf>.

formal diversity recruiting programs at universities, up from 56.3% in 2016. Kevin Gray, *Formal Diversity Recruiting Efforts Climb Among Employers*, Nat'l Ass'n of Colleges & Employers (Mar. 7, 2022).²² And a separate study of American employers found that in the one-year period from mid-2020 to mid-2021, more than two-thirds of respondents reported increasing their investments in university recruitment of historically underrepresented groups. *Id.*

University recruitment programs specifically designed to recruit candidates of racially diverse backgrounds have yielded results. One study of 829 midsize and large U.S. firms found that five years after companies implemented programs focused on recruiting racially diverse students from universities, the proportion of Black male and female managers increased by 8% and 9%, respectively. Frank Dobbin & Alexandra Kalev, *Why Diversity Programs Fail*,

²² <https://www.nacweb.org/diversity-equity-and-inclusion/trends-and-predictions/formal-diversity-recruiting-efforts-climb-among-employers/>; see also ForbesInsight, *Global Diversity and Inclusion: Fostering Innovation Through a Diverse Workforce*, https://images.forbes.com/forbesinsights/StudyPDFs/Innovation_Through_Diversity.pdf (explaining that 52% of global enterprises responding to survey reported utilizing university or graduate school diversity associations to recruit talent, which was the most highly rated strategy); Ronald C. Machen et al., *Initiatives to Promote Diversity and Reduce Systemic Bias in Corporate America* 5 (Oct. 2021), <https://www.wilmerhale.com/en/insights/publications/20211007-how-to-advance-corporate-diversity-in-compliance-with-the-law-a-toolkit> (discussing how strategic partnerships with educational institutions are “essential to successfully increasing the rate of Black hires”).

Harv. Bus. Rev. (2016).²³ The Dobbin & Kalev article also explains that increased recruitment of highly qualified, racially diverse employees is essential to achieving reduction of bias among all employees. *See id.* Once businesses recruit more racially diverse employees, they can then use mentoring and related programs to enhance employees' sense of belonging and inclusion and reduce social isolation and attrition. Machen, *supra*, at 7-8. Amici are committed to continuing and advancing such efforts, and they require a candidate pool that is both highly qualified and racially diverse to do so.

III. THE BUSINESS COMMUNITY'S EXPERIENCE DEMONSTRATES THAT DIVERSITY REMAINS A COMPELLING INTEREST

Amici's experience demonstrates that educational diversity remains a compelling interest. Petitioner's arguments are inconsistent with this experience and the research that supports it.

For instance, in an attempt to downplay the importance of student-body diversity, petitioner cabins its value to in-classroom benefits such as "livelier classroom discussions." Pet. Br. 51. Although such immediate on-campus educational benefits are an important part of the compelling

²³ <https://hbr.org/2016/07/why-diversity-programs-fail> (explaining why interventions such as targeted college recruitment, mentoring programs, intergroup contact, and social accountability successfully increase diversity in business); *see also* Machen, *supra* at 7-8 (explaining that recruitment, mentoring, and accountability are central to promoting diversity and reducing systemic bias in corporate America).

interest this Court has recognized, they are not the whole story. Another component of the compelling interest is how those on-campus experiences prepare students for their next steps into the world, including as workers and leaders for Amici and other American businesses. Indeed, the Court highlighted this aspect of the compelling interest in educational diversity in the same section of *Grutter* to which petitioner points, citing the experiences of businesses and military leaders to support the conclusion that “the diffusion of knowledge and opportunity through public institutions of higher education must be accessible to all individuals regardless of race or ethnicity.” 539 U.S. at 330-31; *see also Sweatt v. Painter*, 339 U.S. 629, 634 (1950) (Legal education “cannot be effective in isolation from the individuals and institutions with which the law interacts.”). And as discussed, ample evidence establishes that exposure to diverse perspectives in higher education—a goal achieved in part through admitting a racially diverse student body—fosters essential skills and qualities in college graduates. These include an increased ability to understand different perspectives and use that knowledge to think creatively; stronger awareness of the benefits of diverse groups; an increased ability to both join and lead diverse teams; and comfort interacting with diverse constituencies such as customers, suppliers, regulators, managers, teammates, clients, and more. Amici have experienced these benefits directly, and therefore value candidates who are adept in working in heterogenous groups.

Petitioner also suggests that universities are using racial minorities as “instruments to provide educational benefits for other, mostly white students.” Pet. Br. 53-54. Petitioner suggests that non-white students do not benefit from racial diversity, but the evidence and Amici’s experiences alike show that racial diversity benefits everyone. Not only do individuals of all racial backgrounds learn to understand different perspectives, but diversity in groups increases thoroughness, accuracy, and motivation to avoid internal biases. Importantly, a diverse student body is needed to achieve these benefits. *See Grutter*, 539 U.S. at 333 (“[D]iminishing the force of [racial] stereotypes is both a crucial part of the Law School’s mission, and one that it cannot accomplish with only token numbers of minority students.”); HJA 938-40 (Asian American student testifying to the importance of having a “strong” presence of students of color on campus, including “someone to affirm” her experiences); HJA 961-62, 964-66 (Black student testifying to the “isolating” feeling of being the only Black student in a high-school class, and testifying that, in her experience, having a racially diverse student body helps to reduce stereotypes); UNCJA 955-56 (African American student testifying to his increased comfort participating in classes with other students of color). Increasing racial diversity helps all students normalize experiences with peers (and future colleagues) of different backgrounds, thereby breeding inclusivity. Those experiences then benefit the businesses where those students will work, and the clients and customers whom they will serve.

Petitioner further argues that consideration of race in university admissions contradicts equal

protection values because it treats people differently based on race. Pet. Br. 52. But the point is not that all people of a particular racial background necessarily have the same experiences or views. *See id.* at 52-53. It is that racial diversity demonstrates in one-to-one communication that individuals of all races and backgrounds have *individualized* points of view, which are at times informed by shared lived experiences. *See Grutter*, 539 U.S. at 330. The record before this Court demonstrates the value that racial diversity, broadly speaking, brings to individual students within and among different racial groups. *See, e.g.*, UNCJA 760 (Latino student testifying that diversity within the Latino community on campus helped break down his own personal stereotypes); HJA 970 (Chinese American student testifying to the value of “meet[ing] Asian Americans who are different from me”); UNCJA 954-55 (African American student testifying to his experiences learning from Muslim students).

The long-term effects of these experiences on individuals in turn add substantial value to group dynamics on a variety of metrics, and thereby business performance. Far from treating people differently based on stereotypes or impermissible racial discrimination, such a process treats everyone the same by considering all areas of value applicants may bring to campus, the workplace, and beyond. The record in this case demonstrates that immersion in a diverse community, assembled based on such a holistic understanding, encourages people of all racial backgrounds to embrace their individuality. *See, e.g.*, HJA 936-37 (Vietnamese American Harvard student testifying that her “story can’t even really be told”

without understanding her racial and ethnic background); HJA 906-08 (Chicana student testifying that her ethnoracial identity “was such a core piece of who I am,” and that she “would not have been able to” share her “potential contributions to Harvard without any reference to [her] ethnicity”). Amici’s experience is in accord, and their organizations are strengthened when their team members and leaders have rich and individualized experiences with people from different racial and ethnic backgrounds. University education remains an essential environment for fulfilling that need.

CONCLUSION

For the above reasons, the Court should affirm.

Respectfully submitted,

RUTHANNE M. DEUTSCH
DEUTSCH HUNT PLLC
300 New Jersey Avenue
NW, Suite 900
Washington, DC 20001

*Counsel for Designated
Amici Curiae*

MICHAEL R. DREEBEN
Counsel of Record
O'MELVENY & MYERS LLP
1625 Eye Street, NW
Washington, DC 20036
(202) 383-5300
mdreeben@omm.com

HEATHER WELLES
NATALIE D. CAMASTRA
KELLY KAMBOURELIS
O'MELVENY & MYERS LLP
400 South Hope Street, 18th
Floor
Los Angeles, CA 90071

MELISSA C. CASSEL
O'MELVENY & MYERS LLP
Two Embarcadero Center,
28th Floor
San Francisco, CA 94111

*Counsel for Designated
Amici Curiae*

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APPENDIX

APPENDIX A
LIST OF *AMICI CURIAE*

Accenture
Adobe Inc.
Air Products and Chemicals, Inc.
Airbnb, Inc.
Alaska Airlines Inc.
American Airlines, Inc.
American Express Company
American International Group, Inc.
Amgen Inc.
Apple Inc.
Ariel Investments, LLC
Bain & Company*
Bayer US LLC
Biogen Inc.*
Bristol Myers Squibb
Chamber of Progress
Cigna Corporation
Cisco Systems, Inc.
Corning Incorporated
Cruise LLC
Dell Technologies Inc.*
Eaton Corporation
Engine Advocacy*
Etsy, Inc.*
General Dynamics Corporation
General Electric Company
General Motors Company
GlaxoSmithKline LLC
Google LLC
HP Inc.
IKEA Retail US
Illinois Tool Works Inc.*
Intel Corporation*
Jazz Pharmaceuticals PLC

* Amici listed in this Appendix are represented by O'Melveny & Myers LLP, except that amici designated with an asterisk (*) are represented solely by Deutsch Hunt PLLC.

2a

JetBlue Airways*
Johnson & Johnson
Kaiser Foundation Health Plan, Inc.
KPMG LLP
Leidos Holdings, Inc.
Levi Strauss & Co.
Logitech Inc.
Lyft, Inc.
Match Group, LLC
Mattel, Inc.
Merck & Co, Inc.
Meta Platforms, Inc.
Northrop Grumman Corporation
Paramount Global
PayPal Inc.
Pinterest, Inc.
Procter & Gamble Company
RealNetworks, Inc.
Red Hat, Inc.*
Ripple Labs Inc.
Salesforce, Inc.*
Silicon Valley Leadership Group*
Starbucks Corporation
Steelcase Inc.*
The Hershey Company
The Kraft Heinz Company
The Prudential Insurance Company of
America
Twilio Inc.
Uber Technologies, Inc.
United Airlines, Inc.
Verily Life Sciences LLC
ViiV Healthcare Company
VMware, Inc.*
Walgreens Boots Alliance, Inc.*
Zazzle Inc.*