

No. 01-1447

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BARBARA GRUTTER,
Plaintiff-Appellee,

v.

LEE BOLINGER, *et al.*,
Defendants-Appellants,

and

KIMBERLY JAMES, *et al.*,
Intervening Defendants.

On Appeal From An Order And Final Judgment Of
The United States District Court
For The Eastern District Of Michigan
(Honorable Bernard A. Friedman)

**BRIEF OF GENERAL MOTORS CORPORATION
AS AMICUS CURIAE
IN SUPPORT OF DEFENDANTS-APPELLANTS**

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**DISCLOSURE OF CORPORATE AFFILIATIONS
AND FINANCIAL INTEREST**

Pursuant to Sixth Circuit Appellate Procedure Rule 26.1, General Motors Corporation makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation?

Amicus curiae General Motors answers “NO”.

If the answer is YES, list below the identity of the Parent Corporation or affiliate and the relationship between it and the named party:

Not applicable.

2. Is there a publicly-owned corporation, not a party to the appeal that has a financial interest in the outcome?

Amicus curiae General Motors answers “NO”.

If the answer is YES, list the identity of such corporation and the nature of the financial interest.

Not applicable.

Dated: May 30, 2001

By: _____
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INTEREST OF AMICUS CURIAE

General Motors Corporation (“General Motors”) is a multi-national corporation headquartered in Detroit, Michigan. A global leader in automobile design and manufacturing, financial services, and advanced technology electronics, General Motors contributes substantially to the national and world economies, with annual revenues exceeding \$175 billion. General Motors employs 388,000 people globally, including 193,000 people in the United States.

General Motors’ interest in this case is substantial. General Motors employs a large number of graduates from the University of Michigan.¹ General Motors depends upon the University of Michigan and similarly selective academic institutions to prepare students for employment — to teach them the skills required to succeed and lead in the global marketplace. The quality of the education these students receive profoundly affects the ability of General Motors, and indeed all major American corporations, to compete.

General Motors files as amicus curiae in this case to explain that the Nation’s interest in safeguarding the freedom of academic institutions to select racially and ethnically diverse student bodies is indeed compelling: the future of

¹ In part because General Motors hires so many graduates from the University of Michigan, the university is one of General Motors’ “Key Institutions,” to which the company provides significant financial assistance.

American business and, in some measure, of the American economy depends upon it.

In General Motors' experience, only a well educated, diverse workforce, comprising people who have learned to work productively and creatively with individuals from a multitude of races and ethnic, religious, and cultural backgrounds, can maintain America's competitiveness in the increasingly diverse and interconnected world economy. Diversity in academic institutions is essential to teaching students the human relations and analytic skills they need to succeed and lead in the work environments of the twenty-first century. These skills include the abilities to work well with colleagues and subordinates from diverse backgrounds; to view issues from multiple perspectives; and to anticipate and respond with sensitivity to the cultural differences of highly diverse customers, colleagues, employees, and global business partners.

General Motors speaks from first-hand experience regarding the importance of such cross-cultural skills. As General Motors' global enterprises expand, it is increasingly critical that employees at every level of its operations utilize these skills in their daily tasks. General Motors now maintains major market presences in more than 200 different countries throughout the world, including in Europe, Asia Pacific, Latin America, Africa, and the Middle East. General Motors'

employees, customers, and business partners thus could scarcely be more racially, ethnically, and culturally diverse.

A ruling proscribing the consideration of race and ethnicity in admissions decisions would dramatically reduce diversity at our Nation's top institutions and thereby deprive the students who will become the corps of our Nation's business elite of the interracial and multicultural interactions in an academic setting that are so integral to their acquisition of cross-cultural skills. Such a ruling also would reduce racial and ethnic diversity in the pool of employment candidates from which the Nation's businesses can draw their future leaders, impeding businesses' own efforts to obtain the manifold benefits of diversity in the managerial levels of their work forces. Each of these results may diminish the ability of American businesses to utilize fully the opportunities of the global market.

All parties have consented to the filing of this brief.

INTRODUCTION

The ability of American businesses to thrive in the twenty-first century will depend in large measure on our Nation's responses to two inevitable forces: the increasingly global and interconnected nature of the world economy (see, *e.g.*, T.K. Bikson & S.A. Law, *Rand Report on Global Preparedness and Human Resources: College and Corporate perspectives* (1994) ("Rand Report")) and the increasing

diversity of our own population (see, *e.g.*, Minority Business Development Agency, U.S. Dep't of Commerce, *Dynamic Diversity* (1999)). The vast majority of businesses in the Fortune 500 currently maintain operations or do business in countries outside of the United States. Technological innovations, including the internet and other telecommunications tools, are creating a truly global, interlinked world economy. See Rand Report, *supra*, at 1-2. Global mergers and business expansion are continually increasing the diversity of American businesses' customer bases and business partners.

Nationally, our own population is also becoming increasingly diverse: by the year 2050, almost half of all Americans — 47% — will be African American, Hispanic, Asian American, or Native American. See *Dynamic Diversity*, *supra*, at 8. After 2050, that “minority” population is projected rapidly to surpass the non-Hispanic white population in size. *Id.* at 11; see also *id.* at 1.

To succeed in this increasingly diverse environment, American businesses must select leaders who possess cross-cultural competence — the capacities to interact with and understand the multiplicity of perspectives held by persons of different races, ethnicities, and cultural histories. Numerous authorities concur that “[c]rosscultural competence” is “the most important new attribute for future effective performance in a global marketplace.” Rand Report, *supra*, at 51; see

also *id.* at 24 (identifying “cross-cultural competence” as “the *critical new human resource requirement* for corporations that have espoused a global business strategy”) (emphasis in original). Thus, it is essential that the selective academic institutions that prepare students to enter the business and professional worlds adequately equip them with this skill. *Id.* at 51-52.

Much research confirms what is intuitively obvious: students are likely to acquire greater cross-cultural competence in a multicultural and multiracial academic environment, in which students and faculty of different cultures and races interact, than they are in a homogeneous one, in which cross-cultural communication is merely a theoretical construct. See pp. 21-22, *infra*. Studies also confirm that diverse academic environments stimulate critical and reflective thinking, opening students’ minds to problem-solving from multiple perspectives. See *id.*

This Court is presented with the question whether state universities have a compelling interest in ensuring that students receive these educational benefits. The answer to that question, originally provided by Justice Powell’s opinion in *Regents of University of Cal. v. Bakke*, 438 U.S. 265 (1978), and confirmed by the experience of the business community and academic institutions in the decades since *Bakke* was decided, is a resounding “yes,” as Judge Duggan correctly

concluded in his opinion below (*Gratz v. Bollinger*, slip op. 23 (Dec. 13, 2000)). Judge Friedman’s contrary conclusion was based on his mistaken belief that *no* interest other than an interest in “remedy[ing] past discrimination” — no matter how “important and laudable” that interest might be — could ever justify the consideration of race by a governmental body. *Grutter v. Bollinger*, slip op. 49 (Mar. 27, 2001). That conclusion is incorrect as a matter of law.²

ARGUMENT

I. CONSIDERATION OF RACE AND ETHNICITY IN UNIVERSITY ADMISSIONS FURTHERS A COMPELLING INTEREST IN EDUCATING STUDENTS AND TRAINING THEM TO COMPETE IN THE GLOBAL MARKETPLACE

A. Institutions of Higher Education Have A Compelling Interest In Selecting Diverse Student Bodies

Justice Powell presciently declared in *Bakke* that “the ‘nation’s future depends upon leaders trained through wide exposure’ to the ideas and mores of students as diverse as this Nation of many peoples.” 438 U.S. at 313 (quoting *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967)). A majority of the Supreme Court held in *Bakke* that the University of California had “a substantial interest that legitimately may be served by a properly devised admissions program

² We leave to the parties, who possess greater familiarity with the details of the University’s program, the question whether the program is narrowly tailored to achieve the above-described compelling interest.

involving the competitive consideration of race and ethnic origin.” *Id.* at 320 (opinion of Powell, J., joined by Brennan, White, Marshall, and Blackmun, JJ.). In his opinion, Justice Powell explained that “attainment of a [racially and ethnically] diverse student body” “clearly is a constitutionally permissible goal for an institution of higher education” (*id.* at 312) because it augments the educational process in two ways.

First, racial and ethnic diversity in an academic institution teaches students skills that will improve their performance as leaders and professionals in a heterogeneous society. 438 U.S. at 313. Immersion in a multiracial academic environment enhances students’ knowledge of different cultures and their understanding of perspectives that are influenced by race. That augmented understanding in turn prepares students, upon graduation, to work cooperatively in multiracial environments and to serve multiracial clientele. As Justice Powell observed, for example, racial diversity in a medical school “enrich[es] the training of its student body,” “better equip[ping] its graduates to render with understanding their vital service” to a “heterogeneous population.” *Id.* at 314.

Second, racial and ethnic diversity promotes ““speculation, experiment, and creation,”” thinking processes that are “essential to the quality of higher education.” 438 U.S. at 311-312 (quoting *Sweezy v. New Hampshire*, 354 U.S.

234, 263 (1957) (Frankfurter, J., concurring)). Differences among students allow them to “stimulate one another to reexamine even their most deeply held assumptions about themselves and their world,” teaching them to view issues from myriad perspectives. *Id.* at 312 & n.48 (quoting William G. Bowen, *Admissions and the Relevance of Race*, PRINCETON ALUMNI WEEKLY 7, 9 (Sept. 26, 1977)).

In the courts below, the University of Michigan presented a mass of unrefuted evidence substantiating both of Justice Powell’s statements regarding the ways in which racial and ethnic diversity enhance students’ intellectual and social growth. Judge Duggan found that the University had presented “solid evidence regarding the educational benefits that flow from a racially and ethnically diverse student body” and, guided by Justice Powell’s opinion, concluded that the University’s interest in achieving these benefits was compelling. *Gratz v. Bollinger*, slip op. 20 (Dec. 13, 2000).

Judge Friedman likewise acknowledged the educational benefits of racial diversity, observing that “racial diversity in the law school population may provide the[] educational and societal benefits” of “enabl[ing] [students] to better understand persons of different races” and “equip[ing] them to serve as lawyers in an increasingly diverse society and an increasingly competitive world

economy.” *Grutter*, slip op. 48-49 (citing Amicus Curiae Brief of General Motors Corp.). Judge Friedman also conceded that the University’s interest in achieving these educational and social benefits was “[c]learly * * * important and laudable.” *Id.* at 49.

Nonetheless, Judge Friedman declined to find that the University’s “[c]learly * * * important and laudable” interest in “attain[ing] a racially diverse class is * * * *compelling*” primarily “because * * * it is not a remedy for past discrimination.” *Ibid.* (emphasis added). Invoking dicta in a Supreme Court opinion, Judge Friedman reasoned that the Supreme Court, if given an opportunity today, would rule that no interest, other than a need to remedy the effects of past discrimination, could ever justify the consideration of race by a governmental body. See *id.* at 46 (citing *City of Richmond v. Croson*, 488 U.S. 469, 493 (1989)).

That was error. In *Bakke*, a majority of five Justices unequivocally held that a state university may consider race in admissions decisions *absent* a history of discrimination by that institution. Although the Justices’ rationales for that conclusion differed, that conclusion — with which Judge Friedman’s opinion is irreconcilable — “remain[s] binding precedent until [the Supreme Court itself] see[s] fit to reconsider [it], regardless of whether subsequent cases have raised

doubts about [its] continuing vitality.” *Hohn v. United States*, 524 U.S. 236, 252-253 (1998).

Because *Bakke* remains good law, the Supreme Court’s suggestion in dicta that affirmative action might appropriately be limited to remedial settings, made in a case that had nothing to do with education or the benefits of diversity, has no bearing here. As Judge Posner has explained: “There is a reason that dicta are dicta and not holdings, that is, are not authoritative. * * * A judge would be unreasonable to conclude that no other consideration except a history of discrimination could ever warrant a [race-conscious] measure unless every other consideration had been presented to and rejected by him.” *Wittmer v. Peters*, 87 F.3d 916, 919 (7th Cir. 1996). After all, “[i]t is not as if the rectification of past discrimination ha[s any] logical or equitable priority over other legitimate goals” that race-conscious decisionmaking “might serve.” *Ibid.*

Numerous courts of appeals thus have recognized nonremedial justifications for affirmative action. *See, e.g., id.* at 919-920 (state had a compelling interest in diversifying ranks of lieutenants in a boot camp) (citing other correctional cases). Indeed, several courts of appeals have held that state educational institutions have a compelling interest in achieving diversity to achieve educational goals. *See, e.g., Smith v. University of Washington Law School*, 233 F.3d 1188 (9th Cir. 2000), cert.

denied, May 29, 2001 (law school); *Brewer v. West Irondequoit Central Sch. Dist.*, 212 F.3d 738, 750 (2d Cir. 2000) (primary school); *Hunter v. Regents of Univ. of Cal.*, 190 F.3d 1061 (9th Cir. 1999) (lab school). The Fifth Circuit is the sole court of appeals to reach a different conclusion. See *Hopwood v. Texas*, 78 F.3d 932, 944-945 (5th Cir. 1996).

Judge Friedman also refused to follow *Bakke* because he was skeptical of Justice Powell's conclusion that racial diversity increases viewpoint diversity. Grutter, slip op. 47. But in *Metro Broadcasting, Inc. v. Federal Communications Comm'n*, 497 U.S. 547 (1990), the Court explicitly endorsed Justice Powell's view that racial diversity tends to promote a healthy and educational diversity of viewpoints. The Court declared: "Just as a 'diverse student body' contributing to a "robust exchange of ideas" is a 'constitutionally permissible goal' on which a race conscious university admissions program may be predicated, the diversity of views and information on the airwaves serves important First Amendment values." *Id.* at 567-568 (citing *Bakke*, 438 U.S. at 311-313 (opinion of Powell, J.)).³

³ The Supreme Court overruled *Metro Broadcasting* on a different ground — specifically, on its holding that a race-conscious federal government program need only be reviewed under intermediate, rather than strict, scrutiny — in *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 225-227 (1995). The Court in *Adarand* did not revisit its holding in *Metro Broadcasting* that racial and ethnic diversity tends to promote a diversity of viewpoints.

To recognize that racial diversity among students enhances educational diversity is not, as plaintiff has suggested, to rely upon impermissible racial stereotypes or to presume that all individuals of a particular race act or think alike. Although persons of a particular race or ethnicity of course do not necessarily share a common perspective, race and ethnicity are as likely as any other experience to influence an individual's own, unique perspective. Just as growing up in a particular region, living with a disability, or having particular professional experiences are likely to affect an individual's views, so too are one's racial and cultural experiences. See WILLIAM G. BOWEN & DEREK BOK, *THE SHAPE OF THE RIVER* 278-279 (1998). As the Court explained in *Metro Broadcasting*, "[t]he predictive judgment about the overall result of minority" representation "is not a rigid assumption about how minorit[ies] * * * will behave in every case but rather" merely recognizes "that greater admission of minorities would contribute, on average, to the robust exchange of ideas." *Id.* at 579 (majority opinion).

Indeed, the Supreme Court often has recognized, in cases other than *Bakke*, that racial and ethnic academic diversity promotes vital educational goals, and even that achieving diversity through race-conscious decisionmaking accordingly is within the prerogative of state educational institutions. In *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971), for example, the Court observed

that, even absent any constitutional violation, “it [would be] within the broad discretionary powers of [elementary and secondary] school authorities” to “conclude” “as an educational policy” “that in order to prepare students to live in a pluralistic society each school should have a prescribed ratio of Negro to white students.” *Id.* at 16; accord *North Carolina Bd. of Educ. v. Swann*, 402 U.S. 43 (1971). Similarly, in *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 460, 472-474 (1982), the Supreme Court struck down a measure that would have restricted a school district’s power to address de facto segregation, for the purpose of augmenting education. In the course of its opinion, the Court noted that “it should be * * * clear that white as well as Negro children benefit from exposure to ‘ethnic and racial diversity in the classroom.’” *Id.* at 472 (internal citation omitted). And it concluded that, “in the absence of a constitutional violation, the desirability and efficacy of school desegregation are matters to be resolved through the political process.” *Id.* at 474. Cf. *Sweatt v. Painter*, 339 U.S. 629, 634 (1950) (recognizing the educational value of diversity in striking down segregation of law school).

As shown below, the experience of the business world confirms Justice Powell’s conclusion that state academic institutions have a compelling interest in using diversity to hone young minds and ““prepar[e] * * * children ‘[to act as]

citizens[]” (*Seattle Sch. Dist.*, 458 U.S. at 473 (internal citation omitted)), “leaders” (*Keyishian*, 385 U.S. at 603), and professionals (*Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954); *Sweatt*, 339 U.S. 634) in our heterogeneous society. *Bakke*, 438 U.S. at 313.

B. Success in Today’s Business World Demands Cross-Cultural Competence and the Ability to View Problems from Multiple Perspectives — Skills Best Learned in Diverse Academic Environments

The business world has learned that, just as Justice Powell observed, “the ‘nation’s future’” does indeed “depend[] upon leaders trained” in diverse academic environments. *Bakke*, 438 U.S. at 313 (Opinion of Powell, J.). The capacities to work easily with persons of other races and to view problems from multiple complex perspectives are essential skills in the business world of the twenty-first century. Indeed, the cross-cultural competence of a business’s workforce directly affects its bottom line. Academic institutions with diverse student bodies offer the best — and for many students, the only — opportunity to acquire these crucial skills.

1. To achieve excellence in the new, diverse global economy, employees of any race, culture, or ethnicity must possess cross-cultural competence

Demographic changes in the racial and ethnic composition of businesses’ workforces, customer bases, and pools of potential business partners increasingly

necessitate that entrants into the managerial levels of the business world come equipped with the abilities to work creatively with persons of any race, ethnicity, or culture and to understand views influenced by those traits. See, *e.g.*, RAND REPORT, *supra*, at 16-18, 24-27. Such cross-cultural competence affects a business's performance of virtually all of its major tasks: (a) identifying and satisfying the needs of diverse customers; (b) recruiting and retaining a diverse workforce, and inspiring that workforce to work together to develop and implement innovative ideas; and (c) forming and fostering productive working relationships with business partners and subsidiaries around the globe.⁴

a. Creating and Selling Products to a Diverse Population. Racial minorities in the United States presently wield an impressive \$600 billion in annual purchasing power (Expert Report of William G. Bowen at 14 (Dec. 9, 1998)) — a number that is increasing exponentially with expanding minority populations. Moreover, with the global expansion of many businesses and the advent of internet shopping, the customer bases of many businesses now include people from many races and diverse cultures around the world.

⁴ In light of the importance of diversity to a business's success, it is not surprising that many businesses have long promoted a commitment to diversity among their ranks. General Motors, for instance, made diversity a "core business objective" in 1995.

Cross-cultural competence is essential for a business to profit from these vast market opportunities. It is undeniable that consumers' cultures can and often do influence their purchasing preferences.⁵ Businesses that are able to identify and cater to these market preferences will prosper; those that lack the sensitivity and domain knowledge to meet these diverse market demands will not.

To meet the challenge, businesses require managers and employees who understand that people from diverse backgrounds manifest diverse interests, and who know how to translate that understanding into creative product development, community outreach, and marketing and advertising campaigns. Examples of such successful identification and satisfaction of the needs of culturally diverse populations abound. See, e.g., TAYLOR H. COX, JR., CULTURAL DIVERSITY IN ORGANIZATIONS: THEORY, RESEARCH, AND PRACTICE 30-31 (1993) (citing, among other examples, a company's successful development of a cosmetics line designed for women of color and a different company's success in turning around poor

⁵ See, e.g., Taylor H. Cox, Jr. & Stacy Blake, *Managing Cultural Diversity: Implications for Organizational Competitiveness*, 5 ACADEMY OF MANAGEMENT EXECUTIVE No. 3, at 45, 49 (1991); David K. Tse *et al.*, *Does Culture Matter? A Cross-Cultural Study of Executives' Choice, Decisiveness, and Risk Adjustment in International Marketing*, 52 JOURNAL OF MARKETING No. 4, at 81-95 (1988); Rohit Deshpande *et al.*, *The Intensity of Ethnic Affiliation: A Study of the Sociology of Hispanic Consumption*, 13 JOURNAL OF CONSUMER RESEARCH No. 2, at 214-220 (1986); S.G. Redding, *Cultural Effects on the Marketing Process in Southeast Asia*, 24 JOURNAL OF MARKET RESEARCH SOC'Y No. 2, at 98-114 (1982).

performance in inner cities by assigning management of those market areas to Black and Hispanic managers sensitive to local consumer preferences).

Companies whose managers understand the importance of forging relationships with diverse communities similarly enhance their business opportunities. Author John Fernandez cites as one example General Motors' closure of a \$1 billion automotive deal with China. The deal was aided by China's appreciation of the corporation's prior outreach efforts to Asian American employees and the Asian American community. JOHN P. FERNANDEZ, RACE, GENDER AND RHETORIC: THE TRUE STATE OF RACE AND GENDER RELATIONS IN CORPORATE AMERICA AT 224 (1998). Conversely, a business's lack of sensitivity to culturally based beliefs may disaffect an entire target market and result in decreased sales. Many of the best examples of this phenomenon have occurred in the global market, when American companies have failed to develop sufficient familiarity with the cultures of potential customers to avoid offending them. See *id.* at 220-221 (enumerating notable mishaps and obstacles).

b. Relationships in the Workplace. In the year 2000, more than one-third of all new labor force entrants in the United States were minorities. See Expert Report of Bowen, at 5; see also FEDERAL GLASS CEILING COMM'N, A SOLID INVESTMENT: MAKING FULL USE OF THE NATION'S HUMAN CAPITAL AT 1 (1995)

(Message From The Chair) (“GLASS CEILING COMM’N REPORT”). Over the next 50 years, that percentage is projected to exceed the percentage of Caucasian workforce entrants. See p. 4, *supra*. Businesses also employ citizens of other nations to staff their global manufacturing and production operations. General Motors, for example, employs citizens of 53 different countries, many of whom are non-Caucasians.

The capacity of many businesses to recruit and retain talented labor — a critical resource — therefore increasingly will depend upon the reputation of the businesses for nondiscrimination, sensitivity to interracial and multicultural issues, and valuing diversity. “Companies with strong records for developing and advancing minorities and women will find it easier to recruit [and retain] members of those groups.” GLASS CEILING COMM’N REPORT, *supra*, at 4.

Indeed, companies with reputations for appropriate management of diversity already are proving more successful in attracting and retaining top-quality workers. See Taylor H. Cox, Jr. & Stacy Blake, *Managing Cultural Diversity: Implications for Organizational Competitiveness*, 5 ACADEMY OF MANAGEMENT EXECUTIVE No. 3, at 45, 48-49 (1991). The need to make work environments more hospitable to

non-Caucasian workers is apparent: at present, minorities in general experience higher turnover rates and levels of job dissatisfaction. See, *e.g.*, *id.* at 45, 46.

Cross-cultural competence augments not only recruiting and retention of employees, but also workforce creativity and productivity. The best ideas and products are created by teams of people who can work together without prejudice or discomfort. Cf. Gareth Morgan, *Endangered Species: New Ideas*, 133 BUSINESS MONTH No. 4, at 75-77 (1989) (cooperation and conflict management are essential to innovation). The absence of such obstacles is of special import in the new work environments of cutting-edge businesses, which stress teamwork and the free movement of ideas between people (see, *e.g.*, WILLIAM G. LEE, MAVERICKS IN THE WORKPLACE: HARNESSING THE GENIUS OF AMERICAN WORKERS 4 (1998)). General Motors, for example, strives for a “walls down” work environment to foster “idea flow” — an interactive process of creative brainstorming unhindered by titles and positions. Idea flow cannot be achieved across barriers of racial and cultural discomfort or among team members who are unable to accept diverse views.

A corporate management comprising individuals who have never before experienced the challenges of interracial and cross-cultural interactions that they will confront in the workplace poses great risks to efficiency and productivity.

First, low-level unease between managers and employees of different races, ethnicities, and cultures may impede productivity and prevent the formation of the close working relationships that make a business “hum.” Second, managers unskilled in considering diverse perspectives may fail to recognize excellent ideas when they come from unexpected sources. Third, a lack of exposure to persons of different races and ethnicities may result in economically inefficient, and improper, hiring and promotion decisions, influenced by false stereotypes rather than an objective assessment of true merit. Such decisions not only destroy morale, but deprive the business of the benefit of excellent workers’ untapped potential. In a worst-case scenario, insensitivity to racial issues could produce intense conflict or render a business vulnerable to costly and disruptive discrimination lawsuits.

In sum, the graduates whom businesses recruit from top academic institutions, such as the University of Michigan, to serve as managers and professionals, will shape the corporate cultures and reputations for diversity of those businesses in the years to come. Graduates who lack sensitivity to perspectives influenced by race will be ill-equipped to meet the fundamental challenge of attracting, retaining, and managing the human capital that businesses need to survive.

c. Forming and Maintaining Relationships With Global Business Partners.

Expanding global presences also mean that businesses increasingly transact with potential commercial partners from diverse races and cultures. General Motors, for example, has business partners and subsidiaries in many different countries and is constantly seeking to expand its operations and sales throughout the world. The company's global business objectives thus dictate that many of its managers and employees engage daily in transnational, cross-cultural, and interracial contacts. Such contacts occur at every level, from the business people to the engineers, who must work across national lines to develop and market the very best products.

Establishing trust across racial and cultural lines is a serious corporate challenge for all businesses that have international aspirations. Businesses that hire graduates who have been immersed in cross-cultural learning environments will be better prepared to meet it.

2. Diversity in academic institutions augments the skills — cross-cultural competence and complex thinking — that students need to help lead our country's economic future

Abundant research has verified Justice Powell's conclusion that racial and ethnic diversity in institutions of higher education assists students in developing the skills that, as we have just explained, are so essential to their success in the

business world: (1) understanding the views of persons from different cultures and (2) addressing issues from multiple perspectives.

Open-mindedness and complex thinking are skills best honed through exposure to multiple ideas and challenging debate in an educational environment. Academics attest, and researchers confirm, that racial and ethnic diversity enhances this process, elevating the level of discourse in institutions of higher education by exposing students to a broader range of perspectives. Students emerge from a diverse academic experience with greater tolerance and ability to interact with persons of other cultures, far less parochial views, and more highly developed cognitive abilities.

We do not undertake to catalogue the abundant research establishing the causal relationship between academic diversity and development of these cognitive and social skills — a task that other amici, representing numerous associations of university educators, have performed. See Brief of Ass’n of American Law Schools, *et al.*, at 4-16 (E. D. Mich. May 3, 1999) (citing sources); Brief of American Council on Education, *et al.*, at 7-20 (E. D. Mich. April 30, 1999) (same). We note only that Judge Duggan had ample basis for his conclusion that “solid evidence” establishes that “educational benefits * * * flow from a racially

and ethnically diverse student body.” *Gratz v. Bollinger*, slip op. 20 (Dec. 13, 2000).⁶

3. Institutions of higher learning are ideally equipped to provide the exposure to diversity, development of cross-cultural competence, and critical thinking skills that graduates need to thrive in the business world

Businesses depend upon institutions of higher learning to teach students the cross-cultural competence and cognitive skills they will need to perform at a high level in the business world. Higher education is the best, and for many students the only, opportunity to acquire these skills.

Selective academic institutions offer a large percentage of white students their first and last opportunity for significant contact with persons of other races and cultures prior to entering the working world. See Expert Report of Thomas J. Sugrue, at 3, 22, 37-44 (Dec. 15, 1998); ORFIELD & WHITLA, *supra*, at 9-13 & Tables 2-7 (50% of the white students at Harvard Law School and University of Michigan Law School had little or no interracial contact prior to entering college or

⁶ Professor Patricia Gurin’s research provides especially powerful empirical support for the proposition that students who “participated in interactions with diverse peers, were comfortable and prepared to live and work in a diverse society.” Expert Report of Patricia Gurin, at 33 (Dec. 15, 1998). See also GARY ORFIELD & DEAN WHITLA, THE CIVIL RIGHTS PROJECT, HARVARD UNIVERSITY, DIVERSITY AND LEGAL EDUCATION: STUDENT EXPERIENCES IN LEADING LAW SCHOOLS (1999), <<http://www.law.harvard.edu/groups/civilrights/publications/lawsurvey.html>> .

law school). Despite our Nation's increasing racial diversity, historical patterns of *de facto* segregation in housing, and hence, also in primary and secondary education, persist. See *id.* at 10. For many students, then, the college or university experience presents the first “opportunity to disrupt an insidious cycle of lifetime segregation.” Expert Report of Patricia Gurin, at 33.

It is also the best such opportunity. Of course, many businesses, including General Motors, can and do provide extensive diversity training to workers after their arrival in the workforce. But these courses are designed to supplement, not substitute for, training and experiences most employees should have received earlier. Should the most selective institutions of higher education return to a state of *de facto* segregation — as research indicates most will do should the Supreme Court overrule *Bakke* and prohibit them from considering race in admissions decisions⁷ — businesses will be ill-equipped to bridge the gap.

A diminution of diversity in institutions of higher education would mean that a huge percentage of their graduates would arrive in the workplace having grown up in racially and ethnically homogeneous neighborhoods and attended racially homogeneous schools: environments that empirical studies indicate breed

⁷ See, *e.g.*, Expert Report of Derek Bok at 5-6 (absent consideration of race in admissions, the representation of blacks in the Nation's premier law schools would sink to a *de minimis* level — in one calculation, 0.4%).

prejudice and stereotypes.⁸ Having been “surrounded only by the likes of themselves,” such students are likely to hold highly parochial and limited perspectives. *Bakke*, 438 U.S. at 312 n.48 (opinion of Powell, J.) (quoting Bowen, *Admissions and the Relevance of Race*, *supra*, at 9). They also may lack the breadth of vision and open-mindedness of students who have had more interactions with persons of other races.

It would be impossible for businesses to play catch-up — to teach college graduates basic social and cognitive skills and values they should have acquired prior to entry into the workplace. First, businesses lack the pedagogical resources, including faculty, of academic institutions to provide the same training in these arenas. Businesses are primarily commercial, not educational, entities, incapable of replicating the safe academic environments that foster the “robust exchange of ideas which discovers truth out of a multitude of tongues.” *Keyishian*, 385 U.S. at 603 (internal quotation marks omitted). Second, research suggests that interracial and cross-cultural contacts diminish prejudice and promote greater understanding primarily when they occur among individuals of equal status. See, e.g., Walter G. Stephan & John C. Brigham, *Intergroup Contact: Introduction*, 41 J. SOC. ISSUES

⁸ See, e.g., Expert Report of Thomas Sugrue, at 44; cf. GORDON W. ALLPORT, *THE NATURE OF PREJUDICE* 271-272 (1954).

No. 3, at 1, 2 (1985); Expert Report of Gurin at 20. Only schools, not businesses, offer a forum for cross-cultural contact among a society of equals, free of hierarchy. Finally, students tend to exhibit greater openness to such lessons at earlier stages of their development. “Students come to universities at a critical stage,” “a time during which they define themselves in relation to others and experiment with different social roles.” *Id.* at 4.

Accordingly, universities, not businesses, “are [the] ideal institutions to foster” the skills and values necessary for participation in a heterogeneous society. See *id.* at 9 (emphasis omitted). See generally HARVARD UNIVERSITY, THE PRESIDENT’S REPORT 1993-1995 at 43-43. As two constitutional scholars recently observed: “If a far-flung democratic republic as diverse — and at times divided — as [modern] America is to survive and flourish, it must cultivate some common spaces where citizens from every corner of society can come together to learn how others live, how others think, how others feel. If not in public universities, where?” Akhil R. Amar & Neal K. Katyal, *Bakke’s Fate*, 43 U.C.L.A. L. Rev. 1745, 1749 (1996).

In sum, institutions of higher learning have a compelling interest in selecting diverse student bodies: to enhance the educational experiences of students of all

racers and equip them with the skills they need to thrive and lead our nation as citizens and in the new global marketplace.

II. ELIMINATION OF AFFIRMATIVE ACTION IN EDUCATIONAL INSTITUTIONS WOULD DEPRIVE BUSINESSES OF WELL TRAINED MINORITY CANDIDATES WHO ARE ESSENTIAL TO OUR NATION'S ECONOMIC SUCCESS

Institutions of higher learning have a compelling interest in considering race in admission decisions, not only because diversity enhances the quality of education, but because diversity enhances the many enterprises students will undertake following graduation. Selective universities and colleges serve as training grounds for and gateways to the higher echelons of all realms of American society, including businesses.

Corporations and others hire from selective academic institutions not only because they tend to select the students with greatest potential, but also because they tend to prepare their students well to perform in the top levels of the workforce. Utilizing the highest quality faculty, most effective curricula, superior programs and facilities, and most powerful alumni and community contacts, these universities and colleges offer unparalleled training opportunities. Cf. *Sweatt*, 339 U.S. at 634. The graduating classes of these institutions therefore, to some extent, define the pool from which future leaders and managers of the business world will

emerge. Institutions of higher learning thus bear a special responsibility to make admissions decisions that will not merely reward the past academic performance of individual students, but enhance our Nation's economic future.

To accomplish that goal, academic institutions must be permitted to continue to consider, as one factor among many in their selection decisions, the race and ethnicity of applicants. Absent such consideration, the evidence suggests that the number of minorities admitted to and graduating from these institutions will plummet. See p. 23 n.7, *supra*. Any reduction in diversity at these institutions accordingly would reduce the diversity of the pool of candidates from which businesses could select top corporate managers and professionals. That, in turn, threatens to deprive businesses of the manifold benefits of having a critical mass of people of color and persons of different ethnicities in their upper ranks and would strike a harmful blow to our Nation's economic well-being.

In this regard, it is notable that “[h]igher education, by making up for educational inequities at early stages in life, can be the ramp up to a level playing field — with no further affirmative action — for the rest of one's future.” Amar & Katyal, *supra*, 43 U.C.L.A. L. Rev. at 1749. If courts prohibit institutions of higher learning from performing this function, businesses will find it more difficult to find superbly trained minority candidates.

There can be little doubt that racial and ethnic diversity in the senior leadership of the corporate world is crucial to our Nation's economic prospects. In a country in which minorities will soon dominate the labor force, commensurate diversity in the upper ranks of management is increasingly important. A stratified workforce, in which whites dominate the highest levels of the managerial corps and minorities dominate the labor corps, may foment racial divisiveness. It also would be retrogressive, eliminating many of the productivity gains businesses have made through intensive efforts to eradicate discrimination and improve relations among workers of different races.

Racial and ethnic diversity in businesses's upper levels also enhances their productivity and economic opportunities for all of the same reasons that, as we explained above at pp. 8-14, cross-cultural competence in managers of any race or ethnicity does. First, racial diversity among managers improves recruiting, retention, and morale of workers who are minorities. Second, "[i]ncreasing the number of minorities * * * in areas such as product development, marketing and advertising allows companies to maximize their ability to tap into many segments of the consumer market." GLASS CEILING COMM'N REPORT at 4. See also CITIZENS' COMM'N ON CIVIL RIGHTS, AFFIRMATIVE ACTION TO OPEN THE DOORS OF JOB OPPORTUNITY 141 (1984). Third, corporations with racially diverse

management teams are better positioned to identify global opportunities and to develop strong relationships with heterogeneous business partners. See, e.g., Fernandez, *supra*, at 224.

In addition, abundant evidence suggests that heterogeneous work teams create better and more innovative products and ideas than homogeneous teams. Homogeneity often causes teams to suffer from lock-step “group think.” See, e.g., Charlan J. Nemeth, *Differential Contributions of Majority and Minority Influence*, 93 PSYCHOLOGICAL REVIEW No. 1, at 23-32 (1986); Sumita Raghuram & Raghu Garud, *The Vicious and Virtuous Facets of Workforce Diversity*, in SELECTED RESEARCH ON WORK TEAM DIVERSITY 155, 156, 160 (Marian N. Ruderman et al. eds., 1996); JOHN P. FERNANDEZ, THE DIVERSITY ADVANTAGE 284-285 (1993). The most innovative companies therefore deliberately establish heterogeneous teams in order to “‘create a marketplace of ideas,’ recognizing that a multiplicity of points of view need to be brought to bear on a problem.” ROSABETH MOSS KANTER, THE CHANGE MASTERS: INNOVATIONS FOR PRODUCTIVITY IN THE AMERICAN CORPORATION 167 (1983).

In short, as GM Chairman Jack Smith has said, diversity in the workplace “is much more than a human issue: it [is] also * * * good business.” See “General Motors – Diversity Management,” <<http://www.generalmotors.com/company/>

community_involvement/diversity/index.htm>(4/27/00). The chief executive officers of numerous Fortune 500 companies agree. As Robert J. Eaton, then-Chairman and CEO of Chrysler Corporation, explained, “workforce diversity is a competitive advantage. Our success as a global community is as dependent on utilizing the wealth of backgrounds, skills, and opinions that a diverse workforce offers, as it is on raw materials, technology and processes.” EXECUTIVE COUNCIL 1998, at 10.⁹ Indeed, the Equal Employment Advisory Council (“EEAC”), a group comprising leading corporate policy makers, has concluded that workplace diversity is so important that affirmative action is often appropriate to achieve it. It reasons in part that a diverse workforce is essential to “compete effectively in a

⁹ See also *id.* at 34 (“we see diversity in the background and talent of our associates as a competitive advantage and as a commitment that is a daily responsibility”) (quoting M. Douglas Ivester, then-Chairman and CEO of The Coca Cola Company); Robert A. Rosenblatt, *PG & E Wins Federal Affirmative Action Award*, L.A. TIMES, Dec. 19, 1989, at D2 (“We are convinced that this investment in equal opportunity pays high dividends.”) (quoting George A. Maneatis, then-President of Pacific Gas & Elec. Co.); Kenneth Labich, *Employees Must Reflect the Diverse World*, FORTUNE, Mar. 26, 1990, at 56 (“Any business climate in which broadly different individuals may succeed will be a climate where the whole organization prospers.”) (quoting James R. Houghton, then-Chairman and CEO of Corning Inc.); Janine S. Hiller & Stephen P. Ferris, *Separating Myth From Reality: An Economic Analysis of Voluntary Affirmative Action Programs*, 23 MEMPHIS ST. U. L. REV. 773, 777 & n.20 (1993) (observing that it is now commonly accepted in business circles that “diversity is good for business”).

global marketplace.” EEAC, *Special Memorandum, Critical Issues In the Affirmative Action Debate: Exec. Order 11,246*, at 4, 10 (Mar. 17, 1995).¹⁰

Empirical research buttresses the conclusion of these corporate executives and industry representatives that workforce diversity is important to effective competition in today’s market. The federal Glass Ceiling Commission, for instance, reported that “[i]ndependent research has shown that companies that go the extra mile in hiring and promoting minorities and women are more profitable.” Glass Ceiling Comm’n Report at 2. Other studies have reached similar conclusions. See, e.g., Hiller & Ferris, *supra*, at 794.

General Motors strongly believes that the future of American businesses depends upon the availability of a diverse group of well-trained graduates. Only with the contributions of the best and brightest of every race, ethnicity, and culture can American businesses continue to create the world’s most innovative products, manage the world’s most productive work forces, and expand their operations across the globe. For the sake of the Nation’s collective economic future,

¹⁰ Accord, e.g., *Diversity in the Workplace: Class Action Suits A Major Concern for the Fortune 500*, CHI. TRIB., June 17, 1997, at N2 (EEAC spokesman stating that most Fortune 500 companies agree with President Clinton’s “mend-it-don’t-end-it” approach to affirmative action). See also Jonathan Kaufman, *Management: How Workplaces May Look Without Affirmative Action*, WALL ST. J., Mar. 20, 1995, at B1.

institutions of higher learning must be permitted to continue to achieve the diversity that enhances both the education of these individuals and the endeavors that they will undertake as graduates.

CONCLUSION

For the reasons stated, this Court should hold that the government has a compelling interest in achieving the educational benefits of diversity in higher education and that admissions parameters that are narrowly tailored to ensure a diverse, heterogenous student body are permissible under the Constitution.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Sixth Circuit Appellate Procedure Rule 26.1, General Motors Corporation makes the following disclosure:

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Eileen Penner

CERTIFICATE OF SERVICE

I hereby certify that, on this 30th day of May 2001, pursuant to FRAP 25 and 6 Cir. R. 31, I caused a copy of the foregoing Brief of General Motors Corporation as Amicus Curiae in Support of Defendants-Appellants to be filed by UPS Overnight Service, with:

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