

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
No. 1:14-cv-00954-LCB-JLW**

STUDENTS FOR FAIR)
ADMISSIONS, INC.,)
)
Plaintiff,)
)
v.)
)
THE UNIVERSITY OF NORTH)
CAROLINA AT CHAPEL HILL, et al.)
)
Defendants.)

**BRIEF OF *AMICI CURIAE* ARCELORMITTAL USA LLC,
ARIEL INVESTMENTS LLC, CAPITOL BROADCASTING COMPANY,
INC., CISCO SYSTEMS, INC., CUMMINS INC., DUKE UNIVERSITY
HEALTH SYSTEM, INC., EBAY INC., ELI LILLY AND COMPANY,
ENERGY CORPORATION, ERNST & YOUNG, GENERAL MOTORS
LLC, GLAXOSMITHKLINE LLC, THE HERSHEY COMPANY,
HP INC., IBM CORPORATION, IKEA RETAIL US LLC, KPMG LLP,
MICROSOFT CORPORATION, NATIONAL ASSOCIATION FOR
STOCK CAR AUTO RACING, INC., PAYPAL HOLDINGS, INC.,
PEPSICO, INC., RED HAT, INC., THE REDWOODS GROUP, INC.,
REPLACEMENTS, LTD., RESEARCH TRIANGLE INSTITUTE,
TAKEDA PHARMACEUTICALS U.S.A., INC., UNITED AIRLINES,
INC., AND YUM! BRANDS, INC. IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

INTEREST OF AMICI CURIAE

Amici are prominent companies and non-profit organizations who do business in North Carolina and who recruit graduates of The University of North Carolina at Chapel Hill (UNC) or similar leading institutions of higher education. Collectively, *amici* hire hundreds of UNC graduates each year.

Amici have a substantial interest in this case. In particular, *amici* believe that racial and ethnic diversity are indispensable to *amici*'s industries. Among its many benefits, diversity fuels collaboration and innovation, two important ingredients for success in business and scientific research.

In addition, *amici* operate in global marketplaces where employees must work and collaborate with others from a host of experiences, including from various racial and ethnic backgrounds. *Amici* turn to UNC and other leading universities to recruit students who will thrive in a diverse environment. *Amici* do so because business success demands exposure to and experience with racial and ethnic differences, and many potential employees specifically benefit from this exposure and experience at the university level.

These points echo those made in amicus briefs filed by similar businesses in the seminal U.S. Supreme Court decisions on diversity in higher education. The Supreme Court has expressly cited and relied on these points. *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.”).

Amici respectfully file this brief in support of Defendants’ motion for summary judgment to emphasize the essential role that diversity plays in the vitality of their organizations, and to ensure that colleges and universities retain flexibility to achieve diversity across multiple dimensions.

ARGUMENT

As the Supreme Court has expressly recognized, racial and ethnic diversity are key features of business success.

Racial and ethnic diversity have great significance to *amici*. The United States and North Carolina have become more diverse, and that trend is accelerating. *Amici* have diverse workforces and operate in diverse markets. Having personnel who can collaborate and lead effectively across racial and cultural lines is a business imperative. In addition, diverse teams have been shown in studies to outperform homogeneous teams because diversity fosters curiosity, listening, idea generation, collaboration, and critical thinking.

It is critical for UNC and other leading universities to have the tools to formulate a student body that best allows students to fully engage in true learning and to prepare those students to succeed in today’s marketplace.

A. The United States and North Carolina continue to become more racially and ethnically diverse.

Racial and ethnic diversity in North Carolina, and nationwide, have grown substantially in recent years. For example, between the 2000 and 2010 censuses, the country's Hispanic population grew by forty-three percent. See U.S. Census Bureau, *Overview of Race and Hispanic Origin: 2010*, 2010 Census Briefs, at 3 (Mar. 2011).¹ North Carolina saw its own minority population grow by almost forty percent in the same period. *Id.* at 18. According to the Census Bureau, half of all Americans will belong to a minority group by 2044. U.S. Census Bureau, *Projections of the Size and Composition of the U.S. Population: 2014 to 2060*, at 1 (Mar. 2015).²

As these points show, the nation's racial and ethnic diversity will continue to increase over time. A more diverse population, in turn, yields a more diverse labor force. In the past few years, the share of racial and ethnic minority births in the United States passed fifty percent. Kendra Yoshinaga, *Babies of Color Are Now the Majority, Census Says*, NPR, July 1, 2016.³

¹ <https://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf> (last visited Jan. 17, 2019).

² <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p25-1143.pdf> (last visited Jan. 17, 2019).

³ <https://www.npr.org/sections/ed/2016/07/01/484325664/babies-of-color-are-now-the-majority-census-says> (last visited Jan. 17, 2019).

The consumer marketplace is also more diverse. Even ten years ago, “worldwide American companies in the Standard & Poor’s 500 (S&P 500) had more than 55 percent of total income earned outside the United States.” Business Roundtable, *Taxation of American Companies in the Global Marketplace: A Primer*, at 4 (Apr. 2011).⁴ Inside the United States, consumers who are racial minorities numbered more than 120 million as of 2015, and are growing at a rate of more than two million per year. Nielsen, *The Multicultural Edge: Rising Super Consumers*, at 7 (2015).⁵

B. *Amici* need employees who are skilled at effectively working across racial and cultural lines.

In light of the changing demographics, *amici*’s need for personnel who have the experience and the capability to work successfully in diverse environments is increasingly important. The commitment of UNC, and of other leading institutions, to enrolling diverse student bodies is integral to *amici*’s effort to achieve this goal.

The summary-judgment record is replete with testimony by business executives about the importance of exposure to persons from diverse backgrounds and viewpoints. Joseph Kenley, a manager at an international

⁴ https://www.businessroundtable.org/sites/default/files/Taxation_of_American_Companies.pdf (last visited Jan. 17, 2019).

⁵ A copy of this report is attached as Exhibit 1.

consulting firm, testified that experiences with persons from different cultures are essential to success in consulting, a relationship-focused industry. Kenley Decl. ¶¶ 12–17 (Ex. 126).⁶ Engaging with students who have various backgrounds challenges preconceptions, encourages open-mindedness and sensitivity, and teaches inclusivity. *Id.* ¶ 18. Lindsay-Rae McIntyre, then Vice President of Human Resources and Chief Diversity Officer at IBM, and now Chief Diversity Officer at Microsoft, reiterated those points. *See* McIntyre Decl. ¶¶ 3, 13–14 (Ex. 101). Jonathan Reckford, CEO of Habitat for Humanity International, emphasized the importance of employees who can work cross-culturally, cross-functionally, and cross-geographically. Reckford Decl. ¶¶ 1–3, 15 (Ex. 107). Mr. Reckford emphasized that employees develop these abilities in college—and do so through exposure to persons from different cultures, races, and genders. *See id.* ¶¶ 15–16.

Academic leaders at business schools confirm the benefits of a diverse educational environment. According to Dr. Peter Henry, the Dean of NYU’s Stern School of Business, it is essential for *amici*’s personnel to develop cross-cultural understandings in educational environments like UNC’s. “Exposure to diversity in an educational environment provides the perspective that

⁶ All exhibit references in this brief are to the Exhibits to Defendants’ Memorandum of Law in Support of Motion for Summary Judgment (ECF No. 153).

produces . . . graduates who are going to be effective business professionals.” Henry Decl. ¶ 12 (Ex. 88). Dr. Joseph DeSimone—a leading authority in entrepreneurial studies—shared a similar view: “The level of diversity among students at UNC-CH plays a powerful role in preparing UNC-CH students for their professional endeavors. This is especially important for students who have not had much exposure to diverse points of view prior to college.” DeSimone Decl. ¶ 37 (Ex. 82).

The summary-judgment record confirms that UNC graduates from different backgrounds attribute their success in the business, law, tech, and non-profit sectors to their college interactions with other students from different backgrounds and viewpoints. *See* Barcott Decl. ¶ 8 (Ex. 68); Barnes Decl. ¶¶ 15–16 (Ex. 70); Bilbao Decl. ¶¶ 14–18 (Ex. 73); Henry Decl. ¶¶ 17–20; McIntyre Decl. ¶¶ 4–5, 9, 15; Reckford Decl. ¶ 8; Williams Decl. ¶¶ 10–16 (Ex. 115).

This evidence is consistent with the Supreme Court’s longtime assessment of the link between diversity in education and success in business. As Justice Powell wrote forty years ago, “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.” *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 313 (1978) (quotation omitted). Justice O’Connor reemphasized this point fifteen years ago. *Grutter*, 539 U.S. at 330.

Amici have witnessed the significance of this principle, and they urge the Court to consider it in evaluating the parties' summary-judgment papers.

C. Racially and ethnically diverse organizations achieve better outcomes by fostering curiosity, critical thinking, and collaboration.

Diverse organizations are simply good business. This is yet another reason why *amici* seek to assemble diverse workforces.

The high performance of diverse teams is well-documented in empirical research. In one recent study, diverse venture-capital firms made more profitable investments and had higher overall fund returns than non-diverse venture-capital firms. Paul Gompers & Silpa Kovvali, *The Other Diversity Dividend*, Harv. Bus. Rev. (July–Aug. 2018).⁷ Another study showed that diverse teams were fifty-eight percent more likely to price stocks correctly than were homogenous teams. David Rock & Heidi Grant, *Why Diverse Teams Are Smarter*, Harv. Bus. Rev. (Nov. 2016).⁸ And yet another recent study found that the companies in the top quartile of gender diversity were fifteen percent more likely to have financial returns above their industry median, and companies in the top quartile of racial and ethnic diversity were

⁷ <https://hbr.org/2018/07/the-other-diversity-dividend> (last visited Jan. 17, 2019).

⁸ <https://hbr.org/2016/11/why-diverse-teams-are-smarter> (last visited Jan. 17, 2019).

thirty-five percent more likely to have financial returns above their industry median. Vivian Hunt et al., *Diversity Matters*, at 1 (McKinsey & Company 2015).⁹ “[M]ore diverse companies are better able to win top talent, and improve their customer orientation, employee satisfaction, and decision making, leading to a virtuous cycle of increasing returns.” *Id.*

Diversity is associated with (1) increased sales revenue, (2) more customers, (3) greater market share, and (4) greater relative profits. Cedric Herring, *Does Diversity Pay? Race, Gender, and the Business Case for Diversity*, 74 *Am. Sociological Rev.* 208, 219 (Apr. 2009).¹⁰ Diversity can also positively affect the retention of qualified employees. Kristyn Scott et al., *The Diverse Organization: Finding Gold at the End of the Rainbow*, 50 *Hum. Res. Mgmt.* 735, 745, 750 (Nov.–Dec. 2011).

Several factors may explain these outcomes. In one study, racial diversity triggered curiosity and listening, while less diverse groups found comfort and confidence in their similarities. That comfort made for faster decisions, but decisions that were inferior to the decisions that the diverse teams reached. Juliet Bourke, *Innovation, high performance and diversity*,

⁹ A copy of this report is attached as Exhibit 2.

¹⁰ A copy of this study is attached as Exhibit 3.

Deloitte.¹¹ Another study concluded that diverse groups outperform homogeneous groups not because of “new ideas,” but because diversity triggers “more careful information processing” that can be absent in less diverse groups. Kellogg Insight, *Better Decisions Through Diversity* (Oct. 1, 2010).¹² The same study also demonstrated that when diverse members were added to collaborative groups, their addition changed the flow of discussion and increased the number and magnitude of disagreements. *Id.* The increased vigor in critical thinking yielded better outcomes. *Id.*

These points reverberate in the testimony of business executives in the summary-judgment record. As Dr. DeSimone explained, homogeneous groups can thwart problem-solving by fostering “groupthink.” DeSimone Decl. ¶ 20; *see also* Mason Decl. ¶ 14 (explaining that organizations reach better decisions when there are different perspectives at the table helping the group make those decisions) (Ex. 98). Multiple executives also emphasized that diverse experiences—including those that are a byproduct of racial and cultural backgrounds—fuel innovation. *See* DeSimone Decl. ¶¶ 22, 26, 28; Mason Decl. ¶ 15 (“Diversity of perspective and background is critical to

¹¹ <https://www2.deloitte.com/au/en/pages/human-capital/articles/creating-high-performing-leadership-teams.html#> (last visited Jan. 17, 2019).

¹² https://insight.kellogg.northwestern.edu/article/better_decisions_through_diversity (last visited Jan. 17, 2019).

learning and developing critical thinking skills.”); Williams Decl. ¶ 17 (“Diversity of ideas comes from having people around the table who have a diversity of experiences and perspectives.”).

This literature is consistent with *amici*’s longstanding view on the value of a diverse workforce. For example, IBM proactively recruits candidates from diverse backgrounds and encourages retention of those employees through approximately 270 affinity groups worldwide.¹³ These initiatives, along with others IBM has pursued for many years, have expanded minority markets dramatically and led to a virtuous circle of growth and progress. David A. Thomas, *Diversity as Strategy*, Harv. Bus. Rev. (Sept. 2004).¹⁴

Interactions with peers from many different backgrounds, races, ethnic groups, and experiences also increase awareness of one’s own biases. That awareness increases one’s sensitivities to and one’s ability to collaborate effectively with other team members who look differently and come from

¹³ <http://www-03.ibm.com/ibm/history/ibm100/us/en/icons/equalworkforce/> (last visited Jan. 17, 2019).

¹⁴ <https://hbr.org/2004/09/diversity-as-strategy> (last visited Jan. 17, 2019).

different backgrounds.¹⁵ See Kenley Decl. ¶¶ 14, 18. Successful business leaders are curious about others’ backgrounds and demonstrate a genuine interest in building relationships with racially and ethnically diverse peers. See McIntyre Decl. ¶¶ 12–13. Leadership comes from influence, and influence often requires “relationships with those we do not look like.” Reckford Decl. ¶ 12.

In sum, diverse teams can unlock innovation and drive market growth in a way that homogeneous teams cannot. See, e.g., Sylvia Ann Hewlett et al., *How Diversity Can Drive Innovation*, Harv. Bus. Rev. (Dec. 2013).¹⁶ Diversity drives innovation by creating an environment where “outside the box” ideas are heard. *Id.* This is why “[l]eaders who give diverse voices equal airtime are nearly twice as likely as others to unleash value-driving insights.” *Id.* *Amici* turn to UNC and other leading universities to recruit these voices.

¹⁵ Indeed, implicit bias, or unconscious stereotyping, contributes to the lack of diversity in many fields, including business and STEM. See Laura Berger, *Unconscious Bias in the Workplace: You Can’t Afford to Ignore It*, Forbes (Mar. 23, 2018), <https://www.forbes.com/sites/forbescoachescouncil/2018/03/23/unconscious-bias-in-the-workplace-you-cant-afford-to-ignore-it/#4076d9d87660> (last visited Jan. 17, 2019); Kuheli Dutt, *How Implicit Bias and Lack of Diversity Undermine Science*, Scientific American (Dec. 17, 2018), <https://blogs.scientificamerican.com/voices/how-implicit-bias-and-lack-of-diversity-undermine-science/> (last visited Jan. 17, 2019).

¹⁶ <https://hbr.org/2013/12/how-diversity-can-drive-innovation> (last visited Jan. 17, 2019).

D. Racial and ethnic diversity at universities like UNC is especially important to countermand the substantial underrepresentation of minorities in STEM fields.

Finally, several *amici* face unique challenges in recruiting a diverse workforce because of underrepresentation of minorities in certain professional disciplines—especially those in science, technology, engineering and mathematics, commonly referred to as STEM fields.

Entry-level STEM positions generally require a degree in a STEM field. See U.S. Dep't of Commerce, ESA Issue Brief 05-11, *Education Supports Racial and Ethnic Equality in STEM* 4 (Sept. 2011).¹⁷ Thus, a college degree is often a prerequisite to work in a STEM field.

In recent years, however, the U.S. has failed to produce an ample supply of workers to meet the growing needs of STEM employers. U.S. Congress J. Econ. Comm., *STEM Education: Preparing for the Jobs of the Future* 3 (Apr. 2012). Estimates show that about 2.4 million STEM jobs went unfilled in 2018. Smithsonian Science Education Center, *The STEM Imperative* (2018).¹⁸ This shortage is due, in part, to low numbers of underrepresented minorities who pursue STEM degrees. See *STEM Education: Preparing for the Jobs of the Future*, *supra* at 5–6.

¹⁷ <https://files.eric.ed.gov/fulltext/ED523768.pdf> (last visited Jan. 17, 2019).

¹⁸ <https://ssec.si.edu/stem-imperative> (last visited Jan. 17, 2019).

For example, while Hispanics compose about seventeen percent of the U.S. population and African Americans compose about thirteen percent, Nat'l Sci. Found., *Women, Minorities, and Persons with Disabilities in Science and Engineering 2* (2017),¹⁹ Hispanics receive only ten percent of core STEM degrees and African Americans only eight percent. U.S. Gov't Accountability Office, GAO-14-374, *Science, Technology, Engineering, and Mathematics Education 55* (2014).²⁰

The workforce numbers are even starker: Hispanics compose about six percent and African Americans about five percent of those employed in science and engineering occupations. Nat'l Sci. Bd., *Science & Engineering Indicators 3-113* (2018).²¹ Put another way, Hispanic and African-American representation in STEM fields is less than forty percent of the representation of those groups in the national population.

Similar disparities persist along gender lines. Although women make up about fifty percent of the U.S. population, they earn only thirty percent of STEM degrees and constitute only twenty-four percent of those currently

¹⁹ <https://www.nsf.gov/statistics/2017/nsf17310/static/downloads/nsf17310-digest.pdf> (last visited Jan. 17, 2019).

²⁰ <https://www.gao.gov/assets/670/663079.pdf> (last visited Jan. 17, 2019).

²¹ <https://www.nsf.gov/statistics/2018/nsb20181/assets/nsb20181.pdf> (last visited Jan. 17, 2019).

working in STEM jobs. U.S. Dep't of Commerce, ESA Issue Brief 06-17, *Women in STEM: 2017 Update 1* (Nov. 2017).²²

This underrepresentation has profound effects. The National Science Foundation concluded that “[s]ecuring our Nation’s continued economic prosperity” depends on the “proactive identification and development of talented young men and women from *all* demographics.” Nat’l Sci. Bd., NSB-10-33, *Preparing the Next Generation of STEM Innovators* 9 (2010).²³

Amici recognize that the causes of this underrepresentation are myriad and varied. Nevertheless, to close the STEM participation gap for underrepresented minorities and women, universities like UNC must educate larger numbers of African-American, Hispanic, and female students who will enter STEM fields. See Rachel D. Godsil, *Why Race Matters in Physics Class*, 64 UCLA L. Rev. Discourse 40, 49–50 (2016).

Amici are taking their own action, as well, to address the underrepresentation of minorities and women in STEM. IBM has expended significant resources to promote diversity in STEM, both in its own ranks and in the educational setting. The company has hosted technology camps for

²² <https://www.commerce.gov/sites/default/files/migrated/reports/women-in-stem-2017-update.pdf> (last visited Jan. 17, 2019).

²³ <https://www.nsf.gov/nsb/publications/2010/nsb1033.pdf> (last visited Jan. 17, 2019).

minority and female students who have expressed interest in the STEM fields.²⁴ GlaxoSmithKline offers a summer enrichment program for students across the country, with particular emphasis on reaching underserved populations.²⁵

Other organizations are engaged in similar initiatives. The Smithsonian Science Education Center has been working with state leaders and school districts throughout the country to improve the quality of K–12 science education. Smithsonian, *Smithsonian Science Education Center* (Aug. 1, 2018).²⁶ Similarly, Girl Scouts has been working with Discovery Education to spark girls’ interest in STEM by providing STEM curriculum to educators and Girl Scouts troop leaders across the country. Discovery Education, *Girls Get STEM* (2018).²⁷

²⁴ IBM has also been ranked as one of the top fifty workplaces for Native American STEM professionals.

²⁵ *Amici* in other fields are taking similar action to address the underrepresentation of minorities and women in their industries. For example, Capitol Broadcasting Company has an annual fellowship program that helps minority students prepare for careers in broadcasting.

²⁶ <https://www.si.edu/newsdesk/factsheets/smithsonian-science-education-center> (last visited Jan. 17, 2019).

²⁷ <https://www.girlsleadstem.com/girlscouts> (last visited Jan. 17, 2019).

For these initiatives to succeed, universities like UNC must enroll a diverse student body that can earn STEM degrees. *Amici* in the STEM field are dependent on those universities to educate and train their future leaders.

CONCLUSION

Racial and ethnic diversity are necessary for *amici* to succeed in today's business world. Markets will only become more global. North Carolina, and the country as a whole, will only become more diverse. Racial and ethnic diversity at leading colleges and universities is critical for businesses in North Carolina and beyond. *Amici* implore the Court to consider these consequences in evaluating the parties' positions at summary judgment.

This the 18th day of January, 2019.

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STATEMENT PURSUANT TO LR 7.5(d)

Amici represent that (1) no party's counsel authored the brief in whole or in part, (2) no party or party's counsel contributed money that was intended to fund preparing or submitting the brief, and (3) no person—other than *amici*, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief.

This the 18th day of January, 2019.

/s/ Stephen D. Feldman
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CERTIFICATE OF WORD COUNT

This is to certify that the foregoing brief contains fewer than 6,250 words, after excluding the caption, signature lines, and certificate of service. Therefore, the foregoing brief complies with the length limitations set by Local Rule 7.3(d). The basis for this certification is the word count feature of the word processing software used to prepare this brief.

This the 18th day of January, 2019.

/s/ Stephen D. Feldman
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