

No. 19-2005

IN THE
United States Court of Appeals for the First Circuit

STUDENTS FOR FAIR ADMISSIONS, INC.,
Plaintiff-Appellant,

v.

PRESIDENT AND FELLOWS OF HARVARD COLLEGE,
Defendant-Appellee.

On Appeal from the United States District Court
for the District of Massachusetts
No. 14-cv-14176-ADB
Hon. Allison D. Burroughs

**BRIEF OF AMGEN INC.; APPLE INC.; APPLIED
MATERIALS, INC.; CISCO SYSTEMS, INC.; CUMMINS
INC.; GENERAL ELECTRIC COMPANY; GILEAD
SCIENCES, INC.; GLAXOSMITHKLINE LLC; INTEL
CORPORATION; MICRON TECHNOLOGY, INC.;
MICROSOFT CORPORATION; TWITTER, INC.; VERIZON
SERVICES CORP.; and VIIV HEALTHCARE COMPANY AS
AMICI CURIAE IN SUPPORT OF APPELLEE**

E. Joshua Rosenkranz
ORRICK, HERRINGTON &
SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019

Darren S. Teshima
ORRICK, HERRINGTON &
SUTCLIFFE LLP
405 Howard Street
San Francisco, CA 94105

Mark S. Davies
Thomas M. Bondy
Katherine M. Kopp
Sheila A. Baynes
Sarah H. Sloan
ORRICK, HERRINGTON &
SUTCLIFFE LLP
1152 15th Street NW
Washington, DC 20005
(202) 339-8400
mark.davies@orrick.com

*Counsel for Amici Curiae**

Keefe B. Clemons
VERIZON SERVICES CORP.
6 Bowdoin Square, 9th Floor
Boston, MA 02114
(917) 439-2610
keefe.b.clemons@verizon.com
*(Counsel for Verizon Services
Corp. only)*

*Orrick, Herrington & Sutcliffe LLP is counsel for Amgen Inc.;
Apple Inc.; Applied Materials, Inc.; Cisco Systems, Inc.;
Cummins Inc.; General Electric Company; Gilead Sciences,
Inc.; GlaxoSmithKline LLC; Intel Corporation; Micron
Technology, Inc.; Microsoft Corporation; Twitter, Inc. and ViiV
Healthcare Company

CORPORATE DISCLOSURE STATEMENT

This brief is filed on behalf of the following leading American businesses:

Amgen Inc.

Apple Inc.

Applied Materials, Inc.

Cisco Systems, Inc.

Cummins Inc.

General Electric Company

Gilead Sciences, Inc.

GlaxoSmithKline LLC

Intel Corporation

Micron Technology, Inc.

Microsoft Corporation

Twitter, Inc.

Verizon Services Corp.

ViiV Healthcare Company

Pursuant to Fed. R. App. P. 26.1:

Amgen Inc. does not have a parent company and no publicly held corporation owns ten percent or more of its stock.

Applied Materials, Inc. does not have a parent company and no publicly held corporation owns ten percent or more of its stock.

Apple Inc. does not have a parent company and no publicly held corporation owns ten percent or more of its stock.

Cisco Systems, Inc. does not have a parent company, and no publicly held corporation owns ten percent or more of its stock.

Cummins Inc. does not have a parent company, and no publicly held corporation owns ten percent or more of its stock.

General Electric Company does not have a parent company, and no publicly held corporation owns ten percent or more of its stock.

Gilead Sciences, Inc. does not have a parent company, and no publicly held corporation owns ten percent or more of its stock.

GlaxoSmithKline LLC is owned, through several layers of wholly-owned subsidiaries, by GlaxoSmithKline plc, a public limited company organized under the laws of England whose Ordinary Shares are publicly traded. To the knowledge of GlaxoSmithKline LLC, none of the

shareholders of GlaxoSmithKline plc beneficially owns ten percent or more of its outstanding shares. However, the JPMorgan Chase Bank, N.A. (“JPM”) serves as the Depositary for the GlaxoSmithKline plc’s American Depositary Shares (“ADSs”), listed on the New York Stock Exchange, each representing two Ordinary Shares in GlaxoSmithKline plc. In that capacity, JPM is the holder of more than ten percent of the outstanding shares in GlaxoSmithKline plc.

Intel Corporation does not have a parent company, and no publicly held corporation owns ten percent or more of its stock.

Micron Technology, Inc. does not have a parent company, and no publicly held corporation owns ten percent or more of its stock.

Microsoft Corporation does not have a parent company, and no publicly held corporation owns ten percent or more of its stock.

Twitter, Inc. does not have a parent company, and no publicly held corporation owns ten percent or more of its stock.

Verizon Services Corp. is a wholly owned subsidiary of Verizon Communications Inc. Verizon Communications Inc. is a publicly held company, and no corporation owns ten percent or more of the stock of Verizon Communications Inc.

ViiV Healthcare Company is ultimately wholly-owned by GlaxoSmithKline plc, Pfizer Inc., and Shionogi Limited; GlaxoSmithKline plc has no parent corporation and the Bank of New York Mellon, a publicly-traded company listed on the New York Stock Exchange, holds more than ten percent of the stock of GlaxoSmithKline plc. Pfizer, Inc. has no parent corporation and no publicly-held corporation owns ten percent or more of its stock. Shinogi Limited is wholly-owned by Shinogi & Co., Ltd., a publicly traded company listed on the Tokyo stock exchange. No publicly-held corporation owns 10% or more of the stock of Shinogi & Co., Ltd.

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INTEREST OF AMICI CURIAE

Amici are some of America's most successful companies.¹ From long-established companies to those founded recently, from makers of machines to providers of new technology, and from locations on the West Coast to the East, *amici* have come together to support the one thing that unites all successful companies: talent. A company may have purpose, may have drive, and may have capability. But without talent, failure will surely follow.

Talent is everywhere. It is not located exclusively in any one particular corner of humanity. If universities are not educating a diverse student body, then they are not educating many of the best. Yet businesses need even more than just talented individuals. Business is a team activity. Today's markets require all to capitalize on the diversity of others, both inside and outside the business. Accordingly, *amici* invest significant resources in programs and practices that encourage a

¹ Pursuant to Fed. R. App. P. 29(a)(2), all parties have consented to the filing of this brief. No portion of the brief was authored by counsel for a party. No party, party's counsel, or any person other than *amici* or their counsel contributed money intended to fund preparing or submitting this brief.

diverse group of people to join and stay with their companies, and that create inclusive cultures where all work together benefiting from each other's differences.

To find the next superb employee, *amici* depend on universities admitting talented students from all backgrounds, and helping each student learn how to thrive in a diverse and inclusive setting. And as the Supreme Court has repeatedly recognized and approved, *amici* agree that a university may well conclude that meeting such a crucial goal, even today, requires a race-conscious, holistic university admissions program. Indeed, businesses affirmed the importance of such admissions practices by filing *amicus* briefs with the Supreme Court in *Fisher v. University of Texas at Austin*, 136 S. Ct. 2198 (2016) (*Fisher II*), *Fisher v. University of Texas at Austin*, 570 U.S. 297 (2013) (*Fisher I*), and *Grutter v. Bollinger*, 539 U.S. 306 (2003).

Amici file this brief in support of Defendant-Appellee President and Fellows of Harvard College to emphasize the continuing importance to businesses of race-conscious, holistic university admissions practices. To illustrate how leading businesses depend on their diversity and inclusion efforts, this brief focuses on the actions of a handful of *amici*.

But all the signatories to this brief devote significant resources to achieve the same critical goals. *Amici* take no position on Harvard's specific policy at issue here. But policies like those approved by the Supreme Court in *Grutter* are essential to *amici*'s ongoing efforts to attract and benefit from the best possible people.

ARGUMENT

As the Supreme Court recognized nearly twenty years ago, “the skills needed in today’s increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints.” *Grutter*, 539 U.S. at 330. Indeed, “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) (opinion of Powell, J.); accord Post-Trial Amicus Curiae Brief of the Asian American Legal Defense and Education Fund et al. in Support of Defendant at 5, *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 397 F. Supp. 3d 126 (D. Mass. 2019) (No. 14-cv-14176) (students benefit from “interactions with a diverse student body,” and

those benefits “continue as students graduate and enter an ‘increasingly diverse workforce”).

To prevail in this intensely varied world-wide market, *amici* must recruit talented people from diverse backgrounds, and ensure those people work together inclusively. In *amici*’s view, the benefits of diversity are “not theoretical but real.” *Grutter*, 539 U.S. at 330. In the absence of workable race-neutral alternatives—as the district court concluded is the case here, 397 F. Supp. 3d at 200—universities such as Harvard must be able to employ race-conscious, holistic admissions practices to create the best recruiting classes for businesses.

I. To succeed, businesses must hire and retain people from a variety of backgrounds, including a variety of racial backgrounds.

As more fully described below, the consensus is that businesses with heterogeneous workforces are more successful than businesses with homogeneous workforces. *Amici*’s experiences validate the wisdom of that consensus. A diverse workforce is a more talented workforce, because it draws from a broader pool of the population, and it is a more effective workforce because it brings different perspectives to the complex problems facing businesses today. But merely knowing these

important truths is not sufficient for businesses to assemble diverse individuals and to create inclusive teams. Accordingly, *amici* have adopted specific programs and practices—highlighted *infra* 10-12, 16-19, 23-24—to help them achieve these competitive imperatives.

A. Businesses with diverse individuals and inclusive cultures win in the global marketplace.

American companies operate globally in the market for their goods and services. Applied Materials, for example, has offices and other facilities in more than 18 different countries; Intel has employees located in more than 50 different countries; Cisco has 96 locations around the world; and Amgen has a presence in approximately 100 countries across the globe.² More generally, in 2018, sales in foreign countries accounted for 42.9% of sales made by the American companies included in the S&P 500 index.³

² As one illustration of the importance of *amici*'s international presence, Amgen is part of a partnership through which it sponsors researchers to conduct studies in Cuba, India, Mexico, and Russia and improve medical testing in more than 25 countries. Amgen, *2018 Responsibility Highlights Report* at 11.

³ Howard Silverblatt, *S&P 500 2018: Global Sales*, Aug. 2019, at 3.

In this setting, the economic advantages of having a diverse and inclusive workforce are borne out in study after study demonstrating the increased profitability of companies with diverse workforces and inclusive environments. The shares of the most diverse companies perform better than the shares of less diverse companies.⁴ One study found that companies in the top quartile for “ethnic/cultural” diversity were 33% more likely to outperform their peers on profitability, while companies in the bottom quartile were 29% more likely to *underperform* their peers on profitability.⁵ That pattern carried over to the board level: Companies with the most ethnically/culturally diverse boards were 43% more likely to experience higher profits than similarly situated companies with less diverse boards.⁶ Similarly, according to

⁴ Dieter Holger, *The Business Case for More Diversity*, Wall St. J., Oct. 26, 2019; *see also* Joann S. Lublin, *New Report Finds a “Diversity Dividend” at Work*, Wall St. J., Jan. 20, 2015 (describing a study finding “a statistically significant relationship between companies with women and minorities in their upper ranks and better financial performance”).

⁵ McKinsey & Company, *Delivering through Diversity*, 2018, at 13-14.

⁶ *Id.* at 13.

another study, venture-capital firms with a diversity of investment partners have higher-performing investments than less diverse firms.⁷

Amici agree that a diverse and inclusive workforce is a significant competitive advantage. As detailed below, *amici* are committed to the actions that make it possible to achieve and sustain such a workforce.

B. Businesses with diverse individuals and inclusive cultures win because they attract talented individuals from a wider population than other businesses.

Diverse workforces outperform their homogeneous counterparts because of the better talent present in the diverse workforces.

Companies that effectively limit their talent search to just one type of person will fail to recruit the most talented people. That is how a company fails to evolve and keep pace in a global marketplace.

Minority populations are growing significantly faster than non-minority populations.⁸ Indeed, the non-Hispanic White population is

⁷ Paul Gompers & Silpa Kovvali, *The Other Diversity Dividend*, Harv. Bus. Rev., July-Aug. 2018.

⁸ U.S. Census Bureau, *Demographic Turning Points for the United States: Population Projections for 2020 to 2060*, Feb. 2020, at 6-7.

expected to be just 44.3 percent of the American population by 2060,⁹ with the group of people who are two or more races expected to grow by 200 percent in that time.¹⁰ By 2060, the “Asian”¹¹ population in the United States is expected to have doubled, the “Hispanic”¹² population to have nearly doubled, and the “American Indian and Alaska Native,”¹³

⁹ This brief uses the language in the relevant cited source to label different racial and ethnic groups.

¹⁰ U.S. Census Bureau, *Demographic Turning Points*, *supra* note 8, at 3, 7.

¹¹ As used in the census, “Asian” is an expansive term that refers to “[a] person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.” *Asian*, United States Census Bureau Glossary, <https://tinyurl.com/y9p5y25h>.

¹² The census uses “Hispanic” to mean “a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.” *Hispanic or Latino Origin*, United States Census Bureau Glossary, <https://tinyurl.com/y7j5t6zc>.

¹³ The census uses “American Indian or Alaska Native” to mean “[a] person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.” *American Indian or Alaska Native*, United States Census Bureau Glossary, <https://tinyurl.com/yach3769>.

“Black or African American,”¹⁴ and “Native Hawaiian and Other Pacific Islander”¹⁵ populations to each have increased by approximately 40 percent. What is more, the country’s foreign-born population is expected to increase from 44 million in 2016 (14 percent of the population) to 69 million in 2060 (17 percent of the population).¹⁶

For these reasons, America has an increasingly racially diverse labor force. The growth rate of White non-Hispanic men and women in the civilian labor force is expected to decrease from 2018 to 2028, just as it did from 2008 to 2018.¹⁷ By contrast, the growth rate of men and

¹⁴ The census uses “Black or African American” to mean “[a] person having origins in any of the Black racial groups of Africa.” *Black or African American*, United States Census Bureau Glossary, <https://tinyurl.com/yd4kwtbj>.

¹⁵ The census uses “Native Hawaiian or Other Pacific Islander” to mean “[a] person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.” *Native Hawaiian or Other Pacific Islander*, United States Census Bureau Glossary, <https://tinyurl.com/yaac4m33>.

¹⁶ U.S. Census Bureau, *Demographic Turning Points*, *supra* note 8, at 3-4.

¹⁷ Bureau of Labor Statistics, U.S. Dep’t of Labor, *Employment Projections – Civilian Labor Force by Age, Sex, Race, and Ethnicity*, tbl.3.1 (2019), <https://tinyurl.com/y8lnxlov>.

women who are Black, Asian, or of Hispanic origin in the labor force is expected to increase during the same period.¹⁸

Amici need a workforce composed of the most talented people, and must assemble that workforce in the context of these population and demographic trends. They are doing so. For example, in January 2015, Intel announced its “Diversity in Technology” initiative. It pledged to achieve full representation of underrepresented minorities and women in Intel’s U.S. workforce by 2020 (and accomplished its goal in 2018, two years early) and committed \$300 million to support diversity and inclusion across the technology industry.¹⁹ And in June 2015, Intel’s venture capital arm, Intel Capital, launched the “Intel Capital Diversity Initiative” to invest in technology companies led by women and underrepresented minorities. As of September 2019, Intel Capital had invested \$381 million in companies led by diverse teams.²⁰ Intel’s commitment to diversity is ongoing: It aims to increase the presence of

¹⁸ *Id.*

¹⁹ See Intel, *Intel Diversity in Technology Initiative* (Dec. 10, 2019), <https://tinyurl.com/ydfjtex6>.

²⁰ See Intel Capital, *Intel Capital Diversity Initiative*, <https://tinyurl.com/yb4hsbk5> (last visited May 18, 2020).

women in technical roles and increase the number of women and underrepresented minorities in senior leadership by 2030.

Similarly, Cisco has developed a “Diverse Talent Accelerators Initiative.” The program comprises a suite of digital solutions to find, attract, and hire diverse talent, where diversity encompasses gender, ethnicity, race, orientation, age, ability, veteran status, and religion. Those solutions include “Smart Insights” to support diversity opportunities; “Smart Start” to write job postings that mitigate bias; “Smart Tracker” to identify the best places to find diverse talent; and “Smart Select” to assemble diverse interviewer panels, which mitigates bias and increases the likelihood of hiring diverse talent. More than 14,000 Cisco leaders and Human Resources employees are equipped to use Diverse Talent Accelerators when making hiring decisions. Cisco Systems, *2019 Corporate Social Responsibility Report* at 40 (“Cisco CSR Report”). As a result of its Diverse Talent Accelerators program, Cisco has successfully increased the representation of employees who identify as women, “African American/Black,” and “Hispanic/Latino.” *Id.* at 40-41.

And Amgen has set goals to increase the presence of underrepresented minorities in scientific positions and executive roles nationally, and to increase the representation of women in management and executive roles worldwide. Amgen, *2018 Responsibility Highlights Report* at 26. Likewise, Applied Materials has set goals to increase the representation of underrepresented minorities and women in its workforce. To achieve those goals, Applied Materials launched a Culture of Inclusion Initiative in 2019, which involves: (1) engaging leaders as “champions of change”; (2) identifying and breaking down systemic barriers to inclusion; and (3) operationalizing inclusion in all aspects of talent management. An important dimension of Applied’s program is transparency and accountability, in particular tracking progress by using qualitative and quantitative metrics and providing visibility to executives, managers, and shareholders. Applied Materials, *2018 Corporate Social Responsibility Report* at 22; Applied Materials, *Changes in Diversity 2016-2019 Report*.

As *amici*’s actions illustrate, American businesses devote great effort to have a workforce that draws from all. Otherwise, the talented people will go elsewhere—and the business itself will suffer as a result.

C. Businesses with diverse individuals and inclusive cultures win because inclusive teams perform better together than the teams in other businesses.

Although the talented individual is important, an even greater benefit materializes when these individuals thrive in an inclusive setting. Most obviously, “[a] diverse and inclusive workforce can ... help ensure that a company’s products and services are respectful of their clients’ cultures.”²¹ Indeed, the buying power of multicultural consumers (i.e. those identifying by a census category other than non-Hispanic White) has increased exponentially in recent decades, from \$661 billion in 1990 to \$3.4 trillion in 2014.²² And multicultural consumers’ share of buying power will only grow: Hispanics, Asian-Americans, and African-Americans already significantly outstrip non-Hispanic Whites in years of effective buying power, which takes into

²¹ Forbes Insights, *Global Diversity and Inclusion: Fostering Innovation Through a Diverse Workforce*, 2011, at 5.

²² Nielsen, *The Multicultural Edge: Rising Super Consumers*, 2015, at 9 (representing a percentage increase of 415%, more than double the 204% overall increase in U.S. buying power).

account median age and average lifespan.²³ To succeed, then, *amici* must be poised to understand and appeal to people among all segments of a diverse population—or be rendered irrelevant.²⁴

But more fundamentally, teams composed of people with different backgrounds perform better because of their broad range of thoughts and ideas. Indeed, “[d]iverse teams ... are more likely to have access to the breadth of information necessary to solve complex problems.”²⁵ Those diverse perspectives drive innovation: “Multiple and varied voices have a wide range of experiences, and this can help generate new ideas about products and practices.”²⁶

²³ *Id.* at 11 (effective years of buying power for African-Americans, Asian-Americans, and Hispanics exceed that of non-Hispanic whites by 5.6, 15.6, and 19.8 years, respectively).

²⁴ See William J. Holstein, *Diversity is Even More Important in Hard Times*, N.Y. Times, Feb. 13, 2009 (Chairman and CEO of the Pepsi Bottling Group stating, “In the United States, the multicultural consumer today is over a third of the population So making sure we have a diverse board and a diverse work force helps us understand the needs of the marketplace.”).

²⁵ Stanley F. Slater et al., *The Business Case for Commitment to Diversity*, 51 Bus. Horizons 201, 203 (2008).

²⁶ Forbes Insights, *Global Diversity and Inclusion*, *supra* note 21 at 5; see also David Rock & Heidi Grant, *Why Diverse Teams are Smarter*,

In addition, diverse groups tend to engage in a more rigorous and thoughtful decision-making process. Because different viewpoints are more common in diverse groups than in their homogeneous counterparts, disagreements are also more common in diverse groups. By contrast, homogeneous groups tend to resort to “groupthink.”²⁷ Differences in opinion push individuals to think critically. Diverse teams are thus “more likely to constantly reexamine facts,” “remain objective,” and “scrutin[ize] ... each member’s actions.”²⁸ In essence, diverse teams “process information more carefully.”²⁹ Accordingly, although homogeneous groups may reach decisions more quickly,

Harv. Bus. Rev., Nov. 2016 (results of one study “revealed that businesses run by culturally diverse leadership teams were more likely to develop new products than those with homogenous leadership”).

²⁷ See Holstein, *supra* note 24 (“[I]t’s difficult, if not impossible, for [a] homogenous board[] to challenge and offer different perspectives, unique experiences and the broad-based wisdom that makes the board, and therefore the company, as effective as they can be.”).

²⁸ Rock & Grant, *supra* note 26.

²⁹ *Id.*

diverse groups tend to drive better outcomes because their decision-making process is more rigorous.³⁰

Again, *amici*'s actions reflect this business imperative of fostering an inclusive culture. For example, for more than 30 years, Apple has fostered community and connection through its "Diversity Network Associations," employee resource groups that bring together employees of all backgrounds, all around the world, for education, leadership programs, and networking. Over 25,000 Apple employees participate in the Diversity Network Associations through groups like Accessibility@Apple, Amigos@Apple, Black@Apple, Pride@Apple, and Women@Apple, and a range of faith-based groups.³¹

Verizon has developed strategies to reduce unconscious bias and empower each of its employees to have a voice and contribute to an inclusive culture that values differences. Since 2016, Verizon has

³⁰ See KelloggInsight, *Better Decisions Through Diversity*, Oct. 1, 2010; see also Slater, *supra* note 25, at 203 ("Opinions of a culturally diverse workforce can lead to higher quality decisions.").

³¹ Apple, *Inclusion & Diversity*, <https://tinyurl.com/pt63utw>; see also *id.* (describing Apple's pay equity goals and policies, which received a top ranking for pay equity in 2019 by Arjuna Capital's Gender Pay Scorecard in the technology industry).

provided unconscious bias training to raise awareness of bias and drive behavioral change. And Verizon's Employee Resource Groups represent the diverse experiences of Verizon's customers, employees, and the larger society, and contribute to the creative and innovative ideas that help Verizon better serve all of its shareholders while building a sense of belonging among employees and encouraging them to bring their authentic selves to work.³²

Cisco maintains a global platform (the Inclusion and Collaboration Community) for diverse groups to connect and build relationships. The platform has more than 29,000 active members, who can access, for example, mentoring resources and webinars aimed at retaining minority talent. *Cisco CSR Report* at 43.

Similarly, Amgen maintains Employee Resource Groups to support minority employees. Approximately 4,000 staff members participate in those groups. Amgen also has organized panels, leadership forums, and workshops to ensure that its diverse workforce is fully integrated. *Amgen, 2018 Responsibility Highlights Report* at 26.

³² Verizon, *2019 Environmental, Social, and Governance Report*, <https://tinyurl.com/y9zs4zns>.

Applied Materials also maintains Employee Resource Groups. Applied Materials has seven groups with 21 chapters across the globe. These groups have been important in fostering a culture of inclusion and engagement, serving as forums for exchanging ideas, providing mentorship, and strengthening bonds across and within diverse communities. Because each group has an engaged executive sponsor, they play a key advisory role to leaders in partnering to remove systematic barriers to inclusion. Applied Materials, *2018 Corporate Social Responsibility Report* at 27.

Micron, too, has Employee Resource Groups—8 groups with 38 global chapters. Micron’s CEO regularly hosts conversations with the groups when he conducts site visits. Micron also maintains a women’s sponsorship program, pairing director-level women with senior leaders. To ensure that it creates an inclusive workplace, Micron conducts an engagement survey twice a year, asking questions such as, “at work I’m respected for who I am.” And Micron has provided members of its executive team with unconscious bias training. Micron, *Diversity, Equality & Inclusion: FY19 Annual Report* at 4-5.

In furtherance of its diversity efforts, Intel offers more than 30 Employee Resource Groups, connecting over 22,000 employees. Intel, *2019 – 2020 Report: Corporate Responsibility at Intel* at 57. Intel also provides Leadership Councils, composed of over 200 Intel leaders, that mentor members of the Employee Resource Groups and lead efforts in recruiting, retention and professional development. *Id.* at 58. In addition, Intel has a global “Inclusion@Intel” program that provides inclusion training, as well as an “Inclusive Leaders” program to help managers build diverse and inclusive teams. *Id.* at 57.

As *amici*’s actions again illustrate, American businesses devote great effort to have a workforce that not only draws from all, but fosters a culture where all work well together. It is only through this diverse and inclusive setting that a company can perform at its best.

II. Businesses need universities to admit diverse individuals and to foster inclusive cultures.

As the district court recognized, the Supreme Court has consistently affirmed that a diverse student body and the benefits it brings constitute a compelling interest that can justify the consideration of race in university admissions programs. *See Fisher I*, 570 U.S. at 308-09 (“[O]btaining the educational benefits of ‘student body diversity

is a compelling state interest.”); *Grutter*, 539 U.S. at 325 (“[S]tudent body diversity is a compelling state interest that can justify the use of race in university admissions.”); *Bakke*, 438 U.S. at 314-15 (opinion of Powell, J.) (“[T]he interest of diversity is compelling in the context of a university’s admissions program.”); *see also Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 397 F. Supp. 3d 126, 190 (D. Mass. 2019) (citing *Bakke*, *Grutter*, and *Fisher I*); Br. for Def.-Appellee at 58-59.

Important business interests confirm the settled view that diversity, including racial diversity, gives rise to a compelling and substantial interest for university admissions programs.³³ University admission decisions affect where students attend university, which, in turn, affects who will graduate with the educational qualifications that *amici* believe are necessary for success in their workforce. To have the largest market of talented people prepared to join *amici*’s businesses, graduates must represent as wide a range of backgrounds as possible.

³³ *Amici* take no position on whether Harvard’s policy must be reviewed under strict scrutiny. *See Students for Fair Admissions*, 397 F. Supp. 3d at 190 n.56.

And because K-12 schools in the United States tend to be racially homogeneous, it is especially important that universities are able to create racially diverse learning environments.³⁴

So too, a university “prepares students for an increasingly diverse workforce and society.” *Fisher II*, 136 S. Ct. at 2210 (quoting *Grutter*, 539 U.S. at 330). People educated in such environments are ready to contribute to the inclusive environment *amici* need: They are prepared to listen to others’ ideas, to build consensus, and to think expansively.³⁵

³⁴ See Sarah Mervosh, *How Much Wealthier Are White School Districts Than Nonwhite Ones? \$23 Billion, Report Says*, N.Y. Times (Feb. 27, 2019), <https://tinyurl.com/y5j4mupo> (report found that in 2016 over half of U.S. schoolchildren attended school in racially concentrated districts where over 75 percent of students are either white or nonwhite); see also Sean F. Reardon & Ann Owens, *60 Years After Brown: Trends and Consequences of School Segregation*, Ann. Rev. Soc. (June 16, 2014) (observing that, depending on the definition used, racial segregation in schools has either increased or remained stagnant since 1980).

³⁵ See, e.g., Nicholas A. Bowman, *College Diversity Experiences and Cognitive Development: A Meta-Analysis*, 80 Rev. Educ. Res. 4, 20 (2010) (analyzing 23 higher education studies and concluding that college diversity experiences are significantly associated with gains in cognitive skills and outcomes); see also Nida Denson & Mitchell J. Chang, *Dynamic Relationships: Identifying Moderators that Maximize Benefits Associated with Diversity*, 86 J. Higher Educ. 1 (2015) (high-quality cross-racial experiences and perceived acceptance of diversity by the university strengthen educational benefits of interaction diversity).

They are able to integrate different perspectives, thereby approaching problem-solving in a more open-minded and creative way. These cognitive benefits translate directly to the business world, where rigorous critical thinking and creative problem-solving skills are crucial.³⁶ And diverse higher education environments foster not only cognitive skills, but also socio-cognitive skills such as leadership that are essential to *amici*'s success.³⁷

To satisfy the standard for articulating a compelling interest set forth in *Fisher I* and *Fisher II*, universities need not supply target metrics or other numerical goalposts—indeed, such a measure could run afoul of the Court's prohibition on racial quotas. *See Bakke*, 438 U.S. at 307 (opinion of Powell, J.). Harvard has repeatedly evaluated its

³⁶ *See, e.g.*, Jiali Luo & David Jamieson-Drake, *A Retrospective Assessment of the Educational Benefits of Interaction Across Racial Boundaries*, 50 J.C. Student Dev. 67 (2009) (study of alumni from 1985, 1995, and 2000 graduating classes of selective universities showing significantly higher skill development and assumption of leadership in professional associations among students with substantial interracial interactions as undergraduates).

³⁷ *See* Sylvia Hurtado, *The Next Generation of Diversity and Intergroup Relations Research*, 61 J. Soc. Issues 595 (2005).

interest in diversity, concluded that it is “real and profound,” and articulated a number of substantial and specific educational benefits that flow from student body diversity.³⁸ *Students for Fair Admissions*, 397 F. Supp. 3d at 134; *see also* Br. for Def.-Appellee at 59-62. That many of those benefits are also essential to *amici*’s continued success further underscores the compelling and substantial nature of Harvard’s interest in diversity.

Amici’s efforts again provide concrete illustration of the important role universities play in advancing business interests. Applied Materials operates a “New College Graduate Program” to attract top talent. As part of that program, Applied Materials sponsors, hosts, and participates in several activities to recruit diverse college graduates, including the National Society of Black Engineers Employer Roundtables and the Society of Women Engineers Evening with Industry event. Applied Materials, *2018 Corporate Social Responsibility Report* at 24. In addition, Applied Materials recruiters

³⁸ Of course, each university must determine and articulate its own interest in diversity. As an exercise of academic judgment, such decisions are entitled to deference. *Fisher II*, 136 S. Ct. at 2208, 2214.

seek to attract diverse talent by partnering with members of the company's affinity groups to bring underrepresented minority students and women to its campuses for panels, discussions, and facilities tours. *Id.* at 23.

Verizon also partners with numerous campus and diversity organizations to recruit and hire diverse talent, including partnerships with Grace Hopper, Society of Hispanic Professional Engineers, Out and Equal, and many others. And Verizon is a founding sponsor of Women in Technology and Entrepreneurship, a collaborative initiative with Cornell Tech at the City University of New York and over 100 corporate partners. The program propels women—from high school through graduate school—into rewarding careers in technology with a focus on education, work experience, and community building.³⁹

Amici observe that the business interests identified above—the need, for multiple reasons, for a diverse and inclusive workforce—give rise to goals that cannot “be reduced to pure numbers,” *Fisher II*, 136 S. Ct. at 2210, but are nonetheless measurable. While *amici* track various

³⁹ Verizon, *2019 Environmental, Social, and Governance Report*, <https://tinyurl.com/y9zs4zns>.

metrics to better understand performance and progress made towards their respective diversity-related goals, *see supra* 10-12, these metrics alone do not fully capture such progress or the value *amici* place on those goals. But these business needs are not “elusory or amorphous” goals, nor do they merely reflect the “benefits of diversity writ large.” *Fisher II*, 136 S. Ct. at 2211. “[D]iversity takes many forms,”⁴⁰ *id.* at 2210, and the creativity and productivity nurtured by an inclusive company culture are more than the mere sum of their parts. By articulating robust and material diversity goals that are “concrete and precise,” *id.* at 2211, *amici* ensure that they will approach diversity with thoughtfulness and rigor, and continually examine and reassess their hiring and personnel practices and objectives.

In sum, American business successes require university admission processes that account for an applicant’s race and ethnicity. In *Grutter*, Justice O’Connor wrote:

⁴⁰ This is certainly true in regards to the diversity of backgrounds and experiences contained by the expansive term “Asian-American.” Amicus Br. for Asian American Legal Defense and Education Fund at 1, May 21, 2020 (there is “vast diversity within the Asian community, including [] stark differences in socioeconomic and education attainment among different ethnic subgroups”); *see also id.* at 3-5, 10-11.

In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity.

Grutter, 539 U.S. at 332. Although *Grutter* was issued almost two decades ago, the need for a “flexible use of race as a ‘plus’ factor” in university admissions programs, *id.* at 335, remains. That is what the practices of today’s leading businesses confirm.

CONCLUSION

To win in global markets, American businesses need universities to graduate diverse individuals who have thrived in an inclusive environment. *Amici* urge the Court to keep these essential business imperatives in mind when analyzing Harvard’s race-conscious admissions policy.

Respectfully submitted,

/s/ Mark S. Davies

Mark S. Davies
Thomas M. Bondy
Katherine M. Kopp
Sheila A. Baynes
Sarah H. Sloan
ORRICK, HERRINGTON &
SUTCLIFFE LLP
1152 15th Street NW
Washington, DC 20005
(202) 339-8400
mark.davies@orrick.com

E. Joshua Rosenkranz
ORRICK, HERRINGTON &
SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019

Darren S. Teshima
ORRICK, HERRINGTON &
SUTCLIFFE LLP
405 Howard Street
San Francisco, CA 94105

(Counsel for Amici Curiae Amgen Inc.; Apple Inc.; Applied Materials, Inc.; Cisco Systems, Inc.; Cummins Inc.; General Electric Company; Gilead Sciences, Inc.; GlaxoSmithKline LLC; Intel Corporation; Micron Technology, Inc.; Microsoft Corporation; Twitter, Inc. and ViiV Healthcare Company)

Keefe B. Clemons
VERIZON SERVICES CORP.
6 Bowdoin Square, 9th Floor
Boston, MA 02114
(917) 439-2610
keefe.b.clemons@verizon.com
*(Counsel for Amicus Curiae Verizon
Services Corp.)*

Counsel for Amici Curiae

May 21, 2020

**ADDENDUM
AMICI CURIAE IN SUPPORT OF DEFENDANT-APPELLEE
PRESIDENT AND FELLOWS OF HARVARD COLLEGE**

Amgen Inc.
1 Amgen Center Drive
MS 28-5A
Thousand Oaks, CA 91320

Apple Inc.
1 Apple Park Way
Cupertino, CA 95014

Applied Materials, Inc.
3050 Bowers Avenue
Santa Clara, CA 95054

Cisco Systems, Inc.
170 W. Tasman Drive
San Jose, CA 95134

Cummins Inc.
301 East Market Street
Indianapolis, IN 46204

General Electric Company
5 Necco Street
Boston, MA 02210

Gilead Sciences, Inc.
333 Lakeside Drive
Foster City, CA 94404

GlaxoSmithKline LLC
5 Crescent Drive
Philadelphia, PA 19112

Intel Corporation
2200 Mission College Blvd.
Santa Clara, CA 95054

Micron Technology, Inc.
8000 S. Federal Way
Boise, ID 83716

Microsoft Corporation
One Microsoft Way
Redmond, WA 98052

Twitter, Inc.
1355 Market Street, Suite 900
San Francisco, CA 94103

Verizon Services Corp.
22001 Loudon County Parkway
Ashburn, VA 20146

ViiV Healthcare Company
Five Moore Drive
Research Triangle Park, NC 27709

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system on May 21, 2020.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/ Mark S. Davies

Mark S. Davies

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B)(i) because this brief contains 4,850 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2019 in Century Schoolbook 14-point font.

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/Mark S. Davies

Mark S. Davies

Counsel for Amici Curiae