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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CHASE CANTRELL, *et al.*,

Plaintiffs-Appellants,

-v.-

ATTORNEY GENERAL BILL SCHUETTE, *et al.*,

Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of Michigan

**BRIEF OF CASCADE ENGINEERING, INC., DTE ENERGY COMPANY,
HERMAN MILLER, INC. AND STEELCASE INC., AMICI CURIAE,
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

**Disclosure of Corporate Affiliations
and Financial Interest**

Sixth Circuit
Case Number: 09-1111 Case Name: CANTRELL, et al. v. SCHUETTE, et al.

Name of counsel: EUGENE DRIKER

Pursuant to 6th Cir. R. 26.1, CASCADE ENGINEERING, INC., DTE ENERGY COMPANY, HERMAN MILLER, INC.
Name of Party STEELCASE INC.
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

NO.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

NO.

CERTIFICATE OF SERVICE

I certify that on NOVEMBER 1, 2011 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ EUGENE DRIKER

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

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INTEREST OF AMICI CURIAE¹

Amici are Michigan-based businesses that regularly hire graduates of Michigan's fifteen public colleges and universities and, accordingly, have a substantial interest in the kind of education and experiences those graduates have received.

Cascade Engineering, Inc., headquartered in Grand Rapids, is a leading provider of engineered plastics systems and components, with more than 1,200 employees and 14 facilities worldwide. Cascade Engineering is committed to creating a work environment in which all employees, regardless of cultural or individual differences, know they are respected and valued as human beings. Cascade works to transform long-held beliefs about people from different backgrounds that stimulate productive alliances within work place peer groups. A culture of inclusion allows people to feel comfortable contributing, encourages new perspectives, and makes the most of each person's potential.

DTE Energy is a Detroit-based diversified energy company involved in the development and management of energy-related businesses and services nationwide. Its operating units include Detroit Edison, an electric utility serving 2.1 million customers in Southeastern Michigan, MichCon, a natural gas utility serving 1.2 million customers in Michigan and other non-utility energy businesses focused on gas storage and pipelines, unconventional gas production, power and industrial projects, and energy trading.

Herman Miller, Inc., headquartered in Zeeland, specializes in the design and manufacture of furniture solutions for the home and office. It generated more than \$1.6 billion in revenue in fiscal 2011. Herman Miller understands that working to become an

¹ All parties have consented to the filing of this *amicus curiae* brief. No portion of this brief was authored by counsel for a party. No person or entity, including the *Amici* joining in this brief, or their counsel made a monetary contribution to the preparation or submission of this brief. See Fed. R. APP. P. 29(5).

inclusive community is both the right thing to do and a business imperative that directly affect its ability to grow. To effectively compete in the global marketplace, Herman Miller recognizes the need to attract and retain the best talent available. An inclusive environment allows Herman Miller employees to be more innovative, to reflect the diversity of its customer base, and to create products that best meet the needs of its clients around the world.

Steelcase Inc. is a leader in the manufacture of workplace furniture and products with 2011 revenue of approximately \$2.4 billion and nearly 10,000 employees around the world. Its headquarters are in Grand Rapids, where it was founded in 1912 by a few people with a strong commitment to integrity and doing the right thing for its customers, employees, business partners, associates and neighbors. Steelcase's employees are its greatest asset and it promotes cultural acceptance through fair recruiting and hiring processes; raising awareness among employees of diversity issues; and creating partnerships with other companies that support diversity.

Amici have each long recognized that having a diverse workforce is essential to their success. Employees who have worked side-by-side with those of different races, cultures and experiences are better equipped to deal with the complexities of our contemporary economy. A diverse work force is essential in dealing with customers, suppliers, regulators, and investors from around the world and from an increasingly diverse population here at home.

It is of significant benefit to Amici that Michigan's public colleges and universities have the discretion they deem necessary to enroll a diverse student body. That diversity will yield college graduates representative of Michigan's increasingly diverse population,

and also give to non-minorities the very important benefits that flow from exposure to individuals different from themselves.

To the extent that Michigan's public colleges and universities are impeded by Proposal 2 in recruiting and admitting minority candidates, employers, like Amici, who rely upon those institutions as an important source of their human capital are deprived of the benefits that greater minority enrollment brings to everyone on campus. For that reason, Amici support Appellants here.

ARGUMENT

THE ABILITY OF MICHIGAN'S PUBLIC COLLEGES AND UNIVERSITIES TO ADMIT AND EDUCATE A DIVERSE STUDENT BODY, REFLECTIVE OF THE STATE'S DIVERSE CITIZENRY, IS OF DIRECT AND SUBSTANTIAL BENEFIT TO MICHIGAN BUSINESSES.

In *Grutter v. Bollinger*, 539 U.S. 306, 325 (2003), the Supreme Court of the United States held that "student body diversity is a compelling state interest that can justify the use of race in university admissions." That same diversity is of compelling interest to Amici, major employers headquartered in Michigan that need well-educated college graduates to fill jobs in an increasingly complex global economy. The importance of student diversity, as recognized in *Grutter*, has only grown since that case was decided, as our nation has confronted economic challenges last seen in the Great Depression, while at the same time facing intense competition from many countries that are aggressively seeking to capture our nation's once commanding place in the world economy.

Michigan's increasingly diverse population, and the global economy in which Michigan's businesses must now compete, make it essential that employers here can look to our public colleges and universities as the training ground for a workforce that has been educated through exposure to others of different races, cultures and life experiences.

Amici have long been committed to promoting diversity in their workforce. It is an essential component of their way of doing business. In a state where almost 20% of the population are African-American, Hispanic and Native American, it is essential for Amici to have among their employees individuals who reflect this diverse population.² To achieve that goal, Amici have for years recruited graduates of Michigan's fifteen public universities

² The 2010 decennial census shows Michigan's population at 9,883,640 of whom 1,400,362 (14.2%) are African-American, 436,358 (4.4%) are Hispanic and 62,007 (.63%) are Native American. U.S. Census Bureau, 2010 Census Report.

and colleges, counting on those institutions to themselves have the kind of campus diversity that is now widely recognized as essential if higher education is to fulfill its mission. See *Grutter*, 539 U.S. 306, 324-325. The benefit of such diversity inures not only to minority students on campus, but to all of the students, who gain real-world experience from interacting (many for the first time) with people of widely different cultures and backgrounds. As Justice Powell wrote in *Bakke*, and as reaffirmed by the Court in *Grutter*, "it is not too much to say 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." *Regents of University of California v. Bakke*, 438 U.S. 265, 313 (1978), quoting *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967)(quoted with approval in *Grutter*, 539 U.S. at 324).

What was true when the Court spoke in *Grutter* in 2003 is ever more true today. The rapid globalization of businesses, coupled with the substantial increase in the population of minority groups in this country, makes it essential that Amici are able to find workers who have benefitted from the widely differing ideas and opinions that come from daily interaction with people different from themselves.

While the ability to understand and work with people of different races and cultures is important today, it will be of even greater importance in the years to come. It is projected that by 2020 the adult population of the United States will be 17% Hispanic, 13% African-American, 6% Asian and 1% Native American. By 2050, Hispanics are projected to make up 29% of the population and African-Americans 13%, with Caucasians in the minority, at 47%. Alliance for Excellent Education, *Dropouts, Diplomas, and Dollars*, August 2008, p. 29. In the face of these dramatic changes facing American society, the business community must act now to train those who will soon lead their organizations in a much

different world. And this need is not simply the theoretical musing of social scientists. As the Supreme Court in *Grutter* recognized, the need for diversity in the workforce is of real, practical significance:

The Law School's claim of a compelling interest is further bolstered by its *amici*, who point to the educational benefits that flow from student body diversity. In addition to the expert studies and reports entered into evidence at trial, numerous studies show that student body diversity promotes learning outcomes, and "better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals. . . ."

These benefits are not theoretical but real, as major 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. Brief for 3M et al. as *Amici Curiae* 5; Brief for General Motors Corp. as *Amicus Curiae* 3-4. 539 U.S. at 330.

Thus, while diversity in the workplace was long thought to simply be the right thing to do, it has become increasingly clear that such diversity is the smart thing to do from a business perspective. According to the Society for Human Resource Management:

A strong business case for diversity will clearly show that creating a diverse and inclusive workplace will benefit everyone in the organization, by making the organization stronger, more resilient, and more competitive.

Society for Human Resource Management, *Building the Business Case for Diversity*, May 22, 2008, p.2.

Diversity and inclusiveness in the workplace promote greater adaptability and flexibility in a rapidly changing marketplace; they help attract and retain the best talent; they reduce costs associated with turnover, absenteeism and low productivity; they stimulate creative thinking from those who bring different perspectives to old problems; they aid in gaining and keeping greater market share (both locally and globally) with an expanded diverse customer base. All of these factors contribute to a more satisfied and productive workforce that, in turn, yields greater profits for their employers. *Id.* See also, Cedric

Herring, *Does Diversity Pay?: Race, Gender, and the Business Case for Diversity*, 74 *American Sociological Review* No. 2, 208-224, April 2009.

Achieving diversity in their workforce is only one part of Amici's needs. The other is that the candidates whom they recruit must be well educated. In today's world that generally means at least a bachelor's degree; a high school diploma is simply no longer sufficient for the increasingly sophisticated tasks that employees are required to perform. The gap between those who do not hold a college degree and those who do has become particularly pronounced during the recent recession. Study after study confirms the direct correlation between obtaining a college degree and getting and keeping a job.³ Georgetown University Center on Education and the Workforce, *Report on Employment Trends*, December 15, 2009. Moreover, the lack of college training, and thus the difficulty in finding employment, has fallen most heavily on minorities. See *Decline of the Working Man, Why Even Fewer Low-skilled American Men Have Jobs*, *The Economist*, April 28, 2011. In recognition of this fact, Amici for years have devoted time, talent and resources in the support of minority students at Michigan's public colleges and universities.

The economic turmoil our nation has endured over the past three years has underscored just how important higher education is to the achievement of individual financial and personal security. While the unemployment rate in Michigan has been among the highest in the nation for several years, the rate for college graduates is less than half that of the entire state population. Michigan League for Human Services, *Labor*

³ Michigan's unemployment rate in August 2011 was 11.2%, third highest in the country. U.S. Dep't. Of Labor, Bureau of Labor Statistics, September 2011. In 2008 only 24.7% of Michigan's citizens age 25 or over held at least a bachelor's degree, putting it 34th among all states. U.S. Census Bureau, *State Rankings – Statistical Abstract of the United States, Persons 25 years old and over with a bachelor's degree or more*, 2008.

Day Report 2011, Appendix C. And data show that the higher the level of educational achievement, the lower the risk of health problems, broken homes, involvement with the criminal justice system, teen-age pregnancy and other pathologies that challenge our society. Alliance for Excellent Education, *Dropouts, Diplomas, and Dollars* (2008).

As the Court noted in *Grutter*, meaningful access to higher education yields not only well-equipped workers, but well-equipped citizens, with all of the important societal benefits that follow.

We have repeatedly acknowledged the overriding importance of preparing students for work and citizenship, describing education as pivotal to "sustaining our political and cultural heritage" with a fundamental role in maintaining the fabric of society. This Court has long recognized that "education...is the very foundation of good citizenship." *Brown v. Board of Education*, 347 U.S. 483, 493, 98 L. Ed. 873, 74 S. Ct. 686 (1954). For this reason, the diffusion of knowledge and opportunity through public institutions of higher education must be accessible to all individuals regardless of race or ethnicity. 539 U.S. at 331.

The ability of Michigan's public colleges and universities to educate and train minority students for work and for life has been adversely affected by Proposal 2. For example, at the University of Michigan the number of African-Americans enrolled as freshmen declined from 330 in 2006 to 283 in 2010, while the number of Native Americans dropped from 52 to 11. During that period, minority enrollment at the University's graduate and professional schools dropped for African-Americans from 745 to 563 and for Native Americans from 92 to 36. See University of Michigan enrollment data, available at: <http://www.provost.umich.edu/reports/FAQraceandethnicity.pdf>. These data presage a decline in diversity in the workplace at the very time when the need for such diversity is so great.

Both the business community and society in general will gain in tangible and meaningful ways by promoting student diversity in our public colleges and universities. Graduates who have experienced such diversity will be far better equipped to work in and

