No. 26-8014

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

CORNELL UNIVERSITY, et al.,	)	On Petition for Permission to
	)	Appeal from a Class Certification
Defendants-Petitioners,	)	Order of the United States District
	)	Court for the Northern District of
v.	)	Illinois, Eastern Division
	)	
ANDREW CORZO, et al.,	)	No. 1:22-cv-00125-MFK
	)	
Plaintiffs-Respondents.	)	Hon. Matthew F. Kennelly,
	)	District Court Judge
	)	
	)	

BRIEF OF *AMICUS CURIAE* ASSOCIATION OF AMERICAN UNIVERSITIES IN SUPPORT OF DEFENDANTS-PETITIONERS' PETITION FOR PERMISSION TO APPEAL UNDER FED. R. CIV. P. 23(f)

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No. 26-8014

Short Caption: Cornell University et al. v. Andrew Corzo et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Association of American Universities as amicus curiae

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the District Court or before an administrative agency) or are expected to appear for the party in this court:

Jenner & Block LLP for Amicus Curiae

(3) If the party or amicus is a corporation:

i) Identify all of its parent corporations, if any; and

None

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

None

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases: N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2: N/A

Attorney's Signature /s/ Lindsay C. Harrison Date: June 22, 2026

Attorney's Printed Name: Lindsay C. Harrison

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** X **No** ____

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

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Attorney's Signature /s/ Elizabeth Henthorne Date: June 22, 2026

Attorney's Printed Name: Elizabeth Henthorne

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(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2: N/A

Attorney's Signature /s/ Gavan W. Duffy Gideon Date: June 22, 2026
Attorney's Printed Name: Gavan W. Duffy Gideon

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IDENTITY AND INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae Association of American Universities ("AAU") was founded in 1900 and is composed of America's leading research universities. AAU's member universities earn the majority of competitively awarded federal funding for research that improves public health, seeks to address national challenges, and contributes significantly to the country's economic strength, while educating and training tomorrow's visionary leaders and innovators. Its members include 69 public and private research universities in the United States, including Cornell University, the University of Pennsylvania, the University of Notre Dame, and the Massachusetts Institute of Technology.

AAU has a strong interest in the continued strength and viability of financial aid in higher education. Indeed, AAU's members are at the forefront of making high-quality education more affordable and accessible. For example, in fiscal year 2024 alone, AAU member universities provided more than $3.2 billion in institutional grants and scholarships to their students. AAU member universities are more affordable on average than other four-year institutions when it comes to out-of-pocket costs, and students at AAU universities have far lower loan default rates than the

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[1] Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *amicus curiae* states that no party's counsel authored this brief in whole or in part and no entity or person, aside from *amicus curiae* or its counsel, contributed money that was intended to fund the preparation or submission of this brief. In the interest of full disclosure, at an earlier stage of this litigation, Jenner & Block LLP represented one of the defendants that has since been dismissed from the case.

national average. AAU is accordingly well positioned to assess financial aid principles and practices like those challenged here and to identify differences between the approaches taken by leading U.S. universities in their efforts to make higher education more affordable.

AAU also has a strong interest in ensuring the proper interpretation and application of Rule 23's requirements, as improperly certified class actions threaten substantial harm to its member universities and their students, faculty, and staff. AAU's members are non-profit institutions on the leading edge of innovation, scholarship, and solutions that contribute to scientific progress, economic development, security, and well-being. Money spent on a financial judgment or settlement extracted through class action pressure inevitably comes at the expense of work critical to members' educational and research-focused missions. A judgment or settlement arising from an improperly certified class thus not only harms universities, but threatens their ability to carry out their missions and serve their students, present and future, as increasing litigation costs threaten to pull resources from existing research, instruction, and financial aid budgets.

INTRODUCTION

The petition at hand presents important questions about Rule 23's application that are of broad consequence to research universities nationwide. The district court certified a class consisting of more than 220,000 students across a 20-year period, after finding that questions of law or fact common to the class predominate over individualized ones. That finding rested on an analysis by Plaintiffs' expert that assumed uniform conduct across Defendants' universities with respect to relevant financial aid practices and policies. Pet. 8-10. And the class certified on that basis sweeps in large numbers of uninjured members, such as students who directly benefitted from application of the financial aid guidelines at issue. Pet. 24-26. Both errors warrant this Court's review.

First, as AAU knows from experience, financial aid programs at major research universities are anything but uniform. AAU's members are all deeply committed to expanding access to higher education through financial aid. But they pursue that shared commitment through widely varying approaches, shaped by differences in institutional missions, student demographics, and available resources. In other words, any assumption that Defendants acted in lockstep with respect to relevant financial aid principles and practices, producing common harm across the class, is at odds with how leading research universities actually operate.

Second, this Court should grant review to address the treatment of uninjured class members—an issue of substantial importance that has caused confusion for courts across the country. The district court's certification of a class containing large numbers of uninjured members cannot be reconciled with binding Circuit precedent. And the broader question of when the presence of uninjured members defeats certification remains unsettled nationwide. This case offers the Court an opportunity to provide additional guidance on that issue—one of particular importance to universities given the risk that aggregated liability untethered to actual harm poses to their research and educational missions.

ARGUMENT

I. AAU Member Universities Pursue a Commitment to Need-Based Financial Aid Through Widely Varying Approaches.

AAU's members have long been at the vanguard of making high-quality education more affordable and accessible, committed to ensuring that students can attend their universities regardless of income or other financial circumstances. Core to that mission are need-blind admissions and need-based financial aid policies. Many AAU member universities admit students without regard to their need for financial assistance and then meet the full demonstrated financial need of the students whom they ultimately enroll through individualized aid packages. The results speak for themselves: Students enrolled at AAU member universities "receive 46% more financial aid from their institutions than from the federal government and have far lower [loan] default rates than the national average."[2]

While AAU's members share an overarching commitment to need-based financial aid, they pursue it through widely varying approaches. Member institutions differ, for example, in how they structure individualized financial aid packages, including how they balance grants against loans. *Cf., e.g.*, Pet. 9-10, 19 (comparing a student who "received a package consisting entirely of grants" to a student who "received $20,000 in loans that must be repaid"). In recent years, dozens of AAU members have expanded grant-based aid for students from middle-class backgrounds, but the particulars of those programs vary substantially, with schools

[2] *Affordability and Student Aid*, Association of American Universities, https://www.aau.edu/affordability-and-student-aid (last visited June 22, 2026).

setting different income thresholds for free-tuition guarantees and adopting different policies regarding non-tuition expenses like housing, books, and fees.[3] Those differences are not incidental; they reflect genuine variation in institutional priorities, student demographics, and available resources.

A model like the one employed here that assumes—contrary to the record evidence—lockstep conduct across institutions is thus at odds with how universities operate. Pet. 9-10, 18-20. Such a model does not merely oversimplify financial aid policies that are nuanced and institution-specific; it generates the appearance of common impact where none exists. And a finding of predominance resting on such an expert model is inconsistent with the "rigorous analysis" that Rule 23 requires. *Arandell Corp. v. Xcel Energy Inc.*, 149 F.4th 883, 894 (7th Cir. 2025); *see* Pet. 19-21.

II. This Court Should Grant Review to Address Important Questions Regarding Certification of a Class With Uninjured Members.

This Court has held that "a class should not be certified if it is apparent that it contains a great many persons who have suffered no injury at the hands of the defendant." *Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 825 (7th Cir. 2012) (quoting *Kohen v. Pac. Inv. Mgmt. Co. LLC*, 571 F.3d 672, 677 (7th Cir. 2009)). That rule called for especially careful application to the proposed class here, given members of the class *by definition* received at least some benefit in the form of need-

[3] Barbara R. Snyder, *Leading Research Universities Are Making College Costs More Affordable and Transparent*, Association of American Universities (May 12, 2026), https://www.aau.edu/newsroom/barbaras-blog/leading-research-universities-are-making-college-costs-more-affordable-and.

based aid from Defendants' financial aid programs. *Cf. Bieneman v. City of Chicago*, 864 F.2d 463, 465 (7th Cir. 1988) (affirming denial of certification where some proposed class members "undoubtedly derive[d] great benefit" from challenged conduct). Yet the district court certified a class that includes many members who could not have been injured, including students who benefited from adherence to the financial aid guidelines at issue, Pet. 24-26, without addressing Defendants' argument that the class contained too many uninjured members, *id.* at A7-8, A18-20.

This issue warrants interlocutory review, as it presents an opportunity to provide appellate guidance in an area of class action law that has caused confusion for courts nationwide. *See Simpson v. Dart*, 23 F.4th 706, 710 (7th Cir. 2022) ("We have often exercised [Rule 23(f)] discretion where 'deciding the appeal would clarify class action law.'" (citation omitted)); *In re Asacol Antitrust Litig.*, 907 F.3d 42, 47 (1st Cir. 2018) (granting interlocutory review of the uninjured-members issue in light of a circuit conflict (citation omitted)). The issue is also of particular importance to universities given the risk that aggregated liability untethered to actual harm poses to their research and educational missions. *Cf. Reliable Money Ord., Inc. v. McKnight Sales Co.*, 704 F.3d 489, 497 (7th Cir. 2013) (Rule 23(f) review appropriate "when class action status so greatly expands the defendant's potential liability so as to coerce a settlement").

A. The Treatment of Uninjured Class Members Remains an Unsettled Question of Nationwide Importance.

The question of what to do about proposed classes that include uninjured members continues to vex courts nationwide. *See, e.g.*, *In re Asacol Antitrust Litig.*, 907 F.3d at 46 (observing that "the presence of uninjured class members" "has been the source of much debate among the circuits"); 1 William B. Rubenstein, *Newberg and Rubenstein on Class Actions* § 2:3, Westlaw (6th ed. database updated June 2026) (the "question whether every class member must demonstrate standing *before* a court certifies a class" "has generated differing approaches" (internal quotation marks omitted)). Some courts have framed the issue as one of standing and denied certification where a class is defined to include uninjured members. *See, e.g.*, *Denney v. Deutsche Bank AG*, 443 F.3d 253, 264 (2d Cir. 2006); *Johannessohn v. Polaris Indus. Inc.*, 9 F.4th 981, 987 (8th Cir. 2021). Other courts focus on the Rule 23 analysis and allow certification of classes with uninjured members. *See, e.g.*, *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 668-69 (9th Cir. 2022). Even some of those courts, however, tend to recognize that a class definition that sweeps in *too many* uninjured members may defeat predominance. *See, e.g.*, *In re Asacol Antitrust Litig.*, 907 F.3d at 53-54 (individualized issues would predominate where "there [were] apparently thousands [of class members] who in fact suffered no injury"); *In re Rail Freight Fuel Surcharge Antitrust Litig. - MDL No. 1869*, 934 F.3d 619, 623-25 (D.C. Cir. 2019) (district court did not abuse its discretion in determining that common questions did not predominate where the damages model indicated 12.7% of proposed class suffered no injury).

This Court has similarly allowed certification of a class with uninjured members while also recognizing limits. It has rejected the argument that a district court must determine whether every class member "has sustained an injury" prior to certification. *Parko v. Shell Oil Co.*, 739 F.3d 1083, 1084-85 (7th Cir. 2014). But it has also held that a "class is defined too broadly to permit certification" if it "include[s] a great number of members who for some reason could not have been harmed by the defendant's allegedly unlawful conduct." *Messner*, 669 F.3d at 824; *see also Kohen*, 571 F.3d at 677 ("if the definition is so broad that it sweeps within it persons who could not have been injured by the defendant's conduct, it is too broad"). At the same, this Court has thus far declined to identify a "precise measure for 'a great many,'" instead noting that "[s]uch determinations are a matter of degree, and will turn on the facts as they appear from case to case." *Arandell*, 149 F.4th at 898 (quoting *Messner*, 669 F.3d at 825).

This case presents the Court an opportunity to provide further guidance on this unsettled area of class action law. The Supreme Court recently recognized the importance of a closely related issue, granting certiorari on the question of "[w]hether a federal court may certify a class action pursuant to [Rule] 23(b)(3) when some members of the proposed class lack any Article III injury." *Lab'y Corp. of Am. Holdings v. Davis*, 145 S. Ct. 1133, 1134 (2025) (mem.). And at least one Justice would have held that a class containing uninjured members fails the predominance requirement—a conclusion potentially in tension with this Court's precedent. *See Lab'y Corp. of Am. Holdings v. Davis*, 605 U.S. 327, 332 (2025) (per curiam)

(Kavanaugh, J., dissenting from Court's dismissal of the writ of certiorari as improvidently granted). Granting the petition here would allow this Court to both address that potential tension and give further clarification to its own precedent on when the presence of uninjured members defeats certification.

B. Certification of Large Classes Containing Many Uninjured Members Poses Unique Risks and Harms to Universities.

The inclusion of uninjured members in a certified class carries real-world consequences, including artificially inflating a headline damages demand. The mere act of certifying a large class "can exert substantial pressure on a defendant 'to settle rather than incur the costs of defending a class action and run the risk of potentially ruinous liability.'" *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 474 (2013) (quoting Fed. R. Civ. P. 23 advisory committee's note to 1998 amendment). And the "*in terrorem* character of a class action" "can be magnified unfairly if it results from a class defined so broadly so as to include many members who could not bring a valid claim even under the best of circumstances." *Messner*, 669 F.3d at 825 (quoting *Kohen*, 571 F.3d at 678)). That concern is what led this Court to hold that a class should not be certified where it includes many uninjured members. *Id.*

The threat of massive aggregate liability takes on special force in the higher education context. Universities are non-profit institutions whose resources are dedicated to teaching, research, and financial aid—not held in reserve to absorb litigation risk. While endowments are sometimes assumed to be a source of liquidity, such funds are restricted by legal requirements, fiduciary obligations, and donor intent to specific purposes, meaning endowment funds cannot easily (if at all) be redirected to satisfy a judgment or finance a costly settlement. The prospect of massive aggregate liability accordingly presents a heightened risk for universities, which may have to divert resources from their core educational missions to satisfy a financial judgment. Money paid out to compensate former students—including, in the case of an overbroad class, uninjured students—comes at the direct expense of present and future students.

This case illustrates the stakes: The district court certified a class that includes more than 220,000 students, Pet. A9-10—a number that was inflated by the inclusion of uninjured class members. And that class size gives rise to an alleged damages amount of $685 million, with potential treble-damages exposure exceeding $2 billion, Pet. 5—a sum that, even when divided among multiple defendants, few universities could absorb without severe consequences for their research and teaching work, and thus direct negative effects on the very students whose interests Plaintiffs claim to represent.

"Classes that are overinflated with *uninjured* members raise the stakes for businesses that are the targets of class actions." *Davis*, 605 U.S. at 333 (Kavanaugh, J., dissenting). For universities, whose missions and resources make them uniquely vulnerable to that pressure, the stakes are higher still. And however a case is resolved, the costs are borne not only by the universities but by the students they serve, as resources directed toward litigation or settlement are resources unavailable for academic programs and financial aid.

CONCLUSION

For the foregoing reasons, AAU respectfully urges this Court to grant the Petition for Permission to Appeal Under Fed. R. Civ. P. 23(f).

Date: June 22, 2026

Respectfully submitted,

/s/ Lindsay C. Harrison

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CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the word limit of Federal Rules of Appellate Procedure 5(c), 29(a)(5), and 29(b)(4) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this document contains 2,591 words. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and Circuit Rule 32, and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6), because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 12-point Century Schoolbook font for the main text and footnotes.

Date: June 22, 2026

/s/ Lindsay C. Harrison
Lindsay C. Harrison
Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I, Lindsay C. Harrison, an attorney, hereby certify that on June 22, 2026, I caused the **Brief Of *Amicus Curiae* American Association of Universities in Support of Defendants-Petitioners' Petition for Permission to Appeal Under Fed. R. Civ. P. 23(f)** to be electronically filed with the Clerk of the Court for the United States Court Of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Pursuant to ECF procedure (a)(4) and Circuit Rule 31(b), and upon notice of this Court's acceptance of the electronic brief for filing, I certify that I will cause ten copies of the above cited brief to be transmitted to the Court via UPS overnight delivery, delivery fee prepaid within five days of that date.

Date: June 22, 2026

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