

No. 26-2759

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

ANDREW CORZO, *et al.*,
Plaintiffs-Appellees,

v.

CORNELL UNIVERSITY, *et al.*,
Defendants-Appellants.

On Appeal from the United States District Court for
the Northern District of Illinois, No. 1:22-cv-00125
Hon. Matthew F. Kennelly, District Court Judge

**BRIEF OF THE CHAMBER OF COMMERCE OF
THE UNITED STATES OF AMERICA AS *AMICUS CURIAE*
IN SUPPORT OF DEFENDANTS-APPELLANTS**

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October 13, 2026

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

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Attorney's Signature: /s/ Ashley C. Parrish Date: 10/13/2026Attorney's Printed Name: Ashley C. ParrishPlease indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d).

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Attorney's Signature: /s/ Katherine M. Ferazzi Date: October 13, 2026Attorney's Printed Name: Katherine M. FerazziPlease indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d).

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INTEREST OF *AMICUS CURIAE*¹

The Chamber of Commerce of the United States of America (“Chamber”) is the world’s largest business organization. As the nation’s leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation’s business community.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case exemplifies the danger of relaxing the requirements for class certification. After determining that the testimony of plaintiffs’ expert, Dr. Hal Singer, was “sufficiently reliable” and “admissible” under *Daubert*, the district court concluded—based on that ruling alone—that

¹ No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. Appellants consent to the filing of this brief. Appellees have not responded to Counsel’s request for consent; accordingly, *amicus* has filed a motion for leave to file this brief.

plaintiffs had carried their burden to satisfy the requirements for class certification, including demonstrating that common issues predominate on the critical question of antitrust impact. A31. But Rule 23 does not permit a court to certify a class merely because the plaintiff's expert has offered admissible testimony.² Rule 23 permits certification only when a court, taking all of the admissible evidence into account, finds that plaintiffs have met their burden to establish all of Rule 23's requirements. Here, that burden requires an affirmative showing that antitrust impact can be proven with proof common to the class. The district court never rigorously evaluated plaintiffs' evidence or addressed defendants' evidence demonstrating that any common issues are overwhelmed by individual ones. This Court should reverse.

Every circuit to consider the issue, including this one, has recognized that *Daubert* and Rule 23 involve distinct inquiries. *Daubert* asks whether an expert's methodology is reliable enough for a factfinder to consider the expert's testimony at trial; Rule 23 asks whether a class

² The universities' opening brief thoroughly and correctly explains why Dr. Singer's analysis does not even satisfy *Daubert*'s admissibility threshold. Trustees Opening Br. 31-65. *Amicus* focuses here on the district court's flawed Rule 23 analysis.

may be certified because plaintiffs have carried their burden to prove, among other requirements, that common questions predominate over individualized ones. Accordingly, as this Court recently held, “just because expert evidence is admissible does not mean that it will justify class certification.” *Arandell Corp. v. Xcel Energy Inc.*, 149 F.4th 883, 894 (7th Cir. 2025).

Because a class action is an exception to the usual rule of individual litigation, a plaintiff seeking to certify a class must do more than offer admissible evidence; it must “affirmatively demonstrate” compliance with Rule 23 through evidentiary proof. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348–51 (2011) (citing *Califano v. Yamasaki*, 442 U.S. 682, 700–01 (1979)); *Comcast Corp. v. Behrend*, 569 U.S. 27, 33–35 (2013). In an antitrust case, that showing requires common proof of antitrust impact: to satisfy the predominance requirement, plaintiffs must prove, by a preponderance of the evidence, that injury to class members can be proven with evidence common to the class. *See In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305, 311 (3d Cir.), *as amended* (Jan. 16, 2009); *Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 811, 815–16 (7th Cir. 2012). A district court considering certification must therefore

confront competing expert evidence and rigorously analyze whether plaintiffs can realistically prove antitrust impact with common proof. *See Arandell*, 149 F.4th at 893–94. Here, the district court relied solely on its earlier *Daubert* ruling and refused to engage with defendants’ competing experts to determine whether plaintiffs’ evidence was sufficient to demonstrate that common issues predominate. *See* A18-20.

The consequences of the district court’s shortcuts are significant. Class certification is often the decisive event in a class action because it creates extraordinary settlement pressure—pressure so great that defendants may abandon meritorious defenses rather than risk an adverse judgment. That is especially true in antitrust cases, like this one, where plaintiffs seek not just actual damages but three times that amount: here, plaintiffs apply an alleged overcharge across a class of more than 220,000 students and seek treble damages, producing potential exposure stretching into the billions of dollars against non-profit educational institutions. Trustees Opening Br. 25, 36. An improper class certification can result in exorbitant costs that divert resources away from current and future students. Rigorous scrutiny of expert

evidence at class certification is an essential safeguard that must be required.

ARGUMENT

I. Before Certifying An Antitrust Class Action, A District Court Must Rigorously Evaluate Whether Plaintiffs' Evidence Establishes That Common Questions Predominate.

The district court's order collapsed two inquiries that Rule 23 and the Federal Rules of Evidence keep distinct. The court previously ruled that Dr. Singer's testimony was sufficiently reliable to be admissible under *Daubert*. A31. When the defendants later argued that his testimony failed to establish common proof of antitrust impact, the court concluded that because it had found Dr. Singer's testimony admissible, plaintiffs had carried their burden to justify class certification. A18-20. That approach conflicts with Rule 23, Supreme Court precedent, and this Court's recent decision in *Arandell*.

A. Admissible evidence is necessary but not sufficient to satisfy the requirements for class certification.

A class action is "an exception to the usual rule" that litigation is conducted by and on behalf of the individual named parties only. *Wal-Mart*, 564 U.S. at 348 (quoting *Califano*, 442 U.S. at 700). To fall within that exception, named plaintiffs must carry their burden of

“affirmatively demonstrat[ing]” compliance with Rule 23, and must do so with “evidentiary proof” that their claims can “in fact” be litigated on a class-wide basis. *Comcast*, 569 U.S. at 33 (emphasis omitted) (quoting *Wal-Mart*, 564 U.S. at 350). The court must determine, after conducting “a rigorous analysis,” that each prerequisite is satisfied. *Wal-Mart*, 564 U.S. at 350–51 (quoting *Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 161 (1982)). That rigorous analysis requires considering how the case will be tried and evaluating whether a common body of evidence can resolve the disputed elements for every class member in a single stroke. *See Hydrogen Peroxide*, 552 F.3d at 311–12.

Daubert performs a very different function. It asks whether expert testimony—whether offered in an individual case or in a class action—is sufficiently reliable to be considered by a jury. The trial judge must ensure that an expert’s testimony “both rests on a reliable foundation and is relevant to the task at hand.” *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 597 (1993). In making this determination, the court must probe the expert’s “principles and methodology,” not “the conclusions that they generate.” *Id.* at 595. *Daubert* thus “does not require a court to admit or to exclude evidence based on its persuasiveness; rather it requires a

court to admit or exclude evidence based on its scientific reliability and relevance.” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 982 (9th Cir. 2011) (citing *Daubert*, 509 U.S. at 589–90).

Recognizing that the Rule 23 and *Daubert* analyses are distinct, this Court held in *Arandell* that “just because expert evidence is admissible does not mean that it will justify class certification.” 149 F.4th at 894. To certify a class, the district court must be “persuaded” that plaintiffs have carried their burden to satisfy each of Rule 23’s essential requirements, and “[l]ike any evidence, admissible expert opinion may persuade its audience, or it may not.” *Hydrogen Peroxide*, 552 F.3d at 323 (internal quotation marks omitted); see *Arandell*, 149 F.4th at 894 (the district court must “investigate the realism of the expert evidence” at class certification (cleaned up)). *Daubert* is therefore a necessary first step when a party relies on expert testimony as common proof—but it is not sufficient to meet the requirements for class certification. See *Arandell*, 149 F.4th at 894; *Hydrogen Peroxide*, 552 F.3d at 315 n.13 (“a district court’s conclusion that an expert’s opinion is admissible does not necessarily dispose of the ultimate question” whether Rule 23 is satisfied); *Blades v. Monsanto Co.*, 400 F.3d 562, 569–70, 575 (8th Cir.

2005) (affirming denial of class certification because the expert's testimony "did not demonstrate ... that class members could use common evidence" to show classwide injury).

Comcast illustrates the point. Even though the defendants there effectively conceded the admissibility of the plaintiffs' expert report, 569 U.S. at 32 n.4, the Supreme Court still analyzed whether the report was sufficient to establish predominance (and concluded that it did not). *Id.* at 38. Even if the expert testimony was "admissible evidence under the Rules," the Court recognized the independent obligation to evaluate whether "the certification was improper because respondents had failed to establish that damages could be measured on a classwide basis." *Id.* at 32 n.4 (internal quotation marks omitted). Accordingly, the Court carefully examined whether the model measured damages attributable to plaintiffs' theory of liability, explaining that "any model supporting a plaintiff's damages case must be consistent with its liability case, particularly with respect to the alleged anticompetitive effect of the violation." *Id.* at 35 (internal quotation marks omitted).

Expert testimony may be sufficiently reliable and relevant to be admitted under *Daubert* but may not be adequate to carry the plaintiff's

burden of proving that common issues predominate—here, that antitrust impact can be established with common proof. *See Arandell*, 149 F.4th at 894. An expert’s model can fall short of predominance in several ways. It may not, for instance, speak to whether common questions predominate: in *Comcast*, the Supreme Court held that a model that does not “measure only those damages attributable to” plaintiffs’ liability theory fails Rule 23’s rigorous-analysis requirement. 569 U.S. at 35. Or conflicting evidence may undermine the case for class certification by exposing material variation across the class. *See West v. Prudential Sec., Inc.*, 282 F.3d 935, 938–40 (7th Cir. 2002) (reversing certification where the expert’s model failed to exclude other potential sources of price movement).

Not surprisingly, every court of appeals to have considered the question agrees that *Daubert* and Rule 23 require different inquiries. *See Arandell*, 149 F.4th at 894; *In re Rail Freight Fuel Surcharge Antitrust Litig.*, 725 F.3d 244, 252, 255 (D.C. Cir. 2013); *Ellis*, 657 F.3d at 982; *Hydrogen Peroxide*, 552 F.3d at 315 n.13; *In re Initial Pub. Offerings Sec. Litig. (In re IPO)*, 471 F.3d 24, 42 (2d Cir. 2006); *Blades*, 400 F.3d at 575; *Unger v. Amedisys Inc.*, 401 F.3d 316, 319, 325 (5th Cir. 2005). The

distinction reflects a court's different role at different stages of litigation. Under *Daubert*, the trial judge screens out testimony that lacks a reliable foundation, while leaving the weighing of admissible evidence to the factfinder. 509 U.S. at 595–97; *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 145 (1999). Under Rule 23, by contrast, the judge alone must decide whether a class may be certified, and must find, by a preponderance of the evidence, that plaintiffs have satisfied each prerequisite. *Arandell*, 149 F.4th at 892. Treating the *Daubert* inquiry as settling whether a plaintiff has carried its burden to justify class certification erases the Rule 23 safeguards. *See West*, 282 F.3d at 938.

The district court's approach also creates perverse incentives. If a favorable *Daubert* ruling justifies class certification, plaintiffs need only calibrate their liability model to clear the admissibility threshold; the model's ability to answer common questions becomes an afterthought. This Court has warned against that approach: allowing plaintiffs to “obtain class certification just by hiring a competent expert” would “amount[] to a delegation of judicial power to the plaintiffs.” *West*, 282 F.3d at 938; *see also Szabo v. Bridgeport Machs., Inc.*, 249 F.3d 672, 677 (7th Cir. 2001) (cautioning that certification based on incontestable

allegations shifts discretion to plaintiffs’ attorneys, to the detriment of absent class members and defendants). Indeed, that approach invites the very “smoke-and-mirrors performance” that evidentiary discipline is meant to prevent. Linda S. Mullenix, *Putting Proponents to Their Proof: Evidentiary Rules at Class Certification*, 82 Geo. Wash. L. Rev. 606, 626 (2014).

The district court’s approach also makes litigation less efficient. If plaintiffs need not demonstrate predominance before certification, the court and the parties will be forced to confront the same issue later—after discovery, expert costs, and settlement pressure have multiplied. The district court’s ruling here functionally supplanted Federal Rule of Civil Procedure 23 with Federal Rule of Evidence 702. That ruling should not be allowed to stand.

B. Courts must rigorously evaluate competing evidence before certifying a class action.

When defendants offer countervailing expert testimony demonstrating that individual questions predominate, the district court must engage with that evidence. *Arandell*, 149 F.4th at 894 (citing *Parko v. Shell Oil Co.*, 739 F.3d 1083, 1086 (7th Cir. 2014)). As *Arandell* makes clear, when evaluating whether to certify a class, “there is no shortcut”

to “avoid full engagement with the economic experts and their many and detailed point-counterpoint debates.” *Id.* at 895.

The district court did precisely what *Arandell* prohibits: resting on its earlier *Daubert* ruling, it refused to address defendants’ competing evidence. A18-20. Defendants’ experts showed that no two schools implemented the alleged conspiracy principles in the same way, that conduct varied by school and by year, and that Dr. Singer’s model assumed uniform conduct that the evidence refuted. A645-647 ¶¶ 150–152; A405-408 ¶¶ 178–179 & fig.8; A735-738; A725 (Tr.117:8–18); A252 (Tr.253:17–25). Even though that evidence is directly relevant to whether common questions predominate, the district court’s certification order did not even mention it. That failure runs headlong into *Arandell*, which faulted the district court for failing to “expressly address or make findings about the defense arguments that the plaintiffs’ [expert] models were inadequate so as to defeat predominance” before certifying a class. 149 F.4th at 891.

This Court’s decision in *West* is instructive. There, the district court certified a class of all purchasers of a bank’s stock after observing that “each side has the support of a reputable financial economist,” and it

treated “the clash” as “enough by itself to support class certification and a trial on the merits.” *West*, 282 F.3d at 938. This Court reversed. It held that a district judge “may not duck hard questions,” which “must be faced and squarely decided, if necessary by holding evidentiary hearings and choosing between competing perspectives.” *Id.* To do otherwise “amounts to a delegation of judicial power to the plaintiffs, who can obtain class certification just by hiring a competent expert.” *Id.* The Court then identified concrete deficiencies in the plaintiffs’ expert’s analysis in response to the defendant’s expert’s criticisms: “By failing to test for and exclude other potential sources of price movement,” the expert “undercut the power of the inference that he advanced.” *Id.* at 939–40. In short, this Court isolated the disputed assumptions, tested them against the record, and decided whether the proposed proof could answer the common question.

The predominance inquiry itself requires the court to engage with the evidence. Predominance weighs the common questions in a case against the individual ones and asks which will drive the litigation. *See Arandell*, 149 F.4th at 892; *Parko*, 739 F.3d at 1085. A plaintiff’s liability model, viewed alone, will nearly always appear to supply common proof,

because it was built to do so. Whether that proof is real depends on whether it survives the factual evidence and expert analyses the defense identifies. For example, in *Hydrogen Peroxide*, plaintiffs' economist offered a "market analysis" and a "pricing structure" analysis asserting that a conspiracy would have impacted all purchasers. 552 F.3d at 312–14. Defendants' economist analyzed individual transaction data and found that customers buying the same grades and concentrations from the same producer in the same year "were as likely to experience a decline in actual prices over the year as an increase," while others saw no change. *Id.* Because the district court denied the *Daubert* motion but "did not confront [the expert's] analysis or his substantive rebuttal," *id.* at 322, the Third Circuit vacated, explaining that the question "is whether, if such impact is plausible in theory, it is also susceptible to proof at trial through available evidence common to the class." *Id.* at 325.

Rigorous Rule 23 analysis frequently entails "overlap with the merits of the plaintiff's underlying claim." *Comcast*, 569 U.S. at 33–34 (quoting *Wal-Mart*, 564 U.S. at 351). Nothing about that overlap is anomalous. As the Supreme Court has explained, the necessity of "touching aspects of the merits in order to resolve preliminary matters"

is “a familiar feature of litigation.” *Wal-Mart*, 564 U.S. at 351–52. In an antitrust case, the core question at the class certification stage is whether plaintiffs can prove antitrust impact—injury to class members—with evidence common to the class. *See Hydrogen Peroxide*, 552 F.3d at 311; *Rail Freight*, 725 F.3d at 252. Answering that question often requires a court to resolve disputes that also bear on the merits. But that overlap “does not allow a district court to skip over an issue critical to certification.” *Arandell*, 149 F.4th at 892; *see also In re IPO*, 471 F.3d at 33 (“the requirements of Rule 23 must be met, not just supported by some evidence”); *Szabo*, 249 F.3d at 676 (the court “should make whatever factual and legal inquiries are necessary under Rule 23”).

The need for a rigorous analysis under Rule 23 is grounded in constitutional principles of due process. *Cf. Taylor v. Sturgell*, 553 U.S. 880, 901 (2008). A defendant’s right to present every available defense includes the right to have the court meaningfully consider its expert evidence at the threshold when deciding whether thousands of claims may proceed together. *See Lindsey v. Normet*, 405 U.S. 56, 66 (1972). A meaningful hearing requires more than an opportunity to file papers the court never analyzes. Defendants presented unrefuted data and expert

evidence directed to the central premise of certification: whether the proposed class members shared a common economic injury. If the district court could dispose of that evidence by pointing to an earlier admissibility ruling, defendants would have no meaningful opportunity to contest aggregation—and the right to present a defense would become hollow precisely when it matters most.

C. A rigorous analysis is especially important when plaintiffs seek to recover more than actual damages.

In an antitrust case alleging a common overcharge, an admissible expert model can often fall short of Rule 23's requirements. A private plaintiff seeking treble damages must prove that the violation injured him or her individually (often called "antitrust impact"). *Hydrogen Peroxide*, 552 F.3d at 311. Because "every class member must prove at least some antitrust impact," class certification is often inappropriate because demonstrating impact may call "for individual, as opposed to common, proof." *Id.* When plaintiffs rely on an expert's regression analysis to demonstrate antitrust impact, that regression must connect a common conspiracy to hundreds of thousands of individual injuries. Whether that connection holds is a predominance question, not merely an admissibility question. *See Reed v. Advocate Health Care*, 268 F.R.D.

573, 582 (N.D. Ill. 2009) (where “fact of damage cannot be established for every class member through proof common to the class,” predominance is defeated (quoting *Bell Atl. Corp. v. AT&T Corp.*, 339 F.3d 294, 302 (5th Cir. 2003))).

The need to evaluate the evidence carefully is especially important in this type of case. As *Arandell* observed, antitrust impact is more difficult to establish in a case like *Comcast*, which challenged conduct whose effect on prices was “less well-recognized” than garden-variety price-fixing allegations. 149 F.4th at 899. This case likewise rests on a less well-recognized theory. Instead of alleging that defendants conspired to “directly fix prices as such,” A31 n.3, plaintiffs allege that defendants agreed to apply shared “principles and methods for calculating institutional financial aid,” A14-15, while each school took its own approach to determine what each student’s family should contribute and how much aid each student would receive. Trustees Opening Br. 13, 17-20; A373-374 ¶¶ 82–83; A381-382 ¶¶ 94–95. As a result, students could pay dramatically different net prices at different schools. Trustees Opening Br. 9-10; A618 ¶ 120. The district court therefore needed to determine not only whether Dr. Singer’s calculations were admissible,

but whether they could establish injury to class members without school-by-school, year-by-year, and student-by-student inquiries. Even if a model that assumes the alleged conduct affected every institution identically could somehow be admitted despite record evidence to the contrary, it may still fail to supply a common answer to the question of antitrust impact.

The district court skipped that inquiry. When defendants argued that Dr. Singer's testimony failed to establish common impact, the court treated its earlier admissibility ruling, A100, A127, as the end of the matter. A29-31. As *Arandell* recognized, the court was required to engage with defendants' evidence to determine whether Dr. Singer's testimony established common impact across the proposed class, whether his model was consistent with plaintiffs' liability theory, and whether the individualized issues defendants identified defeated predominance. The court failed to do so. An earlier admissibility ruling cannot carry plaintiffs' burden.

II. The Real-World Consequences Of The District Court's Shortcut Underscore The Need For A Rigorous Analysis At The Class Certification Stage.

Class certification is not an ordinary procedural milestone—it is “often the whole ballgame.” *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 591 n.2 (3d Cir. 2012). “[V]irtually all cases certified as class actions and not dismissed before trial end in settlement.” Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. 811, 812 (2010); *see also* Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. Rev. 97, 99 (2009) (“[w]ith vanishingly rare exception, class certification sets the litigation on a path toward resolution by way of settlement, not full-fledged testing of the plaintiffs’ case by trial”); *Eubank v. Pella Corp.*, 753 F.3d 718, 720 (7th Cir. 2014) (aggregating many claims “often creates a potential liability so great that the defendant is unwilling to bear the risk, even if it is only a small probability, of an adverse judgment”).

The Supreme Court has recognized that “[c]ertification of a large class may so increase the defendant’s potential damages liability and litigation costs that he may find it economically prudent to settle and to abandon a meritorious defense.” *Coopers & Lybrand v. Livesay*, 437 U.S.

463, 476 (1978). The Supreme Court has likewise warned of the “in terrorem” settlements that class actions entail. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011) (internal quotation marks omitted). Certification is “the major, significant litigation event in class litigation, with serious, outcome-determinative effects for everyone.” Mullenix, 82 Geo. Wash. L. Rev. at 631. There are “not a lot of do-overs” in this realm. *Id.* That is why courts must rigorously analyze the evidence *before* certification, not *after*.

The settlement pressure is especially acute in treble-damages antitrust cases. Because antitrust remedies “often allow recovery of treble damages, the incentive to settle these cases is often paramount,” and “most antitrust class actions are settled before trial.” Duane Morris LLP, Higher Education Class Action Review 2026, at 1 (2026). Courts have long recognized this dynamic, cautioning that class certification in antitrust suits may “create unwarranted pressure to settle nonmeritorious claims.” *Hydrogen Peroxide*, 552 F.3d at 310 (quoting *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 162 (3d Cir. 2001)); *see also id.* (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558–59 (2007)). “Even a defendant who is innocent and holy may

rationality choose to pay a few hundred million dollars in settlement of a class action rather than ‘run the risk of ruinous liability.’” *In re Visa Check/MasterMoney Antitrust Litig.*, 280 F.3d 124, 148 (2d Cir. 2001) (Jacobs, J., dissenting); *see also Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 163 (2008) (noting that “extensive discovery and the potential for uncertainty and disruption” can allow “plaintiffs with weak claims to extort settlements from innocent companies”). Judge Friendly called such outcomes “blackmail settlements.” *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 743 (2023) (quoting Henry J. Friendly, *Federal Jurisdiction: A General View* 120 (1973)). Antitrust cases magnify the danger because they are “exceedingly complex, expensive, and lengthy,” *In re Auto. Refinishing Paint Antitrust Litig.*, 2008 WL 63269, at *5 (E.D. Pa. Jan. 3, 2008), so even anemic claims can acquire enormous settlement value.

The costs of abuse are staggering. Class-action defense cost large U.S.-based companies \$4.53 billion in 2025—11.8 percent of corporate litigation budgets—and spending is projected to reach \$4.8 billion in 2026. Carlton Fields, *2026 Class Action Survey* 6–7 (2026). The trendline is steep: such spending totaled roughly \$2 billion in 2011 and \$2.46

billion in 2018 before topping \$4 billion in 2024 and continuing to climb. *Id.* And defending a single class action—even a meritless one—can continue for years. See U.S. Chamber Inst. for Legal Reform, Unfair, Inefficient, Unpredictable: Class Action Flaws and the Road to Reform 15, 36 (2022). These costs are far from isolated: 74.7 percent of major companies are actively managing class actions—“the highest level in 15 years”—and 91.7 percent face them on a regular basis. Carlton Fields, *supra*, at 8, 17.

These concerns all apply to this case. Plaintiffs seek to aggregate an alleged overcharge across more than 220,000 students, yielding potential treble-damages exposure stretching into the billions of dollars. Trustees Opening Br. 25, 36. Moreover, plaintiffs’ claims target non-profit universities. Need-based financial aid at such universities is not a decision about profit; it is a decision about how much each institution can afford to subsidize. Improper class action litigation can only impose costs that make it more difficult to provide financial aid and direct resources to classrooms, research, and student support.

Class actions against colleges and universities “have multiplied in both frequency and complexity over the last several decades.” Higher

Education Class Action Review, *supra*, at 1. Last year, a single antitrust class settlement involving college athletics required the NCAA and its Power Five conferences to pay \$2.78 billion. *Id.* at 2, 16 (citing *In re College Athlete NIL Litig.*, 803 F. Supp. 3d 959 (N.D. Cal. 2025)). Data-breach litigation adds another front: more than 1,800 data-breach class actions were filed in 2025, including against educational institutions. Higher Education Class Action Review, *supra*, at 5. Each dollar spent defending or settling these cases is a dollar unavailable for education and financial aid.

By treating admissibility as a substitute for predominance, courts fail students, consumers, and businesses alike. As *Arandell* confirmed, Rule 23 requires the plaintiff to prove, before certification, that common evidence can resolve the class members' claims. It also requires the court to test that showing against the defense's evidence and to refuse to let a model that cannot survive scrutiny transform individualized disputes into aggregate liability. This case is no exception. The district court's shortcut threatens current and future students, just as similar shortcuts threaten consumers, workers, and businesses across the country.

CONCLUSION

For these reasons, the Court should reverse.

Respectfully submitted,

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This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) and Circuit Rule 29 because it contains 4,574 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

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CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2026, I caused the foregoing 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 the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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