

**ORAL ARGUMENT NOT YET SCHEDULED**

**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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**Consolidated Case Nos. 07-1315 and 07-1383**

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**CARROLL COLLEGE, INC.,**

**Petitioner/ Cross Respondent**

**vs.**

**NATIONAL LABOR RELATIONS BOARD  
Respondent/Cross Petitioner**

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**ON PETITION FOR REVIEW OF THE NATIONAL LABOR RELATIONS  
BOARD DECISION AND ORDER AND CROSS PETITION FOR  
ENFORCEMENT**

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**BRIEF OF AMICI CURIAE IN SUPPORT OF PETITIONER/CROSS  
RESPONDENT CARROLL COLLEGE**

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## **CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES**

### **(A) Parties and *Amici***

All parties, intervenors, and *amici* appearing in this Court are listed in the Brief for the Petitioner/Cross Respondent Carroll College, Inc.

### **(B) Rulings Under Review**

Reference to the rulings at issue appear in the Brief for Petitioner/Cross Respondent Carroll College, Inc. The *amici* appear in support of Carroll College, Inc. only as to the issue of the managerial status of faculty at Carroll College.

### **(C) Related Cases**

There are no related cases.

## **CORPORATE DISCLOSURE STATEMENT**

There are no parent corporations or publicly held corporations with 10% or more ownership in the American Council on Education (“ACE”), the National Association of Independent Colleges and Universities (“NAICU”), the Council of Independent Colleges (“CIC”) or the Wisconsin Association of Independent Colleges and Universities (“WAICU”).

## **STATUTES AND REGULATIONS**

All applicable statutes and regulations are contained in the Brief for the Petitioner/Cross-Respondent.

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<sup>1</sup> Authorities upon which we chiefly rely are marked with asterisks.

## STATEMENT OF THE AMICI CURIAE

This Court has twice in recent years directed the National Labor Relations Board to prioritize correctly the relevant factors in determining whether college faculty have managerial status as pronounced in *National Labor Relations Board v. Yeshiva University*, 444 U.S. 672 (1980). See *LeMoyne-Owen College v. NLRB*, 357 F. 3d 55 (D.C. Cir. 2004) and *Point Park University v. NLRB*, 372 F. 3d 396 (D.C. Cir. 2006). The *amici curiae*, as described below, represent the vast majority of higher education institutions and request this Court again to recognize that the shared governance structure in higher education creates managerial status for faculty who effectively control either directly or through committees the central academic function of curriculum and courses, without which the institutions could not function.

The American Council on Education (“ACE”), the National Association of Independent Colleges and Universities (“NAICU”), the Council of Independent Colleges (“CIC”) and the Wisconsin Association of Independent Colleges and Universities (“WAICU”) collectively act in the interests of several thousand institutions of higher education in the United States, particularly independent colleges and universities which are the educational institutions most directly affected by the National Labor Relations Act (“NLRA”).

ACE is the largest higher education organization, and serves as the nation’s unifying voice for higher education. Founded in 1918, ACE represents 1,800 accredited, degree-granting colleges and universities and higher education-related associations, organizations, and corporations. ACE serves as a consensus leader on key higher education issues and seeks to influence public policy through advocacy, research, and program initiatives.

NAICU serves as the unified national voice of private, nonprofit higher education in the United States. Founded in 1976, NAICU currently has nearly 1,000 members nationwide, including traditional liberal arts colleges, major research universities, church and faith related

institutions, historically black colleges and universities, women's colleges, performing and visual arts institutions, two-year colleges, and schools of law, medicine, engineering, business, and other professions. The Association has represented private colleges and universities on policy issues with the federal government, such as those affecting student aid, taxation, and government regulation.

Founded in 1956, CIC is the major national service organization for all small and mid-sized, independent, liberal arts colleges and universities in the United States. CIC has more than 640 members and affiliates including liberal arts, comprehensive, and international institutions, as well as higher education-related associations. CIC works to support college and university leadership, advance institutional excellence, and enhance private higher education's contributions to society.

WAICU was founded in 1961 and is recognized in state statutes as the official organization of Wisconsin private, nonprofit (or independent) colleges and universities and their 57,000 students. Each of the 20 WAICU members is a nonprofit, fully accredited, degree-granting baccalaureate or graduate institution. WAICU works to advance the interests and promote the development of independent colleges and universities in Wisconsin and to advocate public policy affecting higher education in Wisconsin and nationally.

The *amici* respectfully submit this brief in support of Petitioner/Cross Respondent Carroll College and urge this Court to prioritize the *Yeshiva* factors in a manner consistent with the law and with the experience of the *amici curiae*, vacate the decision of the Regional Director finding the faculty at Carroll College were employees within the meaning of the NLRA, find the faculty to be managerial, and deny enforcement of the NLRB's decision and order directing the college to bargain.

## SUMMARY OF ARGUMENT

In *Yeshiva*, the Supreme Court made clear that collegiate faculty are managers when they exercise effective control over academic matters, even if their authority is circumscribed by fiscal or other long-range policy concerns and is potentially subject to modification or reversal by higher levels of management. The appropriate analysis, under *Yeshiva*, requires an assessment of multiple factors pertaining to the governance of an institution of higher education giving consideration to which of those factors are more significant than others. A number of the Board's decisions reflect a consideration and ordering of the *Yeshiva* factors that is consistent with the *amici's* own understanding of university governance – that governance is shared among the three (3) broad constituencies—faculty, administration, and trustees—with faculty having predominant control over the educational product of the institution. The *Carroll College* case represents a retreat from those principles articulated in *Yeshiva* and most recently reemphasized by the Board in *LeMoyne-Owen College*, 345 NLRB 1123 (2005) (“*LeMoyne-Owen II*”), where the Board's analysis acknowledged and properly credited the differing areas of managerial authority that are found in mainstream higher education institutions.

The *Carroll College* decision with regard to the *Yeshiva* analysis, left unreviewed during the representation proceeding, failed to recognize and prioritize the relative importance of the *Yeshiva* factors, and demanded degrees of faculty governance that are wholly inconsistent with the Supreme Court's holding, the Board's earlier decisions and with the *amici's* own experience. Moreover, the Regional Director analyzed individual *Yeshiva* factors, in isolation from each other, resulting in an erroneous outcome. Nothing in *Yeshiva*, or Board precedent since *Yeshiva*, provides for this all or nothing analysis; rather, the factors must be considered in the aggregate and then only after prioritization of those factors.

The Regional Director in *Carroll College* also placed great store in ultimate authority and hierarchy of decision-making within the Carroll College governance structure, a rationale wholly discredited by *LeMoyne-Owen II* and not reflective of the traditional shared governance models found within institutions of higher learning. The Regional Director and the Board also returned to another abandoned and faulty standard, “independent review,” and found that because it was possible that the administration could review faculty recommendations before final approval by the Board of Trustees, faculty lacked managerial status. This too fails to recognize the legitimate concept of shared governance within colleges and universities.

When so viewed, even under the facts as found by the Regional Director, faculty at Carroll College are managerial. The Board’s refusal to review the Regional Director’s decision in the context of the representation proceeding ignores the dictates of this Court and leaves institutions of higher education uncertain as to the necessary measure of faculty status. Thus, the *amici curiae* urge the court to provide the guidance that the Board has thus far failed to provide and take appropriate action consistent with the proper prioritization of the *Yeshiva* factors.

## **ARGUMENT**

In *Yeshiva* the Supreme Court identified multiple factors that are relevant to the analysis of managerial status within the modern college or university. This Court recently addressed the *Yeshiva* issue in two separate cases, *LeMoyne-Owen College v. NLRB*, 357 F. 3d 55 (D.C. Cir. 2004) and, two years later, in *Point Park University v. NLRB*, 372 F. 3d 396 (D.C. Cir. 2006). This Court acknowledged that the need for prioritization is “particularly acute” when considering a multi-factor test so that those applying the factors can do so predictably. The Court then



ordered the Board to explain “which factors are significant and which less so, and why.”<sup>2</sup> *LeMoyne-Owen College*, 357 F. 3d at 61.

The Board, on remand, reversed the Regional Director in *LeMoyne-Owen II* and restated several principles of interpretation that are consistent with earlier Board cases and with the broad principles of shared governance. However, neither in that case, nor in *Carroll College*, did the Board follow the instruction from this Court to prioritize the relevant *Yeshiva* factors by identifying which are more significant, which less so, and why.

In *Carroll College*, the Regional Director did little more than restate the broadest principles articulated in *Yeshiva*, *i.e.*, that academic factors are primary and non-academic factors secondary. This does not provide the guidance that those deciding these issues must have in order to predictably assess the facts that exist within a given institution as they relate to the principles of shared governance. For the Board to have found otherwise ignores—or at best misreads—this Court’s rulings in *LeMoyne-Owen* and *Point Park*. This approach simply does not comply with the instructions of this Court and continues the uncertainty with which institutions of higher education have had to deal.<sup>3</sup> This case presents yet another opportunity for the Court to revisit these issues and reinforce its message to the Board that, to date, has refused to identify the relevant importance of the *Yeshiva* factors, by providing the guidance to the Board and to the academy that is critical to this issue.

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<sup>2</sup> *Point Park University* is presently pending before the Board on remand after the Regional Director’s Supplemental Decision and the Board’s grant of the University’s Request for Review of that Supplemental Decision.

<sup>3</sup> Upon analyzing 14 decisions in which the Board considered the facts of each case in relationship to the factors enumerated in *Yeshiva*, reviewers reported that “no attempt was made by the Board or its regional offices to create a model or series of models of managerial job content and the relationship to faculty governance authority.” Barbara A. Lee and James P. Begin, *Criteria for Evaluation the Managerial Status of College Faculty: Applications of Yeshiva University by the NLRB*, 10 J.C.&U.L. 515 (1983-1984). This remains so today.

**A. *Yeshiva* Contemplates Shared Governance and Recognizes that in the Modern Institution each Constituency Contributes to the Management of the Institution.**

The Supreme Court recognized in *Yeshiva* that in the higher education context, managerial authority is shared. *Yeshiva*, 444 U.S. at 680. At *Yeshiva*, there were multiple separate schools, at which faculty participated in university-wide governance *through their representatives* on a student-faculty advisory council. *Id.* at 674-76. The administration, and not the faculty, set general guidelines dealing with a number of academic and nonacademic matters, subject to the approval of the Board of Trustees. *Id.* at 675-76. The schools functioned independently, headed by a Dean or Director, and faculty authority as to academic matters primarily was exercised within those separate schools. *Id.* at 676. The faculty at each school also made recommendations to the Dean or Director about non-academic matters *Id.* at 677.

The Court recognized that there would be instances where the faculty recommendations would not be followed. The Court nonetheless found the faculty to be managerial, observing that the administration's "rarely exercised veto power does not diminish the faculty's effective power in policymaking and implementation." *Id.* at 684 n.17.

In finding the faculty to be managerial, the Court observed that the faculty's effective recommendation of policies in academic matters was most important: curriculum and course schedules ("what courses will be offered, when they will be scheduled, and to whom they will be taught"), teaching methods, grading policies, and matriculation standards, which students will be admitted, retained, and graduated, the size of the student body, the tuition to be charged, and the location of a school. *Id.* at 686. The Court also found that the faculty played an important role in nonacademic matters including hiring, tenure, sabbaticals, termination and promotion. *Id.* at 686 n.5. The Court emphasized academic factors over nonacademic factors. The question

remains, however, within those two (2) broad categories, which factors are more important, which less so, and why.

**B. A Proper Ordering of the Relevant *Yeshiva* Factors, Consistent with the Experience of the *Amici Curiae*, Can Be Gleaned from Existing Board Cases.**

Early on the Board recognized that a strictly analytical approach to *Yeshiva* cases, according the same weight to each of the factors highlighted in *Yeshiva*, was too limited and would miss the thrust of the Court’s opinion. *See, e.g., Univ. of Dubuque*, 289 NLRB 349, 353 (1988) (where the Board urged an approach that measured the many different combinations and permutations of influence faculty may have at an institution).

Further, in *Univ. of Dubuque*, the Board recognized that *Yeshiva* does not set the minimum standard for such a finding:

In this regard, there is no indication in *Yeshiva* that the Court intended its holding to reach only institutions with faculties having as much or nearly as much input as the *Yeshiva* faculty. In fact, the implication is quite the *opposite*.

*Univ. of Dubuque*, 289 NLRB at 353 [emphasis supplied].

Thus, under *Yeshiva* and as amplified by *Dubuque* and other Board cases, in the majority of settings and circumstances, faculty would be found to be managerial based on the extent of their influence over the product of the institution—education—and only where there are substantial departures from the norms of academic life and/or in situations far out-of-the-mainstream would they be found to be non-managerial. This is consistent with the experience and understanding of the *amici*. Where governance is shared, as it is in most institutions, each constituency has responsibility and authority and each *manages* the institution.

In 1966, ACE, the American Association of University Professors, and the Association of Governing Boards of Universities and Colleges prepared the *Joint Statement on Government of Colleges and Universities* (1966) (“Joint Statement”) which identified broad principles of shared

governance among the three (3) principal constituencies: the board, the administration, and the faculty. Under the Joint Statement the governing board would have final institutional authority, with overall responsibility for determining the future needs and course of the institution, for the financial well being of the institution, for establishing goals and for long range planning. The administration would have responsibility for the attainment of those goals and for seeing that the standards and procedures in operation and use within the institution conform to the policies and standards established. The Joint Statement also identifies those academic and nonacademic factors where faculty's role in governing was particularly appropriate. There was agreement that the faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. Joint Statement, Art. V. The Joint Statement identifies significant additional faculty responsibility including setting the requirements for the degrees offered in courses, determining when the requirements have been met, and authorizing the [administration] to grant the degrees. Joint Statement Art. V. Finally, the Joint Statement recognized that budgets, and policies of other groups at the institution, may set limits to realization of faculty advice (those same principles recognized in *Yeshiva*).

Consistent with the Joint Statement, with the Supreme Court's ruling in *Yeshiva*, and a number of the Board cases that follow, and in particular with *LeMoyne-Owen II*, shared responsibilities do not undermine faculty status as managers. Rather, managerial status is demonstrated within the body of work performed by faculty. Viewed as a whole, *Yeshiva* and the Board cases that follow, including *LeMoyne-Owen II*, do provide a demonstrable ordering

and prioritization of the relevant *Yeshiva* factors that is in harmony with the *amici*'s own experience and consistent with well-accepted notions of shared governance.<sup>4</sup>

In academic institutions generally, managerial status of faculty begins with an assessment of faculty's authority in academic matters and in particular, curriculum and course offerings. Indeed, it hinges on faculty authority in these matters. As the *amici curiae* noted in their Brief in Support of Petitioner/Cross Respondent Point Park University, Case No. 05-1060 and 05-1081, curriculum and course offerings should be regarded as the *sine qua non* of managerial status of the faculty.

Other academic factors, such as course scheduling, grading, graduation policies, student admission and retention policies, matriculation standards and teaching methods, are important, but not determinative, factors when viewed in isolation. In cases where the Board found managerial status, including *LeMoyne-Owen II*, the faculty was found effectively to recommend policies with respect to a majority of these seven factors. Thus, these additional factors must be weighed in conjunction with curriculum and course offerings.

The remaining academic factors identified in *Yeshiva*, *i.e.*, size of student body, tuition and location of school, were less significant in that case and are less significant in the Board decisions that followed and, in the view of the *amici*, should not be accorded significant weight today. Of course, any particular factual analysis may demonstrate that faculty exercises effective control in these, and other areas, as well.

*Yeshiva* and the Board decisions following have recognized that faculty control of nonacademic decisions is relevant to managerial status, but not determinative. In those cases where the Board found faculty to be managerial based on the control exercised in academic

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<sup>4</sup> See discussion of Board precedent in Petitioner/Cross Respondent's Brief at pp. 30-33.

areas, it also found they made significant recommendations with regard to hiring, tenure, and promotion and in some instances sabbaticals and terminations.

Thus, the Board's decisions and the practice within the academic community point to three distinct levels of inquiry: first, faculty authority in matters of curriculum and course selection; second, graduation policies, course scheduling, grading, student admission and retention policies, matriculation standards and teaching methods are also important and relevant considerations; and third, other considerations, ranging from the academic calendar, course enrollment levels to faculty status matters remain relevant considerations but were not central to the holding in *Yeshiva*.

The application of this prioritization of factors to the record as found by the Regional Director in *Carroll College* convincingly demonstrates that faculty there are managerial. (*See* Brief of Petitioner/Cross Respondent Carroll College). The evidence firmly establishes faculty control over curriculum and course selections and offerings. In addition, the Regional Director's findings and the record evidence reflect that faculty made effective recommendations with respect to a majority of the supporting academic factors: particularly grading policies, student admissions and retention of students, graduation policies, matriculation standards, and teaching methods. Also, faculty effectively control classroom standards, office hours, teaching loads, as well student discipline (factors the Board cited in *LeMoyne-Owen College*). Faculty also confer academic honors. Overall, the Regional Director's findings reflect managerial control with respect to issues of faculty status including hiring of tenure track faculty, tenure, promotion, and other nonacademic matters.

**C. The Regional Director's Failure to Recognize the Faculty Role as Individuals and on Committees as Demonstrating Managerial Status and His Reliance on Discredited Standards Does Not Reflect the Realities of Shared Governance.**

1. Faculty work as individuals and in committees

As the Board found in *LeMoyne Owen II*, effective control by faculty can take place whether acting as individual faculty members, through committees, or in the faculty assembly. *LeMoyne-Owen II*, 345 NLRB at 1128, citing *Lewis & Clark Coll.*, 300 NLRB 155, 161 (1990) (whether acting individually, by department consensus, through committees, or in meetings of the whole). The Regional Director and the Board in *Carroll College* ignored the reality that faculty demonstrate their managerial status in numerous ways within any institution.

For example, the faculty handbook at Carroll College entrusts the faculty with the management and operation of the curriculum and identifies the Faculty Assembly as the body of the College responsible to take primary action with respect to the educational program. The committee structure and the voting responsibilities within those bodies leads unalterably to the conclusion that faculty are managerial. The committees, dominated by faculty, include the Faculty Executive Council (appointing faculty to other principal committees) which even has input into budget and staffing levels at the College; the Academic Steering Committees (study and supervise academic program, course additions and deletions, major additions and deletions); the Joint Academic Steering Committee (administers and reviews policies related to academic life and a host of undergraduate regulations, and also functions as a super committee reviewing the actions of numerous other committees including Honors, Assessment, and General Education Committee); Admissions Committee (effectively controls the policy for student admissions); and the General Education Committee (defines the core curriculum). Yet the Regional Director ignores the faculty work on committees and finds that while they have authority to recommend they have no power formally and finally to approve or implement recommendations. This is

merely another way of stating that in order to be managerial faculty must have absolute and final control and authority—a position that has no foundation in *Yeshiva* and was most recently rejected by the Board in *LeMoyne-Owen II*.

In practice faculty demonstrate their managerial effectiveness not only within the whole body but in decisions, recommendations, and policy implementation, whether individually or within committees. This concept was recognized in *Yeshiva* and is consistent with the idea of shared governance. Thus, managers include those who “formulate and effectuate management policies by expressing and making operative the decisions of their employer.” *Yeshiva*, 444 U.S. at 682.

## 2. Application of discredited standards

The Regional Director’s analysis of both the academic and nonacademic factors reflects what must be recognized as a misunderstanding or misreading of faculty authority at Carroll College resting on discredited standards. For example, the Regional Director found that, although faculty make recommendations to the administration, the administration and the board of trustees have ultimate authority thus diminishing their managerial status (with regard to degree requirements). The Regional Director also found that programs were conceived and developed by the faculty and implemented by the administration, but that this authority is undercut because the president and the board of trustees must “approve” programs. He also finds that although a majority of the academic steering committee recommendations have been approved by the administration, this, too, is tainted because the administration *could* prevent proposals from being considered by the steering committee. These actions are consistent with those broad principles of academic governance found in the Joint Statement and would, in practice, be consistent with how most private colleges and universities function today. The proper focus should have been on the overwhelming authority of faculty in curricular and other



academic matters, rather than on the possibility that faculty recommendations on those matters, in the abstract, might not be followed. The Regional Director makes the same error with regard to nonacademic factors, dismissing the faculty's involvement and determinations regarding hiring, promotion and tenure, because the final authority rests with the trustees.

Also troubling is the misplaced reliance on the potential for 'independent review' as a determining factor. That theory was most recently repudiated by the Board majority in *LeMoyne-Owen II*, rejecting the dissent's view that would have permitted *no* independent review by administrations in order to find that faculty effectively recommended academic and nonacademic policy. *LeMoyne-Owen Coll.*, 345 NLRB at 1134-35. If, as the Board properly concluded in *LeMoyne-Owen II*, effective control by faculty can be demonstrated by faculty actions "whether acting as individual faculty members, through committees, in the faculty assembly," then the mere prospect of 'independent review' in and of itself cannot be determinative of managerial status. Faculty can, and do, "formulate and effectuate management policies by expressing and making operative the decisions of their employer" whether acting as individuals, within committees, departments, or within the body as a whole. *Yeshiva*, 444 U.S. at 682.

Notwithstanding its decision on remand in *LeMoyne-Owen II*, the Board in this instance has endorsed the very same theories it rejected in that and other cases: hierarchy of decision making; independent review; and absolute or final authority with regard to academic matters. *Yeshiva* and subsequent decisions have made clear that these standards are inappropriate and that faculty managerial standing turns on whether the faculty "effectively recommends" policies in areas of academic governance. *Yeshiva*, 444 U.S. at 683 n.17.

### 3. Misplaced focus on university-wide issues

In addition, this case is one of a recent group of cases demonstrating a misunderstanding of *Yeshiva's* teaching that faculty need not be involved in all decisions at an institution and still be managerial. In *Carroll College*, the Regional Director considered structural changes initiated by the administration to be "significant." He erroneously found that adopting a two school structure, and the implementation of attendant internal restructuring made necessary by that decision, without the faculty approval, undermined the faculty's managerial status. However, this must be considered one of those long range policy issues involving institution wide balance that *Yeshiva*, and subsequent Board precedent, concludes may be uniquely within the province of the administration.<sup>5</sup> *Yeshiva*, 444 U.S. at 689, n.27.

Structural changes at institutions of higher education are ongoing and perhaps inevitable. It is well recognized that the governing board should retain ultimate responsibility and full authority to determine the mission of the institution and to establish the strategic direction while ensuring the institution's fiscal affairs. In many instances these internal structural changes reflect changes in mission or fiscal realities. However, faculty often will be consulted on these matters.<sup>6</sup> Shared governance does not require that faculty have effective control over these areas and the concept cedes authority in these areas to the administration and the trustees. Yet Regional Directors appear to be placing too much emphasis on faculty input into such structural changes, even where they have little or no impact of the delivery of the institution's product.

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<sup>5</sup> In *Lewis & Clark College*, 300 NLRB 155 (1990) the Board acknowledged that financial issues and long range planning decisions were "much broader than those that the faculty members consider in their academic decision-making. The faculty's lack of control over these particular decisions does not nullify the faculty's extensive authority over academic matters." 300 NLRB at 161-62. See also *Elmira Coll.*, 309 NLRB 842, 845, 850 (1992).

<sup>6</sup> See *AGB Statement of Institutional Governance*, at 4 (Nov. 8, 1998).

In *Point Park University*, 6-RC-11276 (2004), faculty were asked to comment and make suggestions on the decision to seek university status but were not decision makers regarding that change. The Regional Director in *Point Park* placed too much emphasis on this nonacademic, structural change, erroneously categorizing it as an academic factor, notwithstanding the fact that it had little if any impact on faculty authority. And, in *California School of Professional Psychology*, 32-RC-5167 (2003), the Regional Director improperly focused on structural changes resulting from the merger of two institutions, notwithstanding the fact that those factors cited by the Regional Director related almost exclusively to nonacademic matters.

This emphasis flies in the face of accepted notions of shared governance. It is a trend that undermines the *Yeshiva* decision and blurs the distinctions, recognized by institutions of higher education, that different stakeholders within an institution have differing governing responsibilities and cooperatively manage the institution.

### **CONCLUSION**

The *amici* organizations, representative of the nation's private colleges and universities, seek guidance from this Court regarding the proper ordering of those factors first enunciated in *Yeshiva*. The *amici* also express concern over the departure from settled standards for analyzing the *Yeshiva* factors as it reflects a misunderstanding of the concepts of shared governance and the normal and appropriate roles of the stakeholders within institutions of higher education.

Therefore, we request that the Court adopt the prioritization of the relevant academic and non-academic factors as offered by the *amici curiae*, vacate the decision of the Regional Director, find that the faculty at Carroll College are managers, and deny enforcement of the Board's order requiring Carroll College to bargain with a union as representative of its faculty.

Dated: March 25, 2008

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

### Certificate of Compliance with Type-Volume Limitation, Typeface Requirements and Type Style Requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 4,293 words, excluding the parts of the brief exempted by Fed. R. App. P. 32 (a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. app. P. 32 (a)(5) and D.C. Cir. R. App. P. 32 (a)(1), and the type style requirements of Fed. R. App. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2003, in Times New Roman, font size 12.

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Attorney for Amici Curiae

Dated: March 25, 2008

**CERTIFICATE OF SERVICE**

I, the undersigned attorney for Amici Curiae, American Council on Education, National Association of American Colleges and Universities, Council of Independent Colleges, and Wisconsin Association of Independent Colleges and Universities, certify that on this 25th day of March 2008, two copies of the Brief of Amici Curiae in Support of Petitioner/Cross Respondent Carroll College was served via first class United States mail, postage prepaid, upon

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