

No. _____

In the Supreme Court of the United States

STUDENTS FOR FAIR ADMISSIONS, INC.,

Petitioner,

v.

UNIVERSITY OF NORTH CAROLINA, et al.,

Respondents.

**MOTION TO EXPEDITE BRIEFING OF THE PETITION
FOR A WRIT OF CERTIORARI BEFORE JUDGMENT**

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November 11, 2021

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This case is a companion to *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, No. 20-1199 (S. Ct.). SFFA asks this Court to moderately expedite the briefing schedule for its certiorari petition here so that both cases can be heard this Term. See S.Ct. R. 21. Respectfully, this Court should instruct Respondents to file their briefs in opposition within the normal 30-day deadline and state that no extensions will be granted. Respondents oppose the motion. SFFA has good cause for this relief.

1. SFFA filed this suit against UNC in November 2014, on the same day that it filed its suit against Harvard. It took nearly seven years for the district court to reach final judgment here, and it took nearly five years for the district court to reach final judgment in *Harvard*.

2. After the First Circuit decided *Harvard*, SFFA filed a certiorari petition in early 2021. SFFA's petition in *Harvard* prompted twenty amicus briefs. Last June, this Court called for the views of the Solicitor General. See *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 141 S. Ct. 2753 (June 14, 2021).

3. The Solicitor General's traditional practice is to "file pending CVSGs in time to meet the Court's traditional cut-off dates for action each Term." Millett, "*We're the Government and We're Here to Help*": *Obtaining Amicus Support from the Federal Government in Supreme Court Cases*, 10 J. App. Prac. & Proced. 209, 215 (2009). For the *Harvard* case, that tradition would have the Solicitor General file her brief soon

so that SFFA’s petition can be considered before “the last conference in January granting cases to be argued in April” 2022. *Id.* at 215 n.17.

4. Today, SFFA filed its petition for certiorari before judgment in this case. Under this Court’s rules, Respondents must file briefs in opposition within 30 days of docketing—likely the week of December 13, 2021. *See* S.Ct. R. 15.3. If Respondents meet this deadline, then this Court will have sufficient time to consider this case alongside *Harvard* and hear both cases this Term. (SFFA will waive the 14-day waiting period so that the Clerk can immediately distribute the petition for a conference in January 2022. *See* S.Ct. R. 15.5.) But if Respondents seek an extension or waive their right to file a brief in opposition, then this Court will lose the opportunity to consider hearing both cases this Term.

5. This case and *Harvard* should be heard together. The first question presented in both cases is the same: whether this Court should overrule *Grutter v. Bollinger*, 539 U.S. 306 (2003), and hold that institutions of higher education cannot use race as a factor in admissions. This Court can resolve that momentous question in either case. But if it decides to revisit *Grutter*, its analysis would be more complete if it considered both a private university (Harvard) and a public university (UNC) and both the Constitution (UNC) and Title VI (Harvard and UNC).

6. The Court followed a similar approach the first time that it resolved the legality of racial preferences in university admissions. In *Grutter*, a case involving a public graduate school, this Court granted certiorari to decide “[w]hether diversity is a compelling interest that can justify the narrowly tailored use of race in selecting

applicants for admission.” 539 U.S. at 322. At the same time, this Court also granted certiorari before judgment in a case involving a public *undergraduate* school so it “could address the constitutionality of the consideration of race in university admissions in a wider range of circumstances.” *Gratz v. Bollinger*, 539 U.S. 244, 260 (2003). So too here.

7. Respondents will suffer no real prejudice from SFFA’s requested relief. SFFA’s proposal would give Respondents the same amount of time that respondents normally get to file a brief in opposition. Any harm from denying Respondents the possibility of an extension is outweighed by the benefits of aligning this case with *Harvard* and ensuring that these cases—which SFFA has spent the better part of a decade litigating—are decided expeditiously.

* * *

For all these reasons, the Court should grant this motion and order Respondents to file briefs in opposition within 30 days of the docketing of SFFA’s petition.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Emily Mullins, hereby certify that an original and 10 copies of the foregoing Motion to Expedite Briefing of the Petition for a Writ of Certiorari Before Judgment in *Students for Fair Admissions, Inc. v. University of North Carolina, et al.*, were sent via Next Day Service to the U.S. Supreme Court, and 1 copy was sent Next Day Service and e-mail to the following parties listed below, this 11th day of November, 2021:

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All parties required to be served have been served.

I further declare under penalty of perjury that the foregoing is true and correct.
This Certificate is executed on November 11, 2021.



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Subscribed and sworn to before me by the said Affiant on the date below designated.

Date: November 11, 2021

John D. Gallagher
Notary Public

[seal]



JOHN D. GALLAGHER
Notary Public, State of Ohio
My Commission Expires
February 14, 2023