

In the Supreme Court of the United States

STUDENTS FOR FAIR ADMISSIONS, INC.,
Petitioner,

v.

UNIVERSITY OF NORTH CAROLINA, et al.,
Respondents.

**RESPONSE IN OPPOSITION TO PETITIONER'S MOTION
TO EXPEDITE BRIEFING OF THE PETITION FOR A
WRIT OF CERTIORARI BEFORE JUDGMENT**

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Petitioner Students for Fair Admissions' motion to expedite briefing of the petition for a writ of certiorari before judgment should be denied. The University Respondents reasonably need a 30-day extension of time to file their brief in opposition, making that brief due on January 14, 2022. SFFA has identified no exigency that would warrant accelerated briefing. And expedited briefing would prejudice the University in light of this case's voluminous record and the significant pre-existing professional obligations of undersigned counsel, who is appearing for the first time on appeal.

STATEMENT

1. Following seven years of litigation and an eight-day bench trial, the district court below entered a 155-page opinion setting out detailed findings of fact and conclusions of law to support its determination that the University's undergraduate admissions program complies with this Court's precedents on how universities may consider race in making admissions decisions. App. 1-186.

2. On November 4, 2021, the district court entered judgment for the University. App. 252-53.

3. Two days later, on November 6, SFFA filed a notice of appeal to the U.S. Court of Appeals for the Fourth Circuit.

4. The Fourth Circuit docketed the appeal on November 10. *See Students for Fair Admissions, Inc. v. Univ. of North Carolina*, No. 21-2263 (4th Cir.).

5. That same day, SFFA notified the University Respondents for the first time of its intent to file a petition for a writ of certiorari before judgment and an accompanying motion to expedite.

6. On November 11, SFFA filed its petition for a writ of certiorari before judgment. This Court docketed the petition on November 15. The University's brief in opposition is currently due on December 15. *See* S. Ct. R. 15.3.

7. In the motion to expedite that it filed with its petition, SFFA seeks an order from this Court that requires the University to respond to the petition within 30 days. Mot. 1.

ARGUMENT

1. The University reasonably needs a 30-day extension of time to file its brief in opposition. SFFA has identified no exigency that would warrant accelerated briefing. Expedited briefing would also prejudice the University. SFFA's motion should therefore be denied.

2. *First*, SFFA has identified no exigency that would warrant accelerated briefing on its petition for a writ of certiorari before judgment. The district court below applied this Court's precedents to conclude that the University's use of race in its undergraduate admissions program is lawful. The district court's fact-intensive application of settled law maintains the status quo—a more than 40-year-old legal framework for how universities may lawfully consider race in admissions decisions. *Fisher v. Univ. of Texas at Austin*, 136 S. Ct. 2198 (2016); *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Regents of Univ. of California v. Bakke*, 438 U.S. 265 (1978). By

contrast, SFFA seeks to upend the status quo by giving this Court the “opportunity” to overrule its precedents as quickly as possible. Mot. 2. But SFFA has identified no aspect of the district court’s careful and exhaustive decision that would warrant such a hurried process.

3. The Fourth Circuit proceedings to date only reinforce this conclusion. The Fourth Circuit docketed SFFA’s appeal just eight days ago. Although the Fourth Circuit has not yet entered a briefing order, under a typical schedule, SFFA’s opening brief would likely be due in December or January, with the University’s response brief due in February or March. Thus, the ordinary appellate-review process remains open and available to SFFA while the parties brief its petition in this Court. That is another mark of why expedited briefing is unnecessary here.

4. SFFA’s argument for expedited briefing rests entirely on speculation. SFFA guesses that the Solicitor General might “soon” file her brief in response to this Court’s CVSG in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 141 S. Ct. 2753 (June 14, 2021). Mot. 1. If the Solicitor General files her brief soon, SFFA reasons, expedited briefing here would allow the Court to hear this case alongside *Harvard*. Mot. 1-2. But the Solicitor General has not filed her brief in *Harvard* and has given no indication of when she might do so. Nor has this Court distributed SFFA’s petition in *Harvard* for conference. Thus, SFFA’s only reason for expedited briefing—to align this case with *Harvard* so that the

Court can hear both cases together before the Term ends—is based on nothing more than conjecture.

5. *Second*, expedited briefing on SFFA’s petition would prejudice the University. Undersigned counsel is appearing as additional counsel for the University for the first time on appeal. As a result, undersigned counsel reasonably needs an additional 30 days to study the extensive record, consider the University’s positions, and prepare the brief in opposition.

6. The large and complex record in this case supports a 30-day extension. The district court below rightly characterized the record as “voluminous.” App. 7. The parties have litigated this case for seven years. The district court held an eight-day bench trial involving 17 live (in-person or virtual) witnesses and more than 250 exhibits. The eight-day bench trial involved significant efforts by the parties to streamline the live testimony due to COVID-19 and otherwise, with substantial additional testimony submitted through declarations, reports, and exhibits. The expert testimony is particularly complex, involving lengthy reports setting out competing statistical models and analyses. And the district court’s findings of fact and conclusions of law span 155 pages. A 30-day extension of time to file the brief in opposition is therefore reasonable, particularly given that undersigned counsel did not actively participate in the trial below.

7. Undersigned counsel also has significant pre-existing professional obligations during or shortly after the current briefing period. For example, undersigned counsel is responsible for merits briefs in numerous significant cases in

the coming weeks, including (but not limited to): *B-21 Wines, Inc. v. Guy*, No. 21-1906, a Fourth Circuit case involving a constitutional challenge to certain North Carolina alcohol regulations; *Quad Graphics, Inc. v. N.C. Dep't of Revenue*, a North Carolina Supreme Court case involving a constitutional challenge to the State's sales tax statutes; *State v. Reavis*, a North Carolina Court of Appeals case involving a constitutional challenge to restrictions on the possession of firearms; and *Singleton v. N.C. Dep't of Health & Human Services*, a North Carolina Court of Appeals case involving a constitutional challenge to the State's certificate-of-need law.

8. A 30-day extension to file the brief in opposition will not prejudice SFFA. As discussed, the Solicitor General has not yet filed her brief in response to this Court's CVSG in *Harvard*. And this Court has not yet distributed SFFA's petition in that case for conference. Thus, should this Court decide that it wishes to hear this case and *Harvard* together, it will have ample opportunity to do so. Moreover, SFFA did not oppose Harvard's request for a 45-day extension to file its brief in opposition, further demonstrating that SFFA will not suffer any prejudice from the 30-day extension for the University Respondents here.

CONCLUSION

This Court should deny SFFA's motion to expedite briefing of its petition for a writ of certiorari before judgment. The University Respondents respectfully request a 30-day extension of time to file the brief in opposition, making that brief due on January 14, 2022.

Respectfully submitted,

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