

**In the Supreme Court of the United States**

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STUDENTS FOR FAIR ADMISSIONS, INC.,

*Petitioner,*

v.

UNIVERSITY OF NORTH CAROLINA, et al.,

*Respondents.*

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

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November 19, 2021

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## INTRODUCTION

Respondents, students and alumni who participated as defendant-intervenors in the proceedings below<sup>1</sup> (hereinafter “Respondent-Students”), respectfully request that this Court deny Petitioner Student for Fair Admission’s (hereinafter “Petitioner” or “SFFA”) Motion to Expedite Briefing of the Petition for a Writ of Certiorari Before Judgment. SFFA’s Motion is procedurally defective. While fashioned as a motion to expedite, it substantively serves as a backdoor attempt to preemptively deny Respondent-Students the ordinary process of seeking an extension, which this Court routinely grants absent exigent circumstances. Moreover, SFFA’s claimed grounds for speedy review—a desire to “align[] this case with *Harvard*”<sup>2</sup>—is based on highly speculative presumptions that this Court will soon consider SFFA’s petition for writ of certiorari in the *SFFA v. Harvard* case<sup>3</sup> and fails to demonstrate the type of urgent circumstances warranting expedited review.

## STATEMENT

1. This case involves the lawfulness of the University of North Carolina at Chapel Hill’s (hereinafter “UNC”) admissions program that considers race as one factor among many to admit a student body that is diverse across many dimensions and produces the benefits of diversity. App.2-3. After holding an eight-day trial and reviewing the voluminous evidence entered by all parties, the district court ruled in

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<sup>1</sup> Respondent-Students are Cecilia Polanco, Luis Acosta, Star Wingate-Bey, Laura Ornelas, and Andrew Brennen. Respondent-Students are a racially diverse group of underrepresented students of color who applied, attended, and/or recently graduated from the University of North Carolina (“UNC”). App.4-5.

<sup>2</sup> Pet’r’s Mot. 3.

<sup>3</sup> *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 980 F.3d 157 (1st Cir. Nov. 12, 2020), *petition for cert. filed*, No. 20-1199 (U.S. Feb. 25, 2021).

UNC's favor on all counts. App.7, 175, 183-86. In a 155-page opinion, the district court found that UNC has a compelling interest in pursuing the educational benefits of diversity and that its process for considering race is both highly individualized and narrowly tailored to achieve such benefits. App.164-65, 174-75, 183-86. The district court entered its final judgment on November 4, 2021. App.252-53.

2. SFFA appealed to the U.S. Court of Appeals for the Fourth Circuit and the case was docketed on November 10. *See Students for Fair Admissions, Inc. v. Univ. of N. C.*, No. 1:14-CV-954, *appeal docketed*, No. 21-2263 (4th Cir. Nov. 10, 2021).

3. On November 11, 2021, SFFA filed its Petition for a Writ of Certiorari Before Judgment (hereinafter "Petition") and its Motion to Expedite Briefing (hereinafter "Motion"). *See Pet'r's Mot. Respondents University of North Carolina at Chapel Hill, et al.*, (hereinafter "University-Respondents") and Respondent-Students both stated their opposition to the Motion. *See Pet'r's Mot.* 1.

4. On November 15, 2021, the Petition was docketed with responses due on December 15, 2021. *See S. Ct. R.* 15.3.

5. On November 18, 2021, University-Respondents submitted a request for a 30-day extension to file their Response in Opposition to SFFA's Petition. Respondent-Students are contemporaneously with this Response, on November 19, 2021, submitting a request for a 30-day extension to file their Response in Opposition to SFFA's Petition in accordance with Rule 30.4.

## ARGUMENT

6. SFFA's Motion is procedurally defective. While styled as a motion to expedite, the Motion asks this Court to order that "no extensions will be granted" so

that Respondent-Students are strictly confined to filing their response within the 30 days set by Supreme Court Rule 15.3. Pet'r's Mot. 1. In essence, SFFA's Motion is a backdoor attempt to peremptorily block Respondent-Students' ability to seek an extension. Whether an extension is warranted should be determined in the context of such a request and decided pursuant to this Court's ordinary procedures. A motion to extend the time to file a brief in opposition may be presented to the Clerk in the form of a letter, and acted upon by the Clerk's Office in the first instance. S. Ct. R. 30.4. Absent "circumstances that necessitate a speedy ruling on the petition, the Clerk's Office will generally grant an initial extension of 30 days upon request." Scott Harris, *Memorandum Concerning the Deadlines for Cert Stage Pleadings and Scheduling of Cases for Conference*, Supreme Court of the United States Office of the Clerk (Feb. 2020), <https://tinyurl.com/y9trjke6>. Because SFFA has improperly invoked the rule governing expedited motions, its Motion should be denied on that procedural basis.

7. Moreover, even if the Court were to consider the merits of SFFA's Motion, it fails to express grounds warranting expedited review and briefing. Orders to expedite cases are infrequently entered and typically limited to exceptional, emergent circumstances that require immediate review. *See, e.g., Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) (granting expedited consideration because case presented issues about whether the seizure of most of the country's steel mills was a proper exercise of the President's military power). SFFA's purported reasons for hastening the briefing schedule—that the Solicitor General *may* submit its brief in SFFA's pending challenge against Harvard University and that this Court *may* consider *Harvard* in the upcoming term (*see* Pet'r's Mot. 1-2)—are purely speculative

and fall far short of the types of circumstances warranting departure from this Court's ordinary procedures. This case presents no more exigent circumstances than *Harvard*, *Fisher II*, *Fisher I*, or *Grutter*, none of which involved expedited briefing, and in many instances involved extensions to file responses.<sup>4</sup>

8. Placing aside the fact that this Court has previously held that cases involving race-conscious admissions in higher education are highly fact-specific,<sup>5</sup> and that this case and the *Harvard* case involve different claims,<sup>6</sup> even assuming, *arguendo*, the issues were sufficiently similar for joint consideration by this Court, Petitioners do not explain why the Court would need full briefing on this Petition before it decides whether to grant certiorari as to *Harvard*.

9. While no grounds for exigency exist, several factors make an extension warranted and necessary in this case. First, David Hinojosa, who is lead Counsel for Respondent-Students, has several competing deadlines and commitments in the coming weeks. As SFFA is well-aware, such conflicts include filing a response brief due December 3rd in the Fifth Circuit opposing SFFA's appeal of its unsuccessful

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<sup>4</sup> See Docket entries for *Harvard*, <https://tinyurl.com/3skyruc3> (last visited November 19, 2021) (one extension sought and granted); *Fisher v. Univ. of Tex. at Austin*, 136 S. Ct. 2198 (2016), <https://tinyurl.com/96e5amvb> (last visited November 19, 2021) (one extension granted to respondents); *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297 (2013), <https://tinyurl.com/5fjuk5d7> (last visited November 19, 2021) (one extension granted to respondents); *Grutter v. Bollinger*, 539 U.S. 306 (2003), <https://tinyurl.com/px3k6kwc> (last visited November 19, 2021) (two extensions granted to respondents).

<sup>5</sup> See e.g., *Grutter*, 539 U.S. at 327, 334 (2003) (“Context matters when reviewing a race-based governmental action under the Equal Protection Clause....[T]he very purpose of strict scrutiny is to take such relevant differences into account.”) (internal quotation marks omitted).

<sup>6</sup> Compare App.2 (describing three claims brought by SFFA against UNC) with *Harvard*, No. 20-1199, Pet. Writ of Cert. at 22-27 (alleging claims of discrimination against Asian American students and racial balancing).

challenge to the University of Austin at Texas’s race-conscious policy.<sup>7</sup> Mr. Hinojosa also has upcoming deadlines in cases involving federal and state constitutional issues, including in: *Black Emergency Response Team v. O’Connor*, 5:21-cv-01022-G (W.D. Okla. filed Oct. 19, 2021) (plaintiffs’ reply brief due December 17, 2021); *NAACP-Charlotte Mecklenburg Branch v. Moore*, 20 CVS 5194 (N.C. Sup.Ct. 2020), *appeal docketed*, COA 21-446 (N.C. Ct. App. Aug. 12, 2021) (response brief due November 24, 2021). Second, the upcoming holidays pose an additional scheduling conflict with team members scheduled for pre-planned vacations. Third, this case involves a voluminous record and, by SFFA’s own acknowledgment, the “momentous question” of whether to overrule more than forty years of Supreme Court decisions regarding the limited consideration of race in university admissions. Pet’r’s Mot. 2. Respondent-Students will require additional time to fully respond to the issues raised in SFFA’s Petition. Fourth, an extension is warranted given SFFA’s unanticipated early submission of a Writ for Certiorari Before Judgment, which was filed one day after the Fourth Circuit docketed the appeal and only seven days after final judgment in the district court. All of these factors weigh in favor of providing Respondent-Students the additional time needed to review SFFA’s Petition and submit a brief that provides a thorough and full presentation of the significant issues at hand.

## CONCLUSION

For the foregoing reasons, Respondent-Students respectfully urge this Court to deny Petitioner’s Motion to Expedite.

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<sup>7</sup> Prior to filing this Motion, SFFA was aware Mr. Hinojosa had scheduling conflicts throughout November since Mr. Hinojosa and co-counsel sought and were granted an extension in *SFFA v. University of Texas at Austin* due to other work commitments. See Doc. Nos. 00516069627, 00516070610, *Students for Fair Admissions, Inc. v. Univ. of Tex. at Austin*, 1:20-CV-763-RP (W.D. Tex. 2021), *appeal docketed*, No. 21-50715 (5th Cir. Aug. 5, 2021).

Dated: November 19, 2021

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, David Hinojosa, hereby certify that an original and 10 copies of the foregoing Response in Opposition to Petitioner's 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*, No. 21-707, were sent via Certified, First-Class Mail through the United States Postal Service to the U.S. Supreme Court, and 1 copy was sent via the same and e-mail to the following parties listed below, this 19th day of November, 2021:

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