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May 9, 2023

Honorable Scott S. Harris
Clerk of Court
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

Re: *The Ohio State University v. Steve Snyder-Hill, et al.*, No. 22-896
Response to Respondents' Extension Request

Dear Mr. Harris:

I am writing on behalf of petitioner The Ohio State University in the above-referenced matter to oppose respondents' request for an extension of time to file the response to the petition for a writ of certiorari. The petition was filed on March 14, 2023, and the response is currently due on June 1, 2023—79 days after the petition was filed. Respondents now seek an additional 29 days for filing the response. We respectfully urge the Court to deny that request so that the petition may be considered in June before the Court's summer recess.*

As the petition for certiorari explains, this case presents an important federal question on which the circuits are split. The Association of American Universities and 23 institutions of higher education have filed an amicus brief urging this Court's review. If the Court agrees to hear the case, all would benefit from allowing the case to be briefed and set for argument early next Term—which a June Conference date would allow. Granting the requested extension, however, would delay consideration until after the Court's summer recess. This factor alone weighs strongly in favor of denying the request. See Stephen M. Shapiro et al., *Supreme Court Practice* § 6.37(c), at 6-141 (11th ed. 2019) ("If a respondent seeks an extension that would push consideration of the case to the long conference at the end of the summer recess . . .

* If the extension request is denied and the response is filed on June 1, 2023, then petitioner will waive the 14-day waiting period for distribution so that the certiorari papers may be distributed on June 6, 2023 for consideration at the Court's June 22, 2023 Conference.

the Clerk may suspect strategic behavior and, absent the petitioner’s consent, limit any extension to allow the petition to be considered in June.”).

Moreover, respondents have known that petitioner would be seeking certiorari since at least December 2022, when petitioner sought—and received—a stay of the mandate in the court of appeals. Order Staying Mandate, Nos. 21-3981, 21-3991 (6th Cir. Dec. 22, 2022). Petitioner then timely filed the petition on March 14, 2023. Yet, despite the obviously important questions presented—underscored by the fact that multiple judges on the court of appeals and several institutions of higher education have specifically called for this Court’s review of the circuit split created by the Sixth Circuit’s decision in this case—respondents not only waived their response to the petition but waited 31 days before doing so. This Court then promptly called for a response to the petition, due June 1, 2023. That deadline gives respondents 79 days after the petition was filed to prepare a response.

According to counsel for respondent’s letter (at 1), respondents have already “begun preparing the Brief in Opposition.” There is ample time to complete the brief before the June 1 deadline. Counsel has failed to point to any unusual circumstances that would prevent completion of the brief during that period. Because any further extension would delay consideration of the case until the long Conference at the end of the summer recess, respondents’ request for an extension should be denied.

Respectfully submitted,



Gregory G. Garre
LATHAM & WATKINS LLP
Counsel of Record for Petitioner

cc: Alexandra Z. Brodsky
Counsel of Record for Respondents