

In the Supreme Court of the United States

STUDENTS FOR FAIR ADMISSIONS, INC.,

Petitioner,

v.

UNIVERSITY OF NORTH CAROLINA, et al.,

Respondents.

**REPLY IN SUPPORT OF MOTION TO EXPEDITE BRIEFING OF THE
PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT &
OPPOSITION TO MOTIONS FOR AN EXTENSION OF TIME**

Alan Ruley
BELL, DAVIS & PITT, P.A.
P.O Box 21029
Winston-Salem, NC 27120
(336) 714-4147

Thomas R. McCarthy
Counsel of Record
William S. Consovoy
J. Michael Connolly
Bryan Weir
Cameron T. Norris
James F. Hasson
CONSOVOY MCCARTHY PLLC
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209
(703) 243-9423
tom@consovoymccarthy.com

Patrick Strawbridge
CONSOVOY MCCARTHY PLLC
Ten Post Office Square
8th Floor South PMB #706
Boston, MA 02109
(617) 227-0548

November 19, 2021

Attorneys for Petitioner

Contrary to UNC’s suggestion, SFFA is not asking for “accelerated briefing.” UNC-Opp. 1, 2 ¶¶1-2. It’s asking that Respondents be held to the *normal* 30-day deadline for briefs in opposition. Ordering Respondents to follow the normal rule has important benefits: It allows this petition to be considered alongside *Harvard*, allows both cases to be heard this Term, and prevents universities from discriminating against high-schoolers for yet another admissions cycle. These benefits more than outweigh the University’s weak prejudice argument: that one “additional counsel” on its massive team of private and public lawyers somehow needs more than eight weeks to get up to speed. UNC-Opp. 4 ¶5. And Intervenors identify no real prejudice at all. This Court should order Respondents to file briefs in opposition by December 15, 2021, and deny Respondents’ motions for a 30-day extension of time.¹

1. UNC does not deny that this case is a “companion” to *Harvard* or that the two cases should be considered together. *Compare* SFFA-Mot. 1, *with* UNC-Opp. 3-4 ¶4, 5 ¶8. But if Respondents’ motions for a 30-day extension are granted, then this Court cannot decide whether to hear both cases this Term. It requires no “speculation” or “conjecture” to conclude that the Solicitor General will respond to this Court’s CVSG in *Harvard* with enough time for that case to be heard this Term. *Cf.* UNC-Opp. 3-4 ¶4; Interv’rs-Opp. 3-4 ¶7. A later filing would violate her office’s longstanding policy. SFFA-Mot. 1-2 ¶3. In fact, it appears that the Solicitor General

¹ SFFA does not oppose a shorter extension—one that would allow this petition and *Harvard* to be considered at a conference in early 2022 and granted in time to be argued this Term.

has now responded to every CVSG that was issued prior to *Harvard*. So her *Harvard* brief should be next.

2. That UNC believes this Court should deny SFFA’s petition is irrelevant to this motion. *Cf.* UNC-Opp. 2-3 ¶¶2-3. The question now is not whether this Court will grant certiorari before judgment; the question now is whether this Court will give itself *the chance* to grant certiorari before judgment with enough time for the case to be heard this Term. UNC’s suggestion that SFFA should go litigate in the Fourth Circuit is thus puzzling. Even if this Court allowed Respondents to push SFFA’s petition to a later conference, pressing forward in the Fourth Circuit would serve little purpose. The Fourth Circuit cannot award SFFA full relief because it has no power to overrule this Court’s precedent in *Grutter*. And if this Court grants SFFA’s petition, any litigation in the Fourth Circuit will be stayed. *E.g., United States v. Texas*, Order, No. 21-50949 (5th Cir. Oct. 22, 2021) (suspending briefing and argument in light of this Court’s grant of certiorari before judgment).

3. This Court should give itself the opportunity to hear this case and *Harvard* together this Term. Pushing these cases to next Term would mean that the constitutional rights of SFFA’s members likely would not be vindicated until 2023—nearly *a decade* after SFFA filed these suits. It would also mean that universities can go another full admissions cycle telling high-schoolers where they can attend school based on their skin color. That “prejudice [to] SFFA” and its members is real. *Cf.* UNC-Opp. 5 ¶8.

4. UNC's prejudice argument is contrived. SFFA's proposal would give Respondents until at least December 15 to file their briefs in opposition, a date that is still 24 days away. UNC claims that it needs 60 days to draft its brief because one "additional counsel" from the state attorney general's office "is appearing ... for the University for the first time on appeal." UNC-Opp. 4 ¶5. But the state attorney general's office has always represented UNC in this case, and its involvement has been active and extensive. UNC is also represented by Skadden Arps, one of the largest law firms in the world. That *a single attorney* from one of the two major offices representing UNC would like more time to study the issues in this case matters little.

5. Respondents' other prejudice arguments are also unpersuasive. Like Respondents, SFFA has added additional counsel on appeal, has attorneys with competing, time-sensitive obligations, and has attorneys who will work on this case around the holidays. Similar dynamics are typical in cases of this magnitude. They cannot outweigh students' real need to have these important constitutional questions heard in a comprehensive, prompt manner.

6. SFFA's motion is not "procedurally defective." *Cf.* Interv'rs-Opp. 2 ¶6. SFFA moved for expedition because Respondents would not agree to file their briefs within 30 days and, as Intervenors note, the Clerk of this Court typically allows one extension as a matter of course. Interv'rs-Opp. 3 ¶6. Intervenors' procedural objection is also moot because Respondents *have now* asked for 30-day extensions. Now that Respondents have made clear that they intend to file briefs in opposition (rather than

waive their right to do so), there's no real difference between denying their motions for an extension and granting SFFA's motion to expedite.

* * *

This Court should order Respondents to file briefs in opposition to SFFA's petition by December 15, 2021. Respondents' motions for a 30-day extension should be denied. While SFFA does not oppose a shorter extension, it asks that any extension be short enough to allow this Court to consider SFFA's petition alongside *Harvard* and to hear both cases this Term.

Alan Ruley
BELL, DAVIS & PITT, P.A.
P.O Box 21029
Winston-Salem, NC 27120
(336) 714-4147

Respectfully submitted,

Thomas R. McCarthy
Counsel of Record
William S. Consovoy
J. Michael Connolly
Bryan Weir
Cameron T. Norris
James F. Hasson
CONSOVOY MCCARTHY PLLC
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209
(703) 243-9423
tom@consovoymccarthy.com

Patrick Strawbridge
CONSOVOY MCCARTHY PLLC
Ten Post Office Square
8th Floor South PMB #706
Boston, MA 02109
(617) 227-0548

November 19, 2021

Attorneys for Petitioner