No. 21-707

In the Supreme Court of the United States

STUDENTS FOR FAIR ADMISSIONS, INC.,
Petitioner,
v.
UNIVERSITY OF NORTH CAROLINA, ET AL.,
Respondents,

ON PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION BY UNIVERSITY RESPONDENTS

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QUESTIONS PRESENTED

1. Whether the Court should overrule *Regents of University of California v. Bakke*, 438 U.S. 265 (1978); *Grutter v. Bollinger*, 539 U.S. 306 (2003); and *Fisher v. University of Texas at Austin*, 136 S. Ct. 2198 (2016).

2. Whether the district court correctly applied this Court's precedents when it concluded that the University carried its burden to show that it has engaged in serious, good-faith consideration of workable race-neutral alternatives to its holistic, race-conscious admissions process.

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INTRODUCTION

More than forty years ago, this Court adopted a framework for the lawful use of race in university admissions. The record here, developed after an eight-day bench trial, shows that the University of North Carolina at Chapel Hill has faithfully adhered to that framework. The University has embraced diversity, in all its forms, as a core feature of its educational mission. It considers race flexibly as merely one factor among numerous factors in its holistic admissions process. And it has scrupulously studied and adopted workable race-neutral alternatives. Thus, as the district court's exhaustive and rigorous 155-page opinion shows, there can be no serious question that the University's admissions process complies with this Court's precedents.

Perhaps for this reason, SFFA devotes very little of its petition to the actual facts of this case. Instead, SFFA attacks this Court's settled precedents that the University has meticulously followed.

Indeed, SFFA goes even further, asking this Court to short-circuit the appellate process and grant a writ of certiorari before judgment. SFFA points to no exigency to justify this extraordinary request, for there is none. There is not even a circuit split. Instead, the law in this area has been stable for decades. And this stability has allowed the people themselves to decide the wisdom of race-conscious admissions policies. Any bid to overturn precedents that have engendered such significant reliance interests should proceed according to the ordinary appellate process. Respect for precedent demands nothing less.

Bypassing the Court of Appeals is particularly unnecessary here, moreover, because SFFA has filed another petition that is largely a carbon copy of the one it filed in this case. *See Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, No. 20-1199. SFFA has urged the Court to grant certiorari in both cases, but offers no good reason to do so. After all, everyone agrees that the same legal standards apply to both public and private universities in this context.

Nor could review possibly be warranted to decide the factbound question of whether the University has properly considered race-neutral alternatives. This Court typically does not review such record-intensive questions. And even if the Court were inclined to do so in this case, SFFA cannot explain why it should do so now. By any measure, the Court of Appeals is the proper forum for such fact-specific inquiries.

Finally, review is also unwarranted because SFFA lacks standing. The record is clear that, at the time the complaint was filed, SFFA was not a genuine membership organization. This Court thus lacks jurisdiction over the questions that SFFA raises.

For all these reasons, this Court should deny SFFA's petition. Certiorari before judgment is reserved for the extraordinarily rare case where the Court simply cannot wait for the ordinary appellate process to run its course. SFFA cannot meet this extremely demanding standard.

STATEMENT OF THE CASE

A. The University Has Embraced Diversity as a Core Part of its Educational Mission.

The University's mission is "to serve as [a] center for research, scholarship, and creativity and to teach a diverse community of undergraduate, graduate, and professional students to become the next generation of leaders." Pet. App. 8. To fulfill this mission, the University has long sought to enroll a diverse student body. Pet. App. 8-9.

The University defines diversity broadly. It seeks students from all kinds of different backgrounds. These include different life experiences, religious beliefs, races and ethnicities, philosophical outlooks, language skills, economic circumstances, and ages, to name just a few. Pet. App. 9, 12. The University's efforts to foster this diversity are extensive. They range from strategic recruitment of low-income and first-generation college students to significant investments in financial aid that make the University a leader among public universities in ensuring that college is accessible to all.

The University has repeatedly reaffirmed its commitment to seeking diversity's educational benefits. Pet. App. 9-10. For example, a 2017 report by the University's provost describes these benefits, including promoting the robust exchange of ideas, fostering innovation, and preparing effective leaders. Pet. App. 13.

Over the course of this litigation, University administrators, faculty, staff, students, and alumni

have made these educational benefits concrete. Diversity, a chemistry professor explained, provides "fertile ground for innovation" in his research lab and wards against the "groupthink" that can stifle new ideas. Pet. App. 13-14. An alumna explained that attending a university with a diverse student body prepared her to teach others with different life experiences. Pet. App. 17-18. The University's former head of admissions observed that diversity readies students "to navigate in a complex multicultural world." Pet. App. 13. Other witnesses, too, confirmed how diversity contributes to the educational experience at the University and helps to fulfill the University's academic mission. Pet. App. 13-14, 17-18, 57-58.

The University takes seriously its efforts to pursue diversity's educational benefits. These University-wide efforts range from student-housing initiatives, to campus discussion forums, to course offerings. Through these efforts, the University seeks to create an environment where students from different backgrounds can meaningfully interact with and learn from one another. Pet. App. 19.

The University closely measures its progress toward achieving diversity's educational benefits. For example, the University conducts both quantitative analysis of the student-body population and qualitative studies on how diversity affects the student experience. Pet. App. 15-17, 59-60.

Based on these regular assessments, the University has concluded that although it has made

significant progress, its efforts to achieve the educational benefits that flow from a diverse student body are not yet finished. Pet. App. 19-20, 60. One continuing challenge is the admission and enrollment of underrepresented minorities, who are admitted at lower overall rates than their white and Asian American peers.[1] Pet. App. 19-20, 60-62, 70-73. Many witnesses testified that the lack of underrepresented minorities on campus limits learning opportunities for all students. Pet. App. 20-22, 61-62. Thus, despite its sustained and dedicated efforts, the University has not yet fully achieved its educational goals. *See* Pet. App. 19-20, 60-62, 186.

B. The University Considers Race Flexibly as One Factor Among Many in its Admissions Process.

The University is the State's flagship institution of higher education. It draws its student body predominantly from North Carolina, with out-of-state enrollment capped at 18% of each incoming class of around 4,200 students. Pet. App. 23. "The University's admissions process is highly selective." Pet. App. 23. During the relevant period, the acceptance rate for in-state students was at or below 50%. Pet. App. 23. For out-of-state students, who make up two-thirds of the

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[1] Consistent with a 1981 consent decree between the UNC System and the United States, the University defines "underrepresented" as any group "whose percentage enrollment within the undergraduate student body is lower than their percentage within the general population in North Carolina." Pet. App. 15 n.7. These groups include "students identifying themselves as African American or [B]lack; American Indian or Alaska Native; or Hispanic, Latino, or Latina." *Id.*

applicant pool, the acceptance rate was a mere 12-14%. Pet. App. 23.

To apply, students submit the Common Application. During the relevant period, this Application included an essay, short answers to question prompts, standardized test scores, and at least one letter of recommendation. Pet. App. 24. The University also receives transcripts and information about the applicant's secondary school. Pet. App. 24. Students may submit other information, including resumes, other letters of recommendation, and art or music samples. Pet. App. 24. As part of the Common Application, students may—but are not required to—indicate their racial background. Pet. App. 25.

Roughly forty readers in the University's admissions office review applications. Pet. App. 26. The office provides each reader with extensive training, using this Court's precedents as guideposts. Pet. App. 27-30.

The University affords each candidate a comprehensive, holistic, and individualized review. Pet. App. 25-26, 30-31, 33. One long-time member of the admissions office explained at trial that applicants are "not just the test score, not just the GPA, not just an essay. They're a whole person." Pet. App. 29. Admissions readers therefore seek to "understand the context" of each applicant's experience, because "success can be defined differently in different environments." Pet. App. 29. As the former head of the admissions office put it, "[n]o student lives in the abstract." Pet. App. 30. The

admissions process aims to "fully" understand the entire "context within which the student has lived and done his or her work." Pet. App. 30.

To do so, the University uses a non-exhaustive list of about forty criteria that it may consider at any stage of the admissions process. Pet. App. 33-34. These criteria fall into eight general categories: a student's academic courseload, academic performance, standardized test scores, extracurricular activities, special athletic or artistic talents, essays, personal background, and personal qualities. Pet. App. 34-35. Readers assign a numerical rating for some of these categories, but the scores are never added together, and no minimum rating is required for admission. Pet. App. 35-36.

As part of their holistic review of each individual applicant, readers may consider race as one factor among many. Pet. App. 25. At no point do readers evaluate candidates of different racial groups separately, nor does the University impose quotas of any kind. Pet. App. 25, 36. Instead, readers may award a "plus"—based on race or many other factors, such as whether the student grew up in a rural area—depending on an applicant's individual circumstances. Pet. App. 25, 36-37. A "plus" is never awarded automatically, is not assigned a numerical value, and, if awarded, does not necessarily result in admission. Pet. App. 36-37. Thus, like any of the dozens of factors that the University considers, an applicant's race may sometimes tip the balance toward admission in an individual case—but it almost always does not. Pet. App. 36-37, 112.

The holistic review of an application takes place in multiple stages. Readers review each application for a provisional decision. Pet. App. 31. For the majority of applicants, a second reader then reviews the application again. Pet. App. 42. Admissions office leadership also read admissions files behind every reader. Pet. App. 45. Based on these reviews, the admissions office ensures that readers properly engage in holistic evaluations, consistent with their training and this Court's precedents. Pet. App. 45. After the admissions office makes provisional decisions, a committee of veteran readers evaluates the decisions across all candidates from each individual high school to ensure that decisions are justified in context. Pet. App. 31-33.

C. The University Has Implemented Many Race-Neutral Alternatives and Continually Assesses the Viability of Others.

The University devotes significant resources to pursuing student-body diversity in a race-neutral fashion and has already implemented many of the most-promising race-neutral strategies. Pet. App. 183.

First, the University actively recruits students who can contribute to a more diverse learning environment. Pet. App. 118-20. For example, the University established the Carolina College Advising Corps, which places recent University graduates as college counselors in high schools throughout North Carolina. The program seeks to increase the number of low-income, first-generation, and underrepresented

students enrolling in college. Pet. App. 119-20. The University also engages in strategic outreach to these students during its annual recruitment process. Pet. App. 46-48.

Second, the University has made a substantial investment in making college affordable for low-income students. The University has a need-blind admissions process, meaning that it does not consider an applicant's ability to pay when making decisions. Pet. App. 120-22. In addition, the University is one of only two public universities in the country to meet the "full demonstrated need" of every undergraduate eligible for financial aid. Pet. App. 120-21. Central to this commitment is the Carolina Covenant program, which meets the full costs of attendance for students whose family income is at or below 200% of federal poverty guidelines. Pet. App. 121. This program is not capped, and Covenant scholars currently account for 12-14% of each incoming class. Pet. App. 121.

Third, the University has increased diversity by admitting transfer students, including from community colleges. In 2006, the University established the Carolina Student Transfer Excellence Program, which offers guaranteed admission to low- and moderate-income students who attend a partner college, complete required courses, and earn an associate's degree. Pet. App. 122-23. This program has grown significantly to include 14 partner colleges and 400 students per year—nearly 10% of the incoming class. Pet. App. 122-23.

Notwithstanding these efforts, the University has continued to evaluate, on a regular basis, whether additional race-neutral measures might help achieve the educational benefits of student-body diversity. For example, in 2007, 2009, and 2012, the admissions office studied various race-neutral alternatives and analyzed their possible effects on the composition of the class. Pet. App. 115-16. Each time, the University found that no alternative would produce a student body about as diverse and academically qualified as its holistic, race-conscious admissions process. Pet. App. 115-16.

This work has continued throughout the last decade. In 2013, the University convened a committee of faculty and staff who modeled the effects of five different types of race-neutral alternatives. Pet. App. 116-17. The group's report concluded that each of the proposed alternatives would lead to a decline in racial diversity, a decline in academic quality, or both. Pet. App. 117. In 2016, the University convened a Committee on Race-Neutral Strategies made up of faculty and administrators to continue the work of the prior group. Pet. App. 117. The group met 15 times between 2016 and 2018 and issued a detailed report on its efforts. *See* Pet. App. 117. The Committee's work remains ongoing.

Despite these and other extensive efforts, the University has yet to identify a workable alternative that could replace the University's current process without compromising its educational and diversity goals. Pet. App. 114.

D. SFFA Sues the University.

In 2014, SFFA brought this lawsuit, alleging that the University intentionally discriminated against some of its members based on their race, in violation of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964.

SFFA is a nonprofit organization that was formed several months before it filed this lawsuit. D.Ct. Dkt. 107-8 at 2. At that time, its nominal members played no meaningful role in the organization. D.Ct. Dkt. 107-4 at 2-3. The district court denied the University's motion to dismiss for lack of standing, however, holding that SFFA had associational standing to bring claims on its members' behalf. Pet. App. 237-45.

In its complaint, SFFA alleged that the University's undergraduate admissions process is unlawful because it considers race as a factor in admissions decisions. Pet. App. 7. Because this Court's precedents squarely foreclose such a claim, the district court entered judgment on that claim in the University's favor. Pet. App. 7.

The complaint also alleged that the University's admissions process fails to comply with this Court's precedents. Specifically, the complaint alleged that the University does not use race as a mere plus factor in admissions decisions and that it overlooks available race-neutral alternatives. Pet. App. 145.

After extensive discovery, the parties filed cross-motions for summary judgment, which the district court denied. Pet. App. 6. The district court then held an eight-day bench trial. Pet. App. 7.

In October 2021, the district court entered a 155-page opinion setting out detailed findings of fact and conclusions of law to support its determination that the University's admissions program complies with this Court's precedents. Pet. App. 1-186. The district court based its decision on three central conclusions.

First, the district court concluded that the University has a compelling interest in pursuing the educational benefits that flow from student-body diversity. Pet. App. 158-65. The court found that the University has made a deliberate decision to pursue diversity's educational benefits and has offered a reasoned, principled explanation for this decision. Pet. App. 8-14. The court also found the University's interest in diversity "sufficiently measurable" to allow for judicial review. Pet. App. 15-17.

Second, the district court concluded that the University considers race only as one factor among many in its holistic admissions process. Pet. App. 165-75. The court rejected as unpersuasive SFFA's effort to cast doubt on the integrity of the admissions process by relying on eight admissions emails—"out of the hundreds of thousands of application files and materials shared during discovery"—that mentioned an applicant's race alongside other nonracial factors. Pet. App. 39-41; *see* Pet. 5-6.

The parties also introduced competing expert-witness testimony about the effect of race on the University's admissions process. Pet. App. 63-113. The district court found the University's expert analysis "more probative" on this issue. Pet. App. 79.

Specifically, the court credited the University's expert's finding that race explained a mere 1.2% of the University's admissions decisions. Pet. App. 110, 112-13.

By contrast, the court found that SFFA's statistical evidence was seriously flawed in multiple ways. To take just one example, SFFA's expert developed a model of the admissions process that relied on SAT scores, even though many applicants submitted only ACT scores. Pet. App. 90. Rather than simply converting ACT scores into SAT scores using a conversion table published by the College Board, as the University does, SFFA's expert made the "troubling" decision to instead assign applicants with identical ACT scores different SAT scores based on their race and gender. Pet. App. 90. Specifically, his model assigned lower SAT scores to underrepresented minority students than white and Asian-American students—even when two students, in reality, received the exact same ACT scores. The district court rightly observed that this choice "amounted to a penalty" for underrepresented minority applicants because it "exaggerates" the difference between their academic credentials and those of other students. Pet. App. 89. And this was no minor flaw: SFFA's expert had no answer to the charge that it skewed the data for more than 50,000 applicants who submitted only ACT scores—a group that, in one year studied, made up 42% of African American applicants and 45% of Hispanic applicants. Pet. App. 92.

Regardless, the district court found that, even if it were to credit SFFA's expert's model, each expert's

calculations "demonstrate that race plays only a minor role in UNC's admissions process." Pet. App. 79-80. Specifically, even under SFFA's expert's flawed model, race would explain only 2.7% of admissions decisions for in-state students (the vast majority of the incoming class), and 6.7% of decisions for out-of-state students. Pet. App. 96. Indeed, SFFA's expert conceded that "race is not a dominant factor in the University's program as a whole." Pet. App. 173.

Third, the district court concluded that the University engages in serious, good-faith consideration of workable race-neutral alternatives. Pet. App. 176-83; *see infra* pp. 8-9. The court found that the University has already implemented some of the most promising race-neutral strategies—in ways that go "well beyond the suggestions" that SFFA offered. Pet. App. 118-23, 181. The court also found that the University continually studies the viability of alternative approaches. Pet. App. 114-18.

The parties introduced competing expert testimony involving statistical analysis of potential race-neutral alternatives that would replace race-conscious holistic review. Pet. App. 63-113. The district court again found the University's expert analysis more probative. Specifically, the University's expert ran more than 100 statistical simulations of possible changes to the admissions process. Pet. App. 126. Based on this analysis, she concluded that no available, workable race-neutral alternatives exist that would allow the University to enroll a student body about as diverse and academically qualified as the University's current holistic, race-conscious

admissions policies. Pet. App. 126. And another of the University's experts "confirmed that there were additionally no actual examples of race neutral alternatives in the real world which the University could follow." Pet. App. 182.

By contrast, the district court again found SFFA's expert analysis to suffer from fundamental flaws. As the district court explained, SFFA's race-neutral alternatives expert, who is an attorney rather than an economist or statistician, relied on simulations prepared by SFFA's expert discussed above and thus "lacked an intimate knowledge of the simulations" that he was testifying about. Pet. App. 120 n.39, 180; *see supra* p. 13. The district court questioned this "unusual manner of offering expert testimony." Pet. App. 179. As for the merits of the testimony, the court repeatedly found that SFFA's expert relied on assumptions that were divorced from reality or inconsistent with the record evidence. Pet. App. 134-42.

Thus, while the court emphasized the University's continuing obligation to study the feasibility of alternatives, it concluded that the University had satisfied its burden to show that no alternative approach is workable at this time. Pet. App. 114, 143.

All told, the court's meticulous findings of fact led to a straightforward legal conclusion: the University met its burden to show that its undergraduate admissions program complies with this Court's precedents.

SFFA appealed to the Fourth Circuit. That court issued a briefing order that would require briefing to be complete by February 2022. SFFA moved to stay briefing in the Fourth Circuit. When that motion was denied, SFFA sought and received a 30-day extension of the briefing schedule.

Despite the ordinary appellate process continuing apace, SFFA petitioned this Court to review the district court's decision immediately.

REASONS FOR DENYING THE PETITION

I. Certiorari Before Judgment Is Not Warranted.

A. This case does not meet the traditional criteria for certiorari before judgment.

A grant of certiorari before judgment is an "extremely rare occurrence." *Coleman v. Paccar, Inc.*, 424 U.S. 1301, 1304 n.* (1976) (Rehnquist, J., in chambers). Such a grant is appropriate "only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination" in the Supreme Court. S. Ct. R. 11. SFFA has not satisfied this "very demanding standard." *Mount Soledad Mem'l Ass'n v. Trunk*, 573 U.S. 954 (2014) (Alito, J., statement respecting the denial of certiorari before judgment).

The question at the heart of SFFA's petition—whether this Court should overrule its precedents and ban any use of race in admissions—is indisputably important. For more than four decades, institutions of

higher education across the country have relied on this Court's precedents to guide how they may consider race in admissions decisions. The policies that schools crafted in the wake of those decisions have helped to ensure that campuses include "students as diverse as this Nation." *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 313 (1978) (Powell, J.).

Nevertheless, the mere fact that a case presents an important question is not sufficient to justify sidestepping the usual appellate process. This Court has routinely denied petitions for certiorari before judgment that also raise important questions. *E.g.*, *Coal. for Prot. of Marriage v. Sevcik*, 570 U.S. 932 (2013) (constitutionality of Nevada amendment that limited marriage to the "union of a man and a woman"); *Baldwin v. Sebelius*, 562 U.S. 1037 (2010) (constitutionality of the individual-mandate provision in the Affordable Care Act); *Hamdan v. Rumsfeld*, 543 U.S. 1096 (2005) (legality of using military commissions to try Guantanamo Bay detainees); *Aaron v. Cooper*, 357 U.S. 566 (1958) (obligation of States to comply with this Court's decision in *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954)).

This pattern is hardly surprising: The Court's rules make clear that an important question is typically a prerequisite for *any* cert grant. *See* S. Ct. R. 10. As a matter of common sense, then, something more than an important question is required before this Court may grant certiorari before judgment.

Instead, this exceptional relief typically requires a matter of exceptional urgency. Stephen M. Shapiro et

al., *Supreme Court Practice* § 4.20, at 287 (10th ed. 2013). In *Youngstown Sheet & Tube Company v. Sawyer*, for instance, the Court granted certiorari before judgment to consider a presidential order seizing most of the country's steel mills. 343 U.S. 579, 582 (1952). The President had argued that aggressive action was necessary to "avert a national catastrophe," given the threat of a labor strike and the country's ongoing involvement in the Korean War. *Id.* The Court faced comparable exigencies in *Dames & Moore v. Regan*, 453 U.S. 654 (1981). There, the President had issued executive orders nullifying certain interests in Iranian assets following the Iran hostage crisis. *Id.* at 660. After lower courts "reached conflicting conclusions on the validity of the President's actions," this Court granted certiorari before judgment to avoid the breach of an executive agreement between the United States and Iran. *Id.*

These examples are prototypical cert-before-judgment cases: In each, the Court was presented with a true emergency, where delay in the appellate process posed significant, time-sensitive risks. *See also United States v. Nixon*, 418 U.S. 683 (1974) (enforceability of subpoena seeking the Watergate tapes from the President); *Ex parte Quirin*, 317 U.S. 1 (1942) (legality of presidential order directing a military tribunal to try German saboteurs captured on domestic soil during World War II). Consistent with this understanding, in each of these instances,

the Court issued an opinion mere weeks after the cases were filed.[2]

The Court has also occasionally granted certiorari before judgment when "disarray" in the lower courts created an urgent need for this Court's intervention. *United States v. Mistretta*, 488 U.S. 361, 371 & n.6 (1989); *see United States v. Booker*, 543 U.S. 220, 229 (2005). For example, in *Mistretta*, the lower courts were divided on "one of the most important questions regarding federal criminal procedure ever to come before this Court"—twenty-one district courts had upheld "the guidelines sentencing system," and twenty-nine had deemed it unconstitutional. Pet., *Mistretta*, 488 U.S. 361 (No. 87-1904), 1988 U.S. S. Ct. Briefs LEXIS 1124, *18-*19. To resolve this "widespread and entrenched division"—which raised the prospect that "thousands of defendants" would require resentencing—the Court allowed the parties to bypass the usual appellate process. *Id.* at *19-*20.

This case is categorically different from these past precedents. To start, the lower courts are not in "disarray." *Mistretta*, 488 U.S. at 371 & n.6. Quite the opposite. As shown by SFFA's inability to identify any division of authority among the courts of appeals, lower courts have carefully applied this Court's precedents to evaluate university admissions practices. *See infra* p. 34.

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[2] *See Youngstown*, 343 U.S. at 582-83 (six weeks); *Dames & Moore*, 453 U.S. at 666-67 (nine weeks); *Nixon*, 418 U.S. at 687-88 (fourteen weeks); *Ex parte Quirin*, 317 U.S. at 22 (four weeks).

This case also fails to qualify as an emergency. It plainly does not involve a time-sensitive matter of national security or international relations. To the contrary, it challenges precedents that have been on the books for decades. SFFA offers no reason why this case suddenly must be heard on an emergency basis.

SFFA's claim of urgency also stands in contrast with its litigation conduct below. SFFA sought and consented to extensions of filing deadlines in the district court—including as recently as February of this year. *See, e.g.*, D.Ct. Dkt. 248 (SFFA motion for post-trial briefing extension); Dkt. 172 (joint motion for summary judgment briefing extension); Dkt. 128 (joint motion for extension of case deadlines); Dkt. 118 (same); Dkt. 102 (same). The idea that SFFA suddenly cannot afford to wait for the ordinary appellate process to run its course does not hold water.

The Fourth Circuit, moreover, has already signaled that it intends to "proceed expeditiously [with] decid[ing] this case." *United States v. Clinton*, 524 U.S. 912 (1998). Indeed, the Fourth Circuit has issued a briefing schedule that might well allow SFFA to seek Supreme Court review next Term, if necessary. SFFA fails to explain why that timeline will not suffice.

B. SFFA's cursory arguments in favor of certiorari before judgment are not persuasive.

SFFA devotes scant attention in its petition to explaining why this case might be one of the exceedingly rare instances when this Court should

grant certiorari before judgment. On this key question, SFFA merely declares that this case is a "companion" to the *Harvard* case and asserts that the Court "regularly" agrees to short-circuit the appellate process when two cases raise "similar or identical issues." Pet. 2, 10-11. As evidence, SFFA points to *Gratz v. Bollinger*, 539 U.S. 244 (2003), which the Court granted before judgment to hear alongside *Grutter v. Bollinger*, 539 U.S. 306 (2003). But SFFA inaccurately characterizes this Court's past practices and makes a comparison to *Gratz* that is completely inapt.

As an initial matter, the idea that this Court "*regularly* grants certiorari before judgment" in order to consider more than one case simultaneously is a gross exaggeration. Pet. 10 (emphasis added). There appear to have been only four cases in the last fifty years where the Court granted certiorari before judgment on that basis. *See ZF Automotive US, Inc. v. Luxshare, Ltd.*, No. 21-401; *Dep't of Homeland Sec. v. Regents of Univ. of Cal.*, 140 S. Ct. 1891, 1905 (2020); *Booker*, 543 U.S. at 229; *Gratz*, 539 U.S. at 259-60. A cert grant here would thus be a rare anomaly, not the latest in a "regular" pattern.

Moreover, even in these rare cases, the Court has not granted certiorari before judgment simply because two cases happened to present the same legal question. Instead, the Court deviates from the ordinary appellate process only when necessary to ensure that the Court has jurisdiction to decide the full range of issues implicated by that overlapping question. *United States v. Fanfan*, for example, raised

a critical severability question that the lower courts in *Booker* had declined to consider. Pet. at 8, *Fanfan*, 542 U.S. 956 (No. 04-105). The federal government thus argued that granting certiorari in *Fanfan* was necessary to "protect against any possibility" that the Court would run into a vehicle problem if it granted *Booker* alone. *Id.* Similarly, in *Gratz*, the lower courts had created a patchwork of rules for evaluating admissions processes at undergraduate and graduate institutions. Pet. at 21-24, *Gratz*, 539 U.S. 244 (No. 02-516). The Court therefore granted certiorari to "address the constitutionality of the consideration of race in university admissions in a wider range of circumstances." *Gratz*, 439 U.S. at 260.[3]

Granting certiorari before judgment in this case would not add similar value. To start, the only question that *Harvard* and this case have in common is the first one: whether the Court should overrule its past precedents. As SFFA's virtually identical petitions in the two cases illustrate, this is not a question that requires two separate legal vehicles.[4]

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[3] A similar concern was raised in *ZF Automotive*. In its petition, ZF Automotive observed that several cases presenting the same issue had or were likely to become moot—including a case that this Court had to dismiss as improvidently granted. Pet. at 16-18, No. 21-401. Because the posture of *ZF Automotive* obviated this concern, the petitioner argued that it provided an ideal vehicle for resolving a significant split in authority. *Id.*

[4] The second question presented here is entirely different from the second question in *Harvard*. In *Harvard*, SFFA focuses on whether that university's admission policy treats Asian-

SFFA itself acknowledges that granting review in this case is not necessary for the Court to answer this question. Pet. 10-11 (conceding that "either case" would allow "[t]his Court [to] resolve" the question). Nevertheless, it claims that the Court's "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)." Pet. 11. SFFA never attempts to explain this bare assertion, and it is easy to see why: This Court has consistently held that Title VI and the Equal Protection Clause are coextensive in this context. *See Grutter*, 539 U.S. at 343 (holding that the failure of the plaintiffs' equal-protection claims means their Title VI claims fail as well); *Bakke*, 438 U.S. at 287 (Powell, J.) ("Title VI must be held to proscribe only those racial classifications that would violate the Equal Protection Clause or the Fifth Amendment."); Br. for the United States as Amicus Curiae at 21, *Harvard*, No. 20-1199 ("This Court has held that Title VI imposes the same limits as the Equal Protection Clause on the consideration of race in admissions.").

Were it otherwise, SFFA would not have been able to challenge *Grutter*'s viability in a Title VI case brought against a private university—as it has done

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American applicants fairly. Pet. at i, No. 20-1199. Here, SFFA asks this Court to review the district court's factbound holding that the University seriously considered workable race-neutral alternatives. Pet. i.

in *Harvard*. Thus, granting certiorari in this case would be wholly redundant.[5]

The situation in *Gratz* is distinguishable in three other ways as well. First, as discussed above, *Gratz* presented a question that had sharply divided the lower courts. The same is not true here. Second, *Gratz* and *Grutter* were true companion cases that challenged distinct admissions policies in different parts of the same university. The cases were decided in the same district court and were appealed to the same Court of Appeals. None of these circumstances are present here. Third, in *Gratz*, although the University of Michigan conditionally opposed certiorari, it asked the Court to grant certiorari before judgment if the Court decided to hear *Grutter*. Br. in Conditional Opp'n at 14-19, *Gratz*, 539 U.S. 244 (No.

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[5] The University agrees with the Solicitor General's amicus brief in *Harvard* that it would not be appropriate for this Court to review that case. Br. 9-23. However, the University respectfully disagrees with the Solicitor General's suggestion that it would be "odd" to reconsider *Bakke*, *Grutter*, and *Fisher* in a case arising under only Title VI. Br. 21. This Court regularly grants review to interpret statutes that are coextensive with constitutional provisions. For example, this Court has repeatedly interpreted long-arm statutes that provide personal jurisdiction to the fullest extent permitted by the Due Process Clause. *E.g.*, *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014); *see also, e.g.*, *Taylor v. United States*, 579 U.S. 301, 305-06 (2016) (Hobbs Act and the Commerce Clause); *Davis v. Mich. Dep't. of Treasury*, 489 U.S. 803, 813 (1989) (statutory consent to nondiscriminatory state taxation of federal employees and constitutional intergovernmental tax immunity); *Shapiro v. United States*, 335 U.S. 1, 19-20 (1948) (statutory immunity provision and the Fifth Amendment's privilege against self-incrimination).

02-516), 2002 U.S. S. Ct. Briefs LEXIS 1161. The respondents acknowledged that "hearing both cases would provide the Court an opportunity to resolve these important legal questions in the context of a broader range of *factual* circumstances . . . than would be possible if the Court granted certiorari in only one case." *Id.* at 28 (emphasis added). Again, the same cannot be said here. SFFA does not ask this Court to clarify what a lawful race-conscious admissions program should look like moving forward. It asks this Court to end race-conscious admissions altogether. SFFA cannot explain why two different factual contexts are necessary for that purpose.

In the end, try as it might to anoint this case a "companion" to *Harvard*, SFFA has little to point to other than an identical plaintiff and filing date. Pet. 1. Never before has this Court granted certiorari before judgment based on such inconsequential, plaintiff-driven factors. It should not do so for the first time here.

II. Even Under Ordinary Certiorari Standards, The Questions Presented Do Not Warrant This Court's Review.

A. SFFA has not shown any pressing need to upend forty years of established precedent.

Over the last forty years, twelve Justices—nominated by nine different presidents—have authored or joined opinions holding that universities may consider race as a factor in making admissions decisions. *Fisher v. Univ. of Tex. at Austin*, 136 S. Ct.

2198 (2016) ("*Fisher II*"); *Grutter*, 539 U.S. 306; *Bakke*, 438 U.S. 265.

SFFA now seeks to overturn these precedents. Because this Court alone has the power to overrule its prior case law, SFFA cannot point to a split in authority, the primary reason this Court grants certiorari. *See* S. Ct. R. 10(a), (b). Thus, SFFA must instead advance "compelling reasons" why the validity of this Court's case law no longer remains "settled." *See* S. Ct. R. 10(c).

SFFA's burden to show that the Court should unsettle its prior precedent is heavy. Any departure from precedent "demand[s] a special justification, over and above the belief that the precedent was wrongly decided." *Allen v. Cooper*, 140 S. Ct. 994, 1003 (2020) (cleaned up). This rule "keep[s] the scale of justice even and steady, and not liable to waver with every new judge's opinion." 1 W. Blackstone, *Commentaries on the Laws of England* 69 (1765); *Ramos v. Louisiana*, 140 S. Ct. 1390, 1411 (2020) (Kavanaugh, J., concurring in part); *see also* Michael J. Gerhardt, *The Power of Precedent* 45 (2008) (noting that, by declining to grant certiorari, the Court "often demonstrate[s] [its] desire to adhere to or accept precedents [it] might not have decided the same way in the first place").

Here, SFFA offers three reasons for overruling this Court's precedent: that the case law is grievously wrong, unworkable, and unworthy of good-faith reliance. Pet. 14-28. On all three counts, SFFA fails to make a persuasive case.

1. SFFA has not shown that *Bakke*, *Grutter*, and *Fisher* were wrongly decided.

This Court has held that university admissions programs may lawfully consider race in a narrowly tailored fashion to achieve student-body diversity. SFFA has fallen far short of identifying compelling arguments grounded in text, history, or precedent that would justify reconsideration of this principle.

This Court's precedent on race-conscious admissions policies in higher education began with Justice Powell's "principal opinion" in *Bakke*. *See Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 307 (2013) ("*Fisher I*"). Universities may, Justice Powell explained, consider race to achieve the compelling interest of student-body diversity. *Bakke*, 438 U.S. at 311-14. But universities must do so in a narrowly tailored fashion. *Id.* at 314-15.

Both of Justice Powell's conclusions are consistent with the Constitution.

To begin, achieving student-body diversity is a compelling government interest. This Court's case law "recognize[es] a constitutional dimension, grounded in the First Amendment, of educational autonomy." *Grutter*, 539 U.S. at 329 (collecting cases). After all, education is "the very foundation of good citizenship." *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954). No less than our "Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth." *Keyishian v. Bd. of Regents of State Univ. of N.Y.*, 385 U.S. 589, 603

(1967). Thus, Justice Powell rightly concluded that, by fostering the "robust exchange of ideas," student-body diversity advances the academic freedom that is a "special concern of the First Amendment." *Bakke*, 438 U.S. at 312 (cleaned up).

Justice Powell went on to explain, however, that even in the pursuit of student-body diversity, universities may consider race only in a narrowly tailored way. *Bakke*, 438 U.S. at 315. Thus, universities must show that any use of race in their admissions decisions is "necessary" to achieve this end. *Id.* at 305, 315.

Justice Powell's opinion in *Bakke* has since "served as the touchstone for constitutional analysis of race-conscious admissions policies." *Grutter*, 539 U.S. at 323. Applying Justice Powell's framework, this Court has twice upheld, and twice reversed, lower court decisions on how universities use race in admissions decisions. *Fisher II*, 136 S. Ct. at 2215; *Fisher I*, 570 U.S. at 315; *Grutter*, 539 U.S. at 343-44; *Gratz*, 539 U.S. at 275-76. In these cases, the Court has repeatedly relied on Justice Powell's dual conclusions that the First Amendment allows universities to pursue the compelling interest of student-body diversity, while the Equal Protection Clause also requires strict judicial scrutiny of whether the consideration of race is narrowly tailored. *Fisher I*, 570 U.S. at 308, 311-12; *Grutter*, 539 U.S. at 329, 333.

All told, Justice Powell's opinion in *Bakke*, the cases on which it relies, and the cases that have followed it form a "whole web of precedents." *Kimble*

v. Marvel Entm't., LLC, 576 U.S. 446, 458 (2015). Against this web, SFFA has failed to come forward with compelling arguments grounded in text, history, or precedent that would warrant granting certiorari here.

As for text and history, SFFA devotes all of one paragraph in its petition to the sweeping claim that four decades of this Court's case law was incorrectly decided as a matter of the Fourteenth Amendment's original public meaning. Pet. 14 (citing the Declaration of Independence and one statement in the congressional record). But this Court requires "something more than ambiguous historical evidence" before it "flatly overrule[s] a number of major decisions." *Gamble v. United States*, 139 S. Ct. 1960, 1969 (2019) (cleaned up). That is all SFFA has offered here.

By contrast, the historical record provides significant support for the proposition that the Fourteenth Amendment was originally understood to permit certain forms of race-conscious government action. *See, e.g.*, Stephen Siegel, *The Federal Government's Power to Enact Color-Conscious Laws: An Originalist Inquiry*, 92 Nw. U. L. Rev. 477, 561 (1998) (identifying, among other examples, race-conscious legislation passed by the Reconstruction-era Congress fixing a maximum fee that agents could charge Black soldiers for helping the soldiers collect bounties for enlisting in the Union army); Eric Schnapper, *Affirmative Action and the Legislative History of the Fourteenth Amendment*, 71 Va. L. Rev. 753 (1985).

SFFA's arguments based on precedent fare no better. SFFA's single-minded focus on *Grutter* is misplaced: it is Justice Powell's principal opinion in *Bakke* that has served as the Court's "touchstone." *Grutter*, 539 U.S. at 323. And *Grutter* was not this Court's last word either. The Court upheld a university's use of race as a factor in its admissions program just five years ago. *Fisher II*, 136 S. Ct. at 2215.

SFFA claims that recent cases have cast doubt on these decisions. Pet. 18. But the two decisions that SFFA cites did not even raise the question of whether a university may consider race in admissions, and they expressly distinguished *Bakke* and *Grutter* on that basis. *Schuette v. BAMN*, 572 U.S. 291, 300 (2014) (plurality opinion); *Parents Involved in Cmty. Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 724-25 (2007). In fact, if these cases are relevant at all, they show only how settled the law is in this area. Both cases recognize that admissions decisions that focus on applicants as individuals, accounting for race as but one factor, are constitutionally permissible in higher education. *Schuette*, 572 U.S. at 300-01 (plurality opinion); *Parents Involved*, 551 U.S. at 723-75. Thus, *Bakke*, *Grutter*, and *Fisher* are hardly the kind of "doctrinal dinosaur[s]" that might warrant rethinking. *Kimble*, 576 U.S. at 458.

2. *Bakke*, *Grutter*, and *Fisher* are workable.

In addition to being correctly decided, this Court's precedents establish a workable framework for

assessing a university's use of race in its admissions decisions. SFFA's contrary arguments are overstated.

As the Court recently explained in *Fisher II*, "three controlling principles" govern the constitutional analysis here. 136 S. Ct. at 2207-08. First, consideration of race must satisfy strict scrutiny. *Id.* at 2208. Second, when a university gives a "reasoned, principled explanation" for its decision to pursue the educational benefits that flow from student-body diversity, that conclusion is entitled to judicial deference. *Id.* (cleaned up). Third, courts give no deference to the university in deciding whether its consideration of race is narrowly tailored. *Id.* To satisfy the narrow-tailoring requirement, the university must show that available and workable race-neutral alternatives "do not suffice." *Id.* (cleaned up).

These three principles are hardly "Delphic." Pet. 21. The decision below proves the point. The district court carefully applied this Court's framework to the record here and had no difficulty identifying the relevant legal standards. Pet. App. 145-83. SFFA's inability to identify any split in authority further undermines its claim that the law in this area is unstable.

SFFA also complains that this Court's precedents require a case-by-case analysis and that litigation of this kind takes time. Pet. 21-22. But that is because strict scrutiny is strict. *See Fisher I*, 570 U.S. at 314. Again, the decision below proves the point. The district court denied the University's motion for

summary judgment, examining its admissions program over an eight-day bench trial and a painstaking post-trial analysis of this case's extensive record. Pet. App. 6-7. The University's admissions program survived constitutional inspection only after the district court's searching review. That is the mark of a workable and stable strict-scrutiny regime.

3. *Bakke*, *Grutter*, and *Fisher* have generated reliance interests.

The cases discussed above have structured the terms of a democratic debate over the wisdom of race-conscious admissions policies in higher education. SFFA asks this Court to stifle this democratic process.

As the Court recognized in *Grutter*, "[p]ublic and private universities across the Nation have modeled their own admissions programs on Justice Powell's views on permissible race-conscious policies." 539 U.S. at 323. Yet this Court has since repeatedly invited universities to "serve as laboratories for experimentation" on the "enduring challenge . . . to reconcile the pursuit of diversity with the constitutional promise of equal treatment and dignity." *Fisher II*, 136 S. Ct. at 2214 (cleaned up); *see also Schuette*, 572 U.S. at 301 (plurality opinion) (seeking to encourage "a dialogue regarding this contested and complex policy question").

The democratic dialogue this Court envisioned continues to play out both within North Carolina and across the country. For example, the North Carolina legislature has recently considered submitting to voters a proposed constitutional amendment that

would prohibit affirmative action in the State's public institutions of higher education. *See* N.C. Senate Bill 729, *available at* https://bit.ly/3lqG21V. Nine States have passed similar laws, one as recently as last year.[6] States have thus taken up the Court's call to "engage in constant deliberation and continued reflection" on this issue. *Fisher II*, 136 S. Ct. at 2215.

In sum, this Court's precedents have structured the terms of democratic deliberation on the wisdom of race-conscious admissions policies in higher education. SFFA asks this Court to intervene to arrest this ongoing democratic debate—and strip the people of their ability to decide the issue for themselves.

B. The district court's factbound application of existing precedent does not warrant review.

SFFA also asks this Court to decide whether the University properly considered race-neutral alternatives in accordance with this Court's precedents. This splitless and factbound issue does not warrant review.

To begin, SFFA does not allege a split in authority on this question. This point, by itself, counsels strongly against accepting review. S. Ct. R. 10.

Review is also unwarranted on this question because it turns on factual disputes. As this Court's

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[6] Ariz. Const. art. II, § 36; Cal. Const. art. I, § 31; Fla. Exec. Order No. 99-281; Idaho Code Ann. § 67-5909A; Mich. Const. art. I, § 26; Neb. Const. art. I, § 30; N.H. Rev. Stat. Ann. § 187-A:16-a; Okla. Const. art. II, § 36A; Wash. Rev. Code Ann. § 49.60.400.

Rules make clear, "[a] petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law." *Id.*

That is the situation here. SFFA agrees that the district court applied the prevailing legal standard for deciding when a university has engaged in serious, good-faith consideration of race-neutral alternatives. *Compare* Pet. 28, 30, *with* Pet. App. 154, 176-77. The question is whether an alternative is "available and workable"—that is, whether the alternative would promote a university's "interest in the educational benefits of diversity about as well and at tolerable administrative expense." *Fisher II*, 136 S. Ct. at 2208 (cleaned up).

SFFA just disagrees with how the district court applied this standard to the facts of this case. For example, both parties introduced expert-witness testimony on race-neutral alternatives. The testimony included econometric simulations designed to show whether the University could still achieve similar levels of diversity and academic preparation in its student body through race-neutral means. Pet. App. 125-26. The district court found that SFFA's expert relied on numerous "unrealistic assumptions" and chose not to credit his testimony. Pet. App. 136; *see* Pet. App. 134-37. SFFA disagrees and asks this Court to be the first appellate forum to review these conclusions. Pet. 29. But SFFA's factual quibbles do not justify granting certiorari, much less certiorari before judgment.

In any event, the district court was right to conclude that the University carried its burden on race-neutral alternatives. The district court found that the University has long considered, and continues to consider, alternative approaches to its admissions process. Pet. App. 114-18. The court also found that the University has already implemented many of the most promising race-neutral strategies, including strategies that go "well beyond" the alternatives that SFFA itself had proposed. Pet. App. 118-23. In addition to considering this evidence, the district court credited the University's "exhaustive" expert testimony on race-neutral alternatives, while still cautioning that the University must "continue to study emerging ideas." Pet. App. 143; *accord* Pet. App. 176-83.

SFFA claims that the district court erred by rejecting as unworkable SFFA's various proposals for changing the University's admissions process. Pet. 30. But as discussed, the district court found that SFFA's alternatives were based on fundamentally flawed expert analysis. *See supra* pp. 13-15.

The district court also concluded that even taking the expert analysis on its own terms, SFFA's proposed alternatives were not workable. The alternatives would either "force the University to choose between maintaining a reputation for excellence and providing educational opportunities to all racial groups," or "dramatically undercut the University's efforts to achieve additional types of diversity that it values." Pet. App. 182. These conclusions squarely align with this Court's precedents. *See Fisher II*, 136 S. Ct. at

2208, 2213. But even if the district court erred, as SFFA claims, the Fourth Circuit is the proper forum for raising that alleged case-specific error in the first instance.

SFFA also cites evidence from other States that do not consider race in admissions. Pet. 29, 31. But again, even accepting that evidence as true, a race-neutral alternative that works elsewhere may not work in North Carolina. States have vastly different histories, demographic makeups, and socioeconomic conditions. As discussed, this Court's precedents expressly recognize the benefits of federalism in this area, whereby different States can approach the question of affirmative action in different ways depending on local conditions.

III. SFFA's Lack of Standing Counsels Against This Court's Review.

Finally, SFFA bears the burden to show that it has Article III standing. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). SFFA did not carry that burden here. This case is therefore a poor vehicle to answer the questions presented.

To decide whether a plaintiff has standing, courts ask "whether the party invoking jurisdiction had the requisite stake in the outcome *when the suit was filed*." *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008) (emphasis added); *accord Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 180 (2000) (courts have "an obligation to assure" themselves that plaintiffs have "Article III standing at the outset of the litigation").

Here, when it initiated this suit, SFFA asserted standing "solely as the representative of its members." *Warth v. Seldin*, 422 U.S. 490, 511 (1975); *accord Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977). When it sued, however, SFFA had no genuine members. SFFA was formed just months before it filed this lawsuit. D.Ct. Dkt. 107-8 at 2. At that time, SFFA was a founder-driven organization whose nominal members played no meaningful role, exerted no control, and provided no material financial support. D.Ct. Dkt. 107-2 at 5-7, 10-15; D.Ct. Dkt. 107-3 at 4-9; *see also* D.Ct. Dkt. 107-4 to -8. Indeed, SFFA's bylaws declined to grant its members any rights whatsoever. D.Ct. Dkt. 107-4.

Below, the district court held to the contrary, Pet. App. 245, but its analysis erroneously assessed SFFA's standing at the time the court ruled on the University's motion to dismiss. This mistaken timeframe was significant, because SFFA had made changes to its organizational structure to bolster its bid for standing. For example, as the district court noted, one of SFFA's five managing directors is now elected by the group's members. Pet. App. 233. But no directors were elected when SFFA sued. D.Ct. Dkt. 107-4. Similarly, the district court found it relevant that SFFA's constituents now pay membership dues. Pet. App. 234. But no such dues were required when the lawsuit was filed. D.Ct. Dkt. 107-3 at 5; Pet. App. 234.

Thus, at the relevant time, SFFA was not a genuine "voluntary membership organization," as this

Court's case law defines that term. *See Hunt*, 432 U.S. at 343-44.

To be sure, over the course of this lawsuit, SFFA has developed as an organization in certain limited ways. Even those developments are insufficient to generate standing, however, because SFFA's members still lack a substantive role in the organization. They have no responsibilities or duties. D.Ct. Dkt. 107-3 at 7-8. Members contribute only a miniscule portion of the group's funding. D.Ct. Dkt. 107-6; *see also* D.Ct. Dkt. 107-2 at 10. And they have no effective ability to control the organization. D.Ct. Dkt. 107-5. Nor is it even clear from the record that any SFFA member retains a live stake in the University's admissions policies. After all, the members that SFFA identified below to support standing have surely all completed their undergraduate studies by now. *See DeFunis v. Odegaard*, 416 U.S. 312, 319-20 (1974) (per curiam).

Regardless, it is black-letter law that a plaintiff cannot manufacture standing after filing a lawsuit. *See Davis*, 554 U.S. at 734. Instead, courts measure a plaintiff's standing at the time it files the complaint. *Id.* Here, when SFFA sued, it was a mere "concerned bystander[ ]," lacking a particularized interest in the outcome of the case and seeking standing "simply as a vehicle for the vindication of value interests." *Hollingsworth v. Perry*, 570 U.S. 693, 707 (2013) (cleaned up). This Court therefore lacks Article III jurisdiction to decide this case.

CONCLUSION

The petition for a writ of certiorari before judgment should be denied.

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December 20, 2021