

December 2, 2022

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

Re: *Flagstar Bank, FSB v. William Kivett, et al.*, No. 22-349

Dear Mr. Harris:

I write on behalf of petitioner to oppose respondents' request for a further extension of time in which to respond to the petition. A further extension of time to December 28 will prejudice petitioner by preventing the case from being heard and decided on the merits this Term and will interfere with counsel's pre-existing travel and family obligations during the upcoming holiday season. Respondents' proffered reasons do not justify that result.

As explained in our November 10 letter, petitioner filed its petition one day in advance of the ordinary deadline, without seeking an extension, to permit the Court to consider the petition and, if granted, decide this case in the current Term. Delaying the case to next Term, we explained, would cause petitioner substantial prejudice, including the costs of the over \$9-million bond that petitioner has posted, and post-judgment interest that continues to accrue on the damages award. Under the current schedule, delay until next Term is still avoidable: petitioner intends to shorten its own time for reply and waive part of the 14-day waiting period for distribution, so that the Court may still consider the petition at its January 6 Conference and, if the petition is granted, may resolve the case this Term.

If the Court grants respondents' requested extension, resolution on the merits this Term would be impossible. The earliest that the Court could consider the petition under respondents' requested schedule is the January 20 Conference, even if petitioner substantially shortens its reply time—too late for argument this Term. And expediting a reply would be difficult if respondents file December 28, between Christmas and New Year's Day: all petitioner's counsel have seasonal family obligations, and one will be out of the country during that entire week.

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Although respondents suggest that this Court frequently grants a 30-day extension to respond to a petition, respondents have already enjoyed the equivalent of such an extension because of their strategic decision to waive their response at the outset. The petition was docketed on October 13, 2022 (and served by email two days before). Even without an additional extension, respondents will have had 61 days to file a response. And they will have had 20 days since the filing of the amicus brief in support of petitioner—the only concrete basis for the extension that respondents give. No additional time to respond to petitioner’s amici is warranted.

For all of these reasons, petitioner opposes respondents’ request for a further extension.

Respectfully submitted,



Jonathan Y. Ellis
Counsel of Record for Petitioner

cc: Steve W. Berman, counsel of record for respondents