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April 25, 2024

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

Re: *Anne Davis on behalf of Braeden Davis v. District of Columbia*,
No. 23-936
Opposition to Respondent's Extension Request

Dear Mr. Harris:

I am writing on behalf of petitioner Anne Davis in the above-referenced matter to oppose the District of Columbia's request for an extension of time to file the response to the petition for a writ of certiorari. The petition was filed on February 23, 2024, and the response is currently due on May 17, 2024—*84 days* after the petition was filed. The District now seeks an additional 45 days for filing the response. If granted, that request would delay the Court's consideration of whether to grant certiorari until the fall. We respectfully urge the Court to deny the District's request, or at least limit any extension, so that the petition may be considered in June, before the Court's summer recess.

As the petition for certiorari explains, this case presents important questions of federal law that affect students with disabilities and their families across the country. The Council of Parent Attorneys and Advocates (COPAA) and Advocates for Justice and Education, Inc. have filed a brief as amici curiae stressing the nationwide importance of this case and urging this Court's review.

The D.C. Circuit's decision in this case was issued in August 2023. The District has known that Ms. Davis would be seeking certiorari since at least December 14, 2023, when Ms. Davis sought and received an extension of time to file a petition for certiorari, shortly after engaging undersigned counsel to represent her in this Court. *See Application to Extend the Time to File Petition for a Writ of Certiorari*, No.

23A561. Ms. Davis then timely filed and served the petition on February 23, 2024. Yet, despite the importance of the questions presented and the circuit splits on those questions, the District waited 33 days before filing a waiver of its right to respond to the petition. This Court then called for a response to the petition, due May 17, 2024. That deadline already gives the District *84 days* after the petition was filed to prepare a response. It ensures that the Court can consider the petition at a conference in June, before breaking for the summer.

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. Granting the requested extension, however, would postpone the District's opposition until July 1, 2024, and thus delay consideration until after the Court's summer recess. This factor weighs strongly in favor of denying the request, especially given the District's extreme delay in filing the waiver. *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 . . . the Clerk may suspect strategic behavior and, absent the petitioner's consent, limit any extension to allow the petition to be considered in June."); *see also, e.g., Ohio State Univ. v. Snyder-Hill*, No. 22-896 (May 10, 2024) (denying extension request in similar circumstances).*

Counsel for the District has failed to point to any unusual circumstances that would warrant the requested extension. Although we appreciate that Deputy Solicitor General Phillips has other obligations, no less than eight different attorneys appeared on the relevant briefs that the District filed in the D.C. Circuit and district court in this case, and we are confident that the District has the bandwidth and capability to address this Court's request for a response on a timely basis.

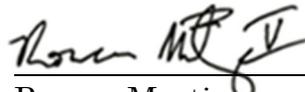
To be clear, undersigned counsel generally appreciates the value of extensions, and ordinarily would consent to this extension as a matter of courtesy. Ms. Davis's

* It is not clear why the District waited 33 days after the petition was filed—just one day before the opposition was due—to file the waiver of an opposition to Ms. Davis's petition. It appears the District may have a policy of not responding to petitions for certiorari, unless this Court first requests a response: As best we can ascertain, it has waived or not filed a response in all but one of the approximately 39 petitions filed against it over the past five years. The District did not delay nearly as long in filing the waivers in many of those other cases. *See, e.g., Silverberg v. District of Columbia*, No. 23-762 (Jan. 26, 2024) (waiver filed 9 days after docketing); *Tinius v. Choi*, No. 23-646 (Dec. 18, 2023) (waiver filed 4 days after docketing); *Bronson v. D.C. Dep't of Bldgs.*, No. 23-5957 (Nov. 17, 2023) (waiver filed 14 days after docketing); *Sanchez v. D.C. Off. of the State Superintendent of Educ.*, No. 22-543 (Dec. 19, 2022) (waiver filed 5 days after docketing); *Fraternal Order of Police v. District of Columbia*, No. 22-476 (Nov. 28, 2022) (waiver filed 10 days after docketing); *Jones v. District of Columbia*, No. 22-5937 (Nov. 1, 2022) (waiver filed 4 days after docketing); *McCrea v. D.C. Off. of Human Rights*, No. 19-7389 (Jan. 28, 2020) (waiver filed 4 days after docketing).

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opposition here stems entirely from the fact that the extension would unduly delay this Court's consideration of her case. If this Court desires to grant the District some relief, Ms. Davis would not object to a seven-day extension of time for the District to file its opposition (until May 24, 2024). In that circumstance, Ms. Davis would waive the 14-day waiting period for distribution under this Court's Rule 15.5, thereby allowing the petition to be distributed to the Justices on June 4, 2024 for consideration at the Court's conference on June 20, 2024.

Respectfully submitted,



Roman Martinez
LATHAM & WATKINS LLP
Counsel of Record for Petitioner

cc: Caroline S. Van Zile
Counsel of Record for Respondent