

No. 19-2005

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

STUDENTS FOR FAIR ADMISSIONS, INC.,

Plaintiff-Appellant,

v.

PRESIDENT AND FELLOWS OF HARVARD COLLEGE,

Defendant-Appellee,

THE HONORABLE AND REVEREND THE BOARD OF OVERSEERS,

Defendant.

On Appeal from the United States District Court for the District of Massachusetts
in Case No. 1:14-cv-14176-ADB, Judge Allison D. Burroughs

**MOTION FOR AN EXTENSION OF TIME TO FILE DEFENDANT-
APPELLEE'S RESPONSE BRIEF AND FOR LEAVE TO FILE AN
OVERSIZED BRIEF**

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February 20, 2020

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Defendant-Appellee President and Fellows of Harvard College certifies that it is a non-profit corporation with no parent corporation and that no public company owns any interest in it.

Pursuant to Federal Rules of Appellate Procedure 26(b), 27, and 31(a)(1), and First Circuit Local Rules 27, 31, and 32.4, Defendant-Appellee President and Fellows of Harvard College (“Harvard”) hereby requests a 56-day extension of time within which to file Harvard’s response brief, until Thursday, May 14, 2020. Harvard also respectfully requests leave to file an oversized response brief of up to 15,000 words. As grounds for this Motion, Harvard states as follows:

1. Under the current briefing schedule, Harvard’s response brief is due Thursday, March 19, 2020. Harvard respectfully requests that it be granted an extension of 56 days in which to file its response brief. If Harvard’s request is granted, its response brief would be due on Thursday, May 14, 2020. Harvard has not previously sought an extension of time for filing its brief.

2. The additional time is requested in light of the complexity of the legal and factual issues presented by this appeal, which arises out of a 15-day trial in which hundreds of exhibits were introduced into evidence, and to accommodate the other professional obligations of Harvard’s counsel, including many deadlines in other cases that cannot be extended.

3. In particular, between today and May 14, 2020, undersigned counsel is responsible for filing briefs and presenting oral argument in numerous cases in the United States Supreme Court and the United States Courts of Appeals, including a brief on the merits in the Supreme Court on March 25, 2020, in

Rutledge v. Pharmaceutical Care Management Ass’n, No. 18-540 (U.S.); oral argument on or around April 27, 2020, in *Rutledge*; a final brief on March 5, 2020, in *Growth Energy v. EPA*, No. 19-1023 (D.C. Cir.); oral argument on March 9, 2020, in *Alston v. NCAA*, No. 19-15566 (9th Cir.); a reply brief on March 10, 2020, in *POET Biorefining, LLC v. EPA*, No. 19-1139 (D.C. Cir.); a response brief on March 18, 2020, in *Sacerdote v. New York University*, No. 18-2707 (2d Cir.); a reply brief on March 23, 2020, in *Oscar Insurance Co. of Florida v. Blue Cross & Blue Shield of Florida, Inc.*, No. 19-14096 (11th Cir.); and a reply brief on Apr. 13, 2020, in *POET Biorefining—Hudson, LLC v. EPA*, No. 19-2429 (8th Cir.).

4. A 56-day extension of the briefing schedule would not prejudice Appellant Students for Fair Admissions (“SFFA”). The district court’s opinion was issued on September 30, 2019, and SFFA’s opening brief was filed 141 days later, on February 18, 2020. The total period requested by Harvard in which to prepare and file its response brief in this case is thus significantly shorter than the period SFFA had to prepare and file its opening brief.

5. Harvard also respectfully requests leave to file an oversized response brief. Harvard requests an additional 2,000 words, for a word limit of 15,000.

6. Compelling reasons justify the filing of an oversized response brief. SFFA sought leave to file a 15,000-word opening brief on February 10, 2020, and this Court granted SFFA’s motion on the same day.

7. As SFFA observed in its motion for leave to file an oversized opening brief, the parties litigated the case below for more than five years, culminating in a 15-day trial with a voluminous record. The case presents complex and important questions of fact and law, and the additional words will allow Harvard to address these questions in the level of detail that they deserve. Harvard also expects several amicus curiae briefs to be filed in support of SFFA, to which Harvard will need to respond.

8. SFFA opposes Harvard's request for an extension of time, although it would consent to a 28-day extension for Harvard's response brief. SFFA does not oppose the request for leave to file an oversized brief.

WHEREFORE, Defendant-Appellee President and Fellows of Harvard College respectfully requests that the Court grant an additional 56 days within which to file its response brief, until Thursday, May 14, 2020, and permit Defendant-Appellee to file an oversized response brief of no more than 15,000 words.

Respectfully submitted.

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February 20, 2020

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 27(d) and 32(g), the undersigned hereby certifies that this motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A).

1. Exclusive of the accompanying documents as authorized by Fed. R. App. P. 27(a)(2)(B) and the exempted portions of the motion as provided by Fed. R. App. P. 27(d)(2) and 32(f), the motion contains 669 words.

2. The motion has been prepared in proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font as provided by Fed. R. App. P. 32(a)(5)-(6). As permitted by Fed. R. App. P. 32(g), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

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February 20, 2020

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of February, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the First Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Seth P. Waxman

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