

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS
BOSTON DIVISION**

STUDENTS FOR FAIR ADMISSIONS, INC.,

Plaintiff,

v.

PRESIDENT AND FELLOWS OF HARVARD
COLLEGE (HARVARD CORPORATION),

Defendant.

Civil Action No. 1:14-cv-14176-ADB

Oral Argument Requested

**DEFENDANT’S MOTION FOR JUDGMENT
ON THE PLEADINGS ON COUNTS IV AND VI**

Pursuant to Federal Rules of Civil Procedure 12(c) and 12(h)(2), Defendant President and Fellows of Harvard College (Harvard Corporation) (“Harvard”) respectfully moves for judgment on the pleadings dismissing Counts IV and VI of the complaint. The grounds for this motion, which are explained in detail in the accompanying Memorandum of Law, include the following:

1. Count IV alleges that Harvard violates Title VI because it “is not using race merely to fill the last few places in the entering freshman class.” Compl. ¶ 473; *see also* Compl. ¶ 467.
2. Count IV rests on a purported legal standard that has no basis in the governing substantive law—indeed, Supreme Court precedent squarely contradicts it.
3. Count VI alleges that all of the Supreme Court decisions that have upheld the consideration of race in admissions were wrongly decided, and that the Supreme Court should now hold that diversity “is not an interest that could ever justify” any consideration of race. Compl. ¶ 494; *see also* Compl. ¶ 502.
4. This Court is not empowered to overrule Supreme Court precedent.

Accordingly, Counts IV and VI of the complaint “[f]ail[] to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(h)(2).

WHEREFORE, Harvard respectfully requests that the Court enter judgment on the pleadings for Harvard on Counts IV and VI of the complaint.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Defendant respectfully requests oral argument of this Motion.

Respectfully submitted,

/s/ Seth P. Waxman

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Dated: September 23, 2016

*Counsel for Defendant President and
Fellows of Harvard College*

LOCAL RULE 7.1 CERTIFICATION

Counsel for Harvard hereby certifies that on September 16, 2016, counsel for Harvard conferred by phone with Plaintiff's counsel in a good faith attempt to resolve or narrow the issues involved in this motion.

/s/ Seth P. Waxman
Seth P. Waxman

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ Seth P. Waxman
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