

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

SAINT XAVIER UNIVERSITY)	
)	
Petitioner/Cross-Respondent)	
)	
v.)	
)	Case Nos. 18-1076,
)	18-1086
NATIONAL LABOR RELATIONS BOARD)	
)	
Respondent /Cross-Petitioner)	
)	
and)	
)	
SAINT XAVIER UNIVERSITY ADJUNCT FACULTY UNION, NEA-IEA)	
)	
Intervenors)	

MOTION TO GOVERN FURTHER PROCEEDINGS

On September 28, 2020, the Court directed the parties to file motions to govern further proceedings in this case, which is currently in abeyance pending the Court’s disposition of *Duquesne University v. NLRB*, 947 F.3d 824 (D.C. Cir. 2020).¹ In *Duquesne*, the Court held that the Board’s test for asserting jurisdiction over religiously-affiliated colleges and universities, set forth in *Pacific Lutheran University*, 361 NLRB 1404 (2014), is inconsistent with the Court’s decisions in *University of Great Falls v. NLRB*, 278 F.3d 1335 (D.C. Cir. 2002) and *Carroll*

¹ The Court is also currently holding *Manhattan College*, Nos. 18-1113, 18-1158, in abeyance pending *Duquesne* and has directed the parties to file motions to govern further proceedings in that case. Simultaneously with this motion, the Board is filing a similar motion in *Manhattan College*.

College v. NLRB, 558 F.3d 568 (D.C. Cir. 2009).² On September 17, 2020, the Court denied rehearing en banc in *Duquesne*, and it issued mandate on September 28, 2020.

In the Board’s view, *Duquesne* precludes the Court’s enforcement of the Board’s decision in the instant case, which is based on the Board’s test in *Pacific Lutheran*. Moreover, while the en banc petition was pending in *Duquesne*, the Board overruled *Pacific Lutheran* and adopted the test set forth by this Court in *Great Falls* to govern when the Board can assert jurisdiction over religiously-affiliated colleges or universities. See *Bethany College*, 369 NLRB No. 98, 2020 WL 3127965 (NLRB June 10, 2020), *petition for review filed*, *Jorsch v. NLRB*, D.C. Cir. Case No. 20-1385 (Sept. 23, 2020). Accordingly, the Board does not oppose the relief sought by Saint Xavier University in its anticipated motion for summary disposition; to wit, that the Court, as it did in *Duquesne*, grant the petition for review, vacate the Board’s Order, and deny the Board’s application for enforcement.

² In *Great Falls*, the Court established a “bright-line” test for determining the Board’s jurisdictional authority over such colleges and universities, and in *Carroll College*, it “reiterated” that *Great Falls* governs the Board’s jurisdiction. *Duquesne*, 947 F.3d at 832.

Respectfully submitted,

/s/ David Habenstreit
David Habenstreit
Assistant General Counsel
National Labor Relations Board
1015 Half Street SE
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202-273-2960

Dated at Washington D.C.
This 28th day of October 2020

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FACULTY UNION, NEA-IEA)	
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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that the foregoing document contains 429 words of proportionally spaced, 14-point type, and that the word processing system used was Microsoft Word 2016.

/s/ David Habenstreit
David Habenstreit
Assistant General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, DC 20570

Dated at Washington, DC
this 28th day of October 2020

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CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2020, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. I certify further that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

/s/ David Habenstreit
David Habenstreit
Assistant General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, DC 20570

Dated at Washington, DC
this 28th day of October 2020