No. 18-1076

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SAINT XAVIER UNIVERSITY
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

SAINT XAVIER UNIVERSITY
ADJUNCT FACULTY UNION, IEA-NEA,
Intervenor.

MOTION TO GOVERN FUTURE PROCEEDINGS

In accordance with the Court's Order of March 3, 2020, Intervenor Saint Xavier University Adjunct Faculty Organization, IEA-NEA hereby files this Motion suggesting the governance of future proceedings in this case.

1. On October 26, 2020, the Intervenor in *Manhattan College v. NLRB*, D.C. Cir. No. 18-1113, filed a petition requesting that the case be heard en banc for the purpose of overruling this Court's decisions in *Duquesne University v. NLRB*, 947 F.3d 824 (2020), *Carroll College, Inc. v. NLRB*, 558 F.3d 568 (D.C. Cir. 2009), and *University of Great Falls v.*

NLRB, 278 F.3d 1335 (D.C. Cir. 2002). *See Duquesne University v. NLRB*, 2020 WL 5551991, at *2 (D.C. Cir., Sept. 17, 2020) (concurring opinion of Judge Pillard suggesting that "[*e*]*n banc* review" would give the Court "an opportunity to reverse the majority's erroneous holding" in *Duquesne University* in a case where a "party ask[s] us to revisit *Great Falls* and *Carroll College* – the cases on which the majority's holding builds"). The Saint Xavier University Adjunct Faculty Organization requests that this case be held pending disposition of the petition in *Manhattan College*.

2. If the Court denies the petition in *Manhattan College*, the Intervenor requests that this case be remanded to the National Labor Relations Board for further proceedings.

On remand, the Board should consider whether the College "formally and affirmatively disclaims any religious role for certain faculty members." *Duquesne University*, 947 F.3d at 835 n.2. The panel majority in *Duquesne University* suggested that this would be a constitutionally permissible test for which faculty members are exempt from NLRB jurisdiction. The exemption defined in this Court's

decisions does not rest on the terms of the NLRA but on the requirements of the First Amendment. If there is a constitutionally permissible test that would permit the Board to assume jurisdiction over the faculty at issue in this case, the Board has a duty to assume jurisdiction.

Respectfully submitted,

/s/ James B. Coppess
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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. This motion complies with the type-volume limitations of Rule 27(d)(2), F.R.A.P., because this petition contains 315 words.

2. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because the petition has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in a 14-point type in a Century font style.

/s/ James B. Coppess
James B. Coppess

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2020, the foregoing Motion to Govern Future Proceedings was served on all parties or their counsel of record through the CM/ECF system.

/s/ James B. Coppess
James B. Coppess