

RESPONSES CONTAIN CONFIDENTIAL AND IDENTIT NOT TO BE PUBLICLY
DISCLOSED DISCOVERY MATERIAL SUBJECT TO PROTECTIVE ORDER

COMMONWEALTH OF MASSACHUSETTS

**Superior Court
Business Litigation Session**

Suffolk, SS

BENJAMIN EDELMAN,

Plaintiff,

v.

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE,

Defendant.

Civil Action 2384CV00395-BLS2

**DEFENDANT’S RESPONSES AND OBJECTIONS TO
PLAINTIFF’S FIRST SET OF INTERROGATORIES**

President and Fellows of Harvard College (“Harvard” or “Defendant”) hereby responds to Benjamin Edelman’s (“Plaintiff” or “Edelman”) First Set of Interrogatories as follows:

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

1. Harvard objects to the definition of “document” to the extent it is broader in scope than the term is defined in Mass. R. Civ. P. 34(a)(1).
2. Harvard objects to the use of the terms “Harvard” and “Defendant,” and the definitions of “you” and “your” and “agent[s], contractor[s], and/or employee[s]” to the extent that they include former employees and predecessors in interest.
3. Harvard objects to the General Instructions to the extent they require Harvard to go beyond what is required by Mass. R. Civ. P. 26 and 33 and Superior Court R. 30A.

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7. Seventh Affirmative Defense

Harvard intends to argue that Plaintiff's claims for damages are speculative and/or not enforceable, in particular (but not limited to) the requested remedy that Harvard conduct a "do over" of Plaintiff's tenure application review.

8. Eighth Affirmative Defense

To the extent a court determines that any of Plaintiff's claims may fairly be characterized as tort claims, Harvard intends to argue that Plaintiff's damages, if any, are limited in whole or in part by M.G.L. c. 231 § 85K because Harvard is a charitable organization under that statute.

INTERROGATORY NO. 5:

Identify all witnesses that you anticipate calling at trial and describe their anticipated testimony. If you are aware of the name and contact information of any attorney representing a witness, provide that information as well.

RESPONSE TO INTERROGATORY NO. 5:

Harvard objects to this Interrogatory as overbroad and premature because at the time of answering, Harvard has not identified any witness(es) it anticipates calling at trial, and therefore cannot describe any anticipated testimony of such witness(es).

INTERROGATORY NO. 6:

State the basis of Dean Nohria's decision to deny Plaintiff tenure.

RESPONSE TO INTERROGATORY NO. 6:

Harvard objects to this Interrogatory to the extent it seeks information protected by the attorney client privilege, work product privilege, and any other privilege or immunity. Harvard further objects because the Interrogatory rests on an incorrect premise: under Harvard's tenure procedures, the HBS Dean does not "decide" whether to grant or deny tenure but decides whether to recommend a candidate for tenure to Harvard's President. Subject to and without waiving the foregoing, Harvard responds as follows.

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While a candidate for tenure is rightly focused solely on his or her own application and how promotion or denial will affect him or her personally, the Dean, in adhering to the appointments process, “must strive to consider simultaneously the interests of individual candidates and the interests of HBS” when considering a tenure recommendation. [Green Book p. 11, emphasis added]. In formulating his recommendation to the President, the Dean “makes use of faculty information, judgment, and advice.” [Green Book p. 11]. While “[a]ll evidence, recommendations, views, and votes are taken into account by the Dean” [Green Book p. 13], this does not mean that a majority vote by the Appointments Committee in favor of promotion is automatically binding on the Dean, who “has the sole responsibility for the recommendations made to the President” [Green Book p. 11]. The decision to recommend a candidate for promotion to full tenure is at the complete discretion of the Dean; the President of Harvard, in turn, has full discretion to accept or deny that recommendation. Dean Nohria understood his responsibilities as Dean of HBS in assessing Edelman’s candidacy for tenure, which included not only considering the recommendations of the Subcommittee and the FRB, as well as the Appointments Committee votes and commentary, but also weighing the interests of the institution, which include not just academic excellence but also a strong devotion to upholding HBS’s Community Values.

Based on Edelman’s actions, as described in the 2015 Report, the 2015 FRB reached the conclusion that Edelman had not met the “Community Values” criteria for tenure, and he was given time to demonstrate that he could meet those standards. In 2017, Dean Nohria, with the assistance of the FRB and the Appointments Committee, evaluated whether there was evidence that Edelman had learned from the events leading to the 2015 Report, had met the Community Values criteria, and whether it was likely that he would uphold those standards going forward. Dean Nohria noted that, under the circumstances, it was reasonable to expect Edelman to exercise common sense and

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good judgment during the period between his 2015 tenure review and his 2017 tenure review to avoid any conduct that might be seen as creating doubt about whether he met Community Values and whether he would strive to meet those standards if granted tenure. Dean Nohria also took into account the fact that there was substantial division among HBS's tenured faculty about Edelman's candidacy. Many faculty members expressed concerns about whether, if tenured, Edelman would adhere to Community Values. Dean Nohria also took into account the fact that, in at least the previous ten years, no candidate had been promoted where there had been as many negative views expressed by the Appointments Committee as were expressed about Edelman's candidacy. Based chiefly on this, as well as all of the evidence and recommendations before him, Dean Nohria concluded that there was substantial uncertainty about whether Edelman had met the Community Values criteria and would adhere to Community Values if tenured and that this uncertainty posed a serious risk to the institution. Dean Nohria determined, as a result, that he would not recommend Edelman for promotion to the President.

INTERROGATORY NO. 7:

Identify and describe a tenured HBS professor's compensation and benefits package, including but not limited to salary, benefits, retirement contributions, mortgage assistance, tuition assistance, and healthcare.

RESPONSE TO INTERROGATORY NO. 7:

Harvard objects to this Interrogatory on the basis that it is overbroad and unduly burdensome. Harvard also objects to the extent it seeks information protected by the attorney client privilege, work product doctrine, or any other privilege or immunity. Harvard further objects on the basis that it is ambiguous and/or vague, as it does not specify or imply a specific scope of time. Harvard therefore construes this Interrogatory to encompass compensation and benefits currently available to a tenured professor at HBS who would have been promoted to tenure in either 2015