No. _____

IN THE SUPREME COURT OF THE UNITED STATES

EVERGLADES COLLEGE, INC.,

Applicant,

v.

LINDA MCMAHON, ET AL.,

Respondents.

APPLICATION TO THE HON. ELENA KAGAN FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Pursuant to Supreme Court Rule 13.5, Everglades College, Inc. ("Applicant") moves for an extension of time of sixty days, to and including October 20, 2025, to file a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition will be August 19, 2025.

In support of this request, Applicant states as follows:

1. The United States Court of Appeals for the Ninth Circuit rendered its decision on November 5, 2024 (Exhibit A) and denied a timely petition for rehearing on May 21, 2025 (Exhibit B). This Court has jurisdiction under 28 U.S.C. § 1254(1).

2. Citing the Higher Education Act, the Department of Education has issued regulations that enable federal student-loan borrowers to apply to the Department for "borrower defense" forgiveness—a narrow class of loan forgiveness that releases

debt incurred by students at schools that engaged in certain misconduct. *See* 34 C.F.R. §§ 685.206, 685.222. In this case, a class of borrowers sued in federal district court to compel the Department merely to process their lingering borrower-defense applications under those regulations. But after secret negotiations with the plaintiffs, the Department executed a sweeping settlement that dispensed with adjudications altogether, canceled billions in loans for hundreds of thousands of borrowers, and rewrote the Department's regulations without complying with the Administrative Procedure Act. The Department also used the settlement to "determine[]" that 150 schools attended by members of the plaintiff class had engaged in "substantial misconduct." Ex. A at 14. The Department cited no evidence, provided no notice to the schools prior to the "determin[ation]," and afforded the schools no process through which they could defend themselves.

3. Because the settlement specifically named the schools, inflicted grave reputational harm on them, and exposed them to serious financial and programmatic consequences, four schools sought to intervene to object to final approval of the settlement. The district court permitted those schools, which included Everglades College, to intervene under Rule 24(b) and lodge their objections. *Id.* at 15. Everglades objected that the case was already moot and that the settlement violated due process, the APA, the HEA, and Rule 23. The district court overruled those objections. Everglades appealed. A fractured Ninth Circuit panel held that although Everglades had injury sufficient to establish constitutional standing, it lacked "prudential standing" to appeal. *Id.* at 15-17. The majority concluded that the harms

inflicted upon Everglades did not amount to "formal legal prejudice." *See id.* at 24-27.

4. Judge Collins dissented, explaining that the Ninth Circuit's formal-legal-prejudice rule—which appears nowhere in the Federal Rules of Civil Procedure—conflicts with the permissive-intervention standard in Rule 24(b), and that, at any rate, Everglades's Article III injuries clear the legal-prejudice bar. *See id.* at 32-41. Having determined that intervention was proper, Judge Collins did not opine on Applicant's additional procedural argument that the formal-legal-prejudice rule has no application in the context of agency settlements. *See, e.g.*, Applicant's Pet. for Reh'g En Banc, Doc. 94-1 at 10-11, *Sweet v. Everglades Coll., Inc.*, No. 23-15049 (9th Cir.). Rather, Judge Collins turned to the merits and concluded that the district court erred in approving the massive settlement because the Department has neither the authority to unilaterally cancel student loans en masse nor the authority to amend its regulatory framework through a settlement. *See* Ex. A at 41-45.

5. The Ninth Circuit's "formal legal prejudice" rule lacks a solid foundation, conflicts with Rule 24, and derogates the Judiciary's constitutional responsibility to adjudicate Cases and Controversies. The forthcoming petition for certiorari will ask this Court to review that important issue, which presents fundamental questions regarding separation of powers and class settlements. As a multi-state coalition outlined below, this case is one of the worst examples of "the executive branch … collusively settl[ing] cases to make policy without having to satisfy constitutionally and congressionally imposed strictures." Br. of *Amici Curiae* Ohio *et al.*, Doc. 24 at 2, *Sweet*

v. Everglades Coll., Inc., No. 23-15049 (9th Cir.). That sue-and-settle tactic short circuits both the ordinary political process and the APA by allowing federal agencies and ideologically aligned plaintiffs to negotiate settlements that dictate long-term agency policy, usually without opposition or public input. Yet under the Ninth Circuit's rule, parties directly named and affected by one of these collusive settlements are powerless to object unless they suffer "formal legal prejudice"—a seemingly nebulous threshold that goes beyond Article III's justiciability requirements.

6. Applicant's counsel requires additional time to prepare a petition that fully addresses these important and far-reaching issues in a manner most helpful to the Court. Applicant's counsel of record, Mr. Panuccio, has substantial litigation obligations between now and the current due date of the petition, including a summary-judgment hearing on July 31 in *LC 4.4 775 NE 77 Terrace, LLC v. 775 NE 77th Terrace LLC,* No. 2023-018752-CA-44 (Fla. Cir. Ct.); a deposition on August 5 in *Grove Harbour Marina and Caribbean Marketplace LLC v. Grove Bay Investment Group, LLC*, No. 2019-031658-CA-01 (Fla. Cir. Ct.); an appellate brief due on August 8 in *Perlmutter v. Federal Insurance Co.*, SC2024-0058 (Fla.); an oral argument on August 11 in *AHCA v. CMS*, No. 24-10875 (11th Cir.); a bench trial set in *LC 4.4 775 NE 77 Terrace, LLC* for a trial period between August 11 and August 29; and a bench trial set in *Grove Harbour* for a trial period between September 15 and October 3.

WHEREFORE, for the foregoing reasons, Applicant respectfully requests an extension of time of sixty days to file a petition for a writ of certiorari. Because an extension of sixty days would fall on Saturday, October 18, 2025, Applicant's new

deadline to file a petition for a writ of certiorari would run to and including Monday, October 20, 2025.

Date: July 17, 2025

Respectfully submitted,

/s/ Jesse Panuccio

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