No. _____

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF FLORIDA AND FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Petitioners,

v.

CENTER FOR BIOLOGICAL DIVERSITY, ET AL.,

Respondents.

APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the District of Columbia Circuit:

Petitioners the State of Florida and Florida Department of Environmental Protection (collectively, "Florida") respectfully request a 60-day extension of time, to and including August 24, 2026, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case, *Center for Biological Diversity* v. *Zeldin*, No. 24-5101. The D.C. Circuit entered its judgment on March 27, 2026. Unless extended, the time for filing a petition

for a writ of certiorari will expire on June 25, 2026. Under this Court's Rule 13.5, this application is being filed at least 10 days before that date.

1. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1). A copy of the opinion of the D.C. Circuit is attached as Exhibit 1.

2. This case raises important questions under the Endangered Species Act, 16 U.S.C. § 1531, *et seq.* ("ESA"), and the Clean Water Act, 33 U.S.C. § 1251, *et seq.* ("CWA"), concerning whether federal agencies, when approving a State's assumption of Section 404 permitting authority under the CWA, may comply with Section 7 of the ESA through a Programmatic Biological Opinion ("BiOp") and corresponding Incidental Take Statement ("ITS") that rely on cooperative federal–state procedures for species-specific analysis and institution of permit-specific protective measures during implementation of the State's permitting program. On these issues, the D.C. Circuit's decision creates a direct circuit split with the Second Circuit's decision in *Cooling Water Intake Structure Coalition* v. *EPA*, 905 F.3d 49 (2d Cir. 2018), and raises questions of exceptional national importance concerning State sovereignty and cooperative federalism.

3. Section 404 of the CWA prohibits the discharge of pollutants into waters of the United States without a permit. 33 U.S.C. §§ 1311(a), 1362(6), (7), (12). Although the U.S. Army Corps of Engineers ordinarily administers the Section 404 permitting program, the CWA allows States to assume that

authority subject to EPA approval and ongoing federal oversight. *Id.* § 1344(g). In fact, the CWA expresses Congress's strong preference for state administration. *Id.* § 1251(b). Prior to Florida, only two States—Michigan and New Jersey—had ever assumed Section 404 permitting authority.

Florida applied to assume the Section 404 program. As part of that process, EPA initiated a Section 7 programmatic consultation with the U.S. Fish and Wildlife Service ("FWS"). Because of the inability to predict the effects of all future permits under Florida's program on a species-specific basis, FWS evaluated the program's binding "technical assistance process"—a mandatory collaboration framework between federal and state agencies that would guarantee species-specific and project-specific analysis on a permit-by-permit basis. FWS concluded that this process included critical safeguards at least as protective as a Section 7 consultation and issued a no-jeopardy BiOp along with an ITS. EPA and Florida modeled this program on a comparable approach the Second Circuit unanimously upheld in *Cooling Water*.

A group of environmental plaintiffs challenged EPA's approval in the U.S. District Court for the District of Columbia.* For three years, Florida successfully administered the Section 404 program within state boundaries.

* Environmental groups include the Center for Biological Diversity; Defenders of Wildlife; Sierra Club; Conservancy of Southwest Florida; Florida Wildlife Federation; Miami Waterkeeper; and St. Johns Riverkeeper.

The district court vacated the approval. *Ctr. for Biological Diversity* v. *Regan*, 734 F. Supp. 3d 1 (D.D.C. 2024). The United States and Florida appealed. Across the last three administrations, the United States has defended the program approval at issue in this case.

A divided panel of the D.C. Circuit affirmed. *Ctr. for Biological Diversity* v. *Zeldin*, 171 F.4th 356 (D.C. Cir. 2026). Judge Pan, writing for the majority, held that the BiOp was invalid because FWS was required to perform a species-specific "effects analysis" across hundreds of species in Florida at the program approval stage and could not satisfy that obligation by binding itself to the permit-by-permit technical assistance process. The majority expressly rejected the Second Circuit's *Cooling Water* decision as "at odds with applicable regulations." *Id.* at 378. The panel also held the ITS invalid for failing to set an upfront numeric "amount or extent" of incidental take. *Id.* at 379–381. And the panel concluded that EPA erred in failing to consult with the National Marine Fisheries Service. *Id.* at 364 n.1. The court thus vacated EPA's approval of Florida's program.

Judge Henderson authored a forceful dissent. She endorsed *Cooling Water*'s holding that this type of programmatic BiOp is valid and concluded that "FWS reasonably reached a no-jeopardy determination" in light of the comprehensive structural safeguards built into Florida's program. *Id.* at 403. She characterized the majority's species-specific requirement as an "atextual

legal rule" that "distort[s] the underlying statutory text, impose[s] unnecessary burdens on litigants, and cause[s] confusion for courts." *Id.* at 394. She also dissented on remedy, arguing that, even if the ITS is invalid, vacatur was unnecessary and severely disruptive in light of the investments made by Florida and the reliance interests of its citizens. *Id.* at 407–408.

4. Florida respectfully requests an extension of time within which to file its petition for a writ of certiorari. This case involves the intersection of the CWA, the ESA, and principles of cooperative federalism, and it warrants close coordination between Florida and the United States. The record is extensive, the legal issues are multifaceted, and the petition will benefit from the kind of careful framing that a compressed timeline does not allow. Florida has been engaged in extensive discussions with the federal government regarding next steps, including whether to file a petition for rehearing en banc in the D.C. Circuit. The federal government has sought and received two unopposed extensions of time to file a petition for rehearing en banc in the D.C. Circuit. If Florida or the United States decides to file a petition in the D.C. Circuit, the deadline for seeking certiorari will be extended accordingly, but until a decision has been made, Florida seeks to preserve its ability to seek certiorari in this Court. In addition, counsel has been and will continue to be heavily engaged with the press of matters in this and other courts, including: (1) participating in oral argument in *Alta Power, LLC* v. *General Electric*

International, Inc., No. 25-10774, in the U.S. Court of Appeals for the Fifth Circuit on June 2, 2026; (2) filing a reply brief in *Tapia* v. *Perea*, No. 26-185, in the U.S. Court of Appeals for the Ninth Circuit on June 11, 2026; (3) filing a reply brief in *SEC* v. *Stanford International Bank*, No. 25-11338, in the U.S. Court of Appeals for the Fifth Circuit on June 11, 2026; and (4) filing a brief in opposition to certiorari in *Zavislak* v. *Netflix, Inc.*, No. 25-1142, in this Court on June 25, 2026.

Thus, the requested 60-day extension is necessary to afford counsel adequate time to prepare and file a petition that would be helpful to the Court, and to allow for additional strategic coordination between Florida and the United States.

Respectfully submitted.

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