No. A-_____

IN THE

Supreme Court of the United States

MAVERICK GAMING LLC,

Applicant,

v.

UNITED STATES OF AMERICA, ET AL.,

Respondents.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Matthew D. McGill
Counsel of Record
Lochlan F. Shelfer
Trenton Van Oss
Brian C. McCarty
GIBSON, DUNN & CRUTCHER LLP
1700 M Street N.W.
Washington, D.C. 20036
Phone: 202.887.3680
Email: mmcgill@gibsondunn.com

Counsel for Applicant
Maverick Gaming LLC

TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT:

Pursuant to Rules 13.5 and 30.2 of this Court, Applicant Maverick Gaming LLC respectfully applies for a 60-day extension of time, to and including May 12, 2025, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.[*] The court of appeals entered its judgment on December 13, 2024. App. 3a. Unless extended, the time within which to file a petition for a writ of certiorari will expire on March 13, 2025. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

BACKGROUND

This case presents an important question of law that has split the courts of appeals: whether non-party entities can use sovereign immunity to force courts to dismiss Administrative Procedure Act ("APA") suits challenging governmental action for failure to join a required party under Federal Rule of Civil Procedure 19.

1. Maverick owns and operates cardrooms in the State of Washington and seeks to expand its gaming offerings in Washington to include additional games such as roulette, craps, and sports betting. But Maverick is unable to do so because Washington permits only federally recognized Indian tribes to offer those types of games within the State. Purporting to act pursuant to the Indian Gaming Regulatory Act ("IGRA")—the federal statute regulating gaming on Indian lands—Washington entered

[*] Under this Court's Rule 29.6, Applicant states that Maverick Gaming LLC, a nongovernmental limited liability company, has no parent company, and no publicly held company owns 10% or more of Maverick Gaming LLC's stock.

into tribal-state gaming compacts with each of the 29 federally recognized Indian tribes in the State. The compacts grant the tribes the exclusive right to offer most forms of casino-style gaming (known as "class III" gaming under IGRA). These compacts were approved by the U.S. Secretary of the Interior, a condition IGRA imposes for class III gaming to be lawful on Indian lands. *See* 25 U.S.C. § 2710(d)(1)(C), (8). In 2020, Washington passed a new law giving federally recognized Indian tribes the exclusive right to offer sports betting, a type of gaming that Washington had previously omitted from the list of class III games Indian tribes could offer. Washington thereafter executed amendments to its tribal-state compacts permitting the tribes to offer sports betting, and the Secretary of the Interior approved the sports-betting compact amendments. Washington makes it a crime for any non-tribal entity to offer most forms of class III gaming.

2. On January 11, 2022, Maverick filed this lawsuit in the U.S. District Court for the District of Columbia. It challenged the Secretary of the Interior's approvals of the sports-betting compact amendments under the APA, alleging that the approvals (1) violated IGRA's requirement that class III gaming activities are lawful only if the state "permits such gaming for any purpose by any person, organization, or entity," 25 U.S.C. § 2710(d)(1)(B); (2) violated the Constitution's guarantee of equal protection by permitting a tribal sports-betting monopoly that discriminates on the basis of race and ancestry; and (3) violated the Constitution's anti-commandeering doctrine because IGRA compels States to negotiate tribal-state gaming compacts with the tribes. Maverick also challenged under 42 U.S.C. § 1983 Washington State officials'

administration of the tribal-state gaming compacts and sports-betting amendments on those same grounds and challenged those officials' enforcement of Washington's criminal gaming laws against Maverick as a violation of equal protection.

The district court granted the Washington State defendants' motion to transfer the case to the U.S. District Court for the Western District of Washington. That court then granted the Shoalwater Bay Indian Tribe's motion to intervene for the limited purpose of filing a motion to dismiss for failure to join an indispensable party under Rule 19.

On February 21, 2023, the district court granted the Shoalwater Bay Indian Tribe's motion to dismiss Maverick's complaint in its entirety. The district court concluded that the Shoalwater Bay Indian Tribe was a required party under Rule 19(a), that it could not feasibly be joined because it had not waived its sovereign immunity, and that the action could not proceed in equity and good conscience under Rule 19(b). App. 54a-65a.

Maverick timely appealed. On December 13, 2024, the Ninth Circuit affirmed the district court's order. App. 7a. The court held that it was bound by two prior Ninth Circuit decisions—*Diné Citizens Against Ruining Our Environment* v. *Bureau of Indian Affairs*, 932 F.3d 843 (9th Cir. 2019), and *Klamath Irrigation District* v. *U.S. Bureau of Reclamation*, 48 F.4th 934 (9th Cir. 2022)—to hold that the United States cannot adequately represent the interests of the Tribe, even though "the Federal Defendants and Tribe share an interest in defending the Secretary's approval of the gaming compacts and sports betting amendments." App. 22a-32a.

In a concurring opinion, Judge Miller noted that the Ninth Circuit has "created a circuit conflict" by deeming Indian tribes indispensable parties in suits challenging federal agency action under the APA. App. 47a. The Tenth Circuit has held that "a tribe is not a required party in an APA action" because "the Secretary's interest in defending his determinations is 'virtually identical' to the tribe's interest." App. 47a-48a (quoting *Sac & Fox Nation of Missouri* v. *Norton*, 240 F.3d 1250, 1259-1260 (10th Cir. 2001)). And the "District of Columbia Circuit" agrees. App. 48a (citing *Ramah Navajo School Board, Inc*. v. *Babbitt*, 87 F.3d 1338, 1350-1352 (D.C. Cir. 1996)). As Judge Miller concluded, the Ninth Circuit's contrary approach "threatens to 'sound[] the death knell for any judicial review of executive decisionmaking' in the wide range of cases in which agency actions implicate the interests of Indian tribes." App. 47a.

REASONS FOR GRANTING THE APPLICATION

1. As Judge Miller explained in his concurrence, the Ninth Circuit's erroneous decision deepens an entrenched circuit split over whether non-party Indian tribes—or, indeed, any sovereign—may insulate federal agency action from judicial review under the APA by intervening and using its sovereign immunity to force dismissal of the case under Rule 19. App. 47a-48a.

The Ninth Circuit's cases not only conflict with those of other circuits—they also are contrary to the settled position of the United States. As the government recently informed this Court, the Ninth Circuit's cases "erroneously appl[y] Rule 19 to require dismissal of [suits] under the APA," and the question "if or when an Indian Tribe's assertion of sovereign immunity may require dismissal of an APA action, may warrant

this Court's review in a future case." Gov't Br. in Opp. at 16, *Klamath Irrigation District* v. *United States Bureau of Reclamation*, No. 22-1116 (Sept. 27, 2023), 2023 WL 6367584; see also Gov't Br. in Opp. at 25, *Klamath Irrigation District* v. *United States Bureau of Reclamation*, No. 23-216 (Nov. 9, 2023), 2023 WL 7549194 ("it is the government's position that the Ninth Circuit erred in affirming the dismissal of that APA action on Rule 19 grounds").

2. "For good cause, a Justice may extend the time to file a petition for a writ of certiorari for a period not exceeding 60 days." Sup. Ct. R. 13.5. Good cause exists here for multiple reasons. *First*, counsel for Maverick have significant professional obligations during the period in which the petition would otherwise need to be prepared, including a March 3, 2025 oral argument in this Court in *CC/Devas (Mauritius) Limited* v. *Antrix Corp. Ltd.*, No. 23-1201 (U.S.); a March 19, 2025 hearing in *In re The Financial Oversight and Management Board for Puerto Rico*, No. 17-bk-4780-LTS (Bankr. D.P.R.); and several filings in state and federal appellate courts. *Second*, additional time is necessary to allow counsel to address the important and complex issues raised by the intersection of tribal sovereign immunity, judicial review of federal agency action, and the Federal Rules of Civil Procedure in this case. Maverick is not aware of any party that would be prejudiced by a 60-day extension.

CONCLUSION

For the foregoing reasons, Maverick respectfully requests that the time within which to file a petition for a writ of certiorari be extended by 60 days, to and including May 12, 2025.

February 14, 2025

Respectfully submitted,

/s/ Matthew D. McGill

Matthew D. McGill
Counsel of Record
Lochlan F. Shelfer
Trenton Van Oss
Brian C. McCarty
GIBSON, DUNN & CRUTCHER LLP
1700 M Street N.W.
Washington, D.C. 20036
Phone: 202.887.3680
Email: mmcgill@gibsondunn.com

Counsel for Applicant
Maverick Gaming LLC