

1 J. Henk Taylor, A.Z. Bar #016321  
RYAN RAPP UNDERWOOD & PACHECO, P.L.C.  
2 3200 N. Central Avenue, Suite 2250, Phoenix, Arizona 85012  
Telephone: (602) 280-1000  
3 Facsimile: (602) 265-1495  
htaylor@rrulaw.com

4 Aaron S. Ament, D.C. Bar #1602164 (*pro hac vice* forthcoming)  
5 Daniel A. Zibel, D.C. Bar #491377 (*pro hac vice* forthcoming)  
6 Maya H. Weinstein\*, N.C. Bar #56621 (*pro hac vice* forthcoming)  
NATIONAL STUDENT LEGAL DEFENSE NETWORK  
7 1015 15th Street NW, Suite 600, Washington, D.C. 20005  
(202) 734-7495  
8 aaron@defendstudents.org  
dan@defendstudents.org  
maya@defendstudents.org

9 Brian Galle, N.Y. Bar #419154 (*pro hac vice* forthcoming)  
10 Georgetown University Law Center  
600 New Jersey Avenue NW, Washington, D.C. 20001  
11 (202) 662-4039  
brian.galle@georgetown.edu

12 Attorneys for Proposed Intervenor-Defendant Student Defense  
13 \*Admitted to practice law only in North Carolina; Supervised by organizational  
principals while D.C. Bar application is pending.

14  
15 **IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF ARIZONA**

16 Grand Canyon University,  
17  
18 Plaintiff,

19 v.

20 Miguel Cardona, in his Official Capacity  
as Secretary of the United States  
21 Department of Education, and the United  
States Department of Education.

22 Defendants,

23 and

24 National Student Legal Defense Network,

25 Applicant to Intervene.

No.: 2:21-cv-00177

**MOTION OF NATIONAL  
STUDENT LEGAL DEFENSE  
NETWORK TO INTERVENE AS  
DEFENDANT**

**MEMORANDUM IN SUPPORT OF  
MOTION TO INTERVENE**

April 22, 2021

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES** ..... iii

**MOTION TO INTERVENE**..... 1

**MEMORANDUM OF POINTS AND AUTHORITIES**..... 1

**INTRODUCTION** ..... 1

**BACKGROUND** ..... 5

**I. For-Profit and Nonprofit Institutions under the Higher Education Act**..... 5

**II. The GCU-GCE Transaction** ..... 6

**III. The Department’s November 2019 Decision** ..... 7

**IV. Proposed Intervenors**..... 9

**LEGAL STANDARD** ..... 10

**ARGUMENT**..... 11

**I. Student Defense Satisfies the Three Threshold Requirements for Permissive Intervention**..... 11

**A. Student Defense has an Independent Ground for Jurisdiction** ..... 11

**B. The Motion to Intervene is Timely** ..... 12

**C. Students Defense’s Defenses Share Common Questions of Law and Fact with the Main Action**..... 12

**II. The Court Should Use Its Discretion to Permit Student Defense to Intervene**..... 13

**CONCLUSION** ..... 17

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**TABLE OF AUTHORITIES**

**CASES**

*Am. Civil Liberties Union of N. Cal. v. Burwell*, No. 16-CV-03539-LB,  
2017 WL 492833 (N.D. Cal. Feb. 7, 2017)..... 16

*Arizonans for Fair Elections v. Hobbs*, 335 F.R.D. 261 (D. Ariz. 2020) ..... 12

*Beckman Indus. V. Inst’l Ins. Co.*, 966 F.2d 470 (9th Cir. 1992) ..... 10

*Blum v. Merrill Lynch Pierce Fenner & Smith Inc.*, 712 F.3d 1349 (9th  
Cir. 2013)..... 10

*Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893 (9th  
Cir. 2011)..... 12, 13, 14

*Ctr. for Biological Diversity v. Zinke*,  
No. CV-18-00047, 2018 WL 3497081 (D. Ariz. July 20, 2018) ..... 10, 12, 13

*Digit. Media Sols. V. South University*, 1:19-CV-00145 (N.D. Ohio  
Jan. 18, 2019). ..... 9

*Dunagan et al. v. Ill. Inst. of Art, et. al*, No. 19-CV-00809 (N.D. Ill.  
Mar. 30, 2021). ..... 9

*Freedom from Religion Found. v. Geithner*, 644 F.3d 836 (9th Cir. 2011) ..... 11

*Nw. Forest Res. Council v. Glickman*, 82 F.3d 825 (9th Cir. 1996)..... 12

*Perry v. Proposition 8 Official Proponents*, 587 F.3d 947 (9th Cir. 2009) ..... 13

*Peruta v. Cnty. of San Diego*, 824 F.3d 919 (9th Cir. 2016) ..... 12

*Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326 (9th Cir. 1977) ..... 16

*Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810 (9th Cir. 2001)..... 14, 16

**STATUTES**

HEA § 101, 20 U.S.C. § 1001..... 1, 2, 5

HEA § 102, 20 U.S.C. § 1002..... 2, 5, 6

20 U.S.C. § 1094..... 6

HEA § 498, 20 U.S.C. § 1099..... 1

20 U.S.C. § 3403(b) ..... 4

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

26 U.S.C. § 501(c)(3)..... 5

Pub. L. 116-260, 134 Stat. 1182 ..... 3, 15

Pub. L. 117-2, 135 Stat. 4 ..... 3, 16

**RULES**

Fed. R. Civ. P. 24..... *passim*

**TREATISES**

7C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Fed. Practice & Proc.* § 1917 (3d ed. 2010) ..... 12

**REGULATIONS**

34 C.F.R. § 600.2 ..... 2, 5, 8

34 C.F.R. § 600.31 ..... 1, 2

34 C.F.R. §§ 600.4–600.5 ..... 2, 5

34 C.F.R. § 668.28 ..... 8

**OTHER AUTHORITIES**

Grand Canyon Education, Inc., Annual Report (Form 10-K) (Feb. 20, 2019), available at: <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001434588/000155837020001013/lope-20191231x10ka0a80b.htm> ..... 14, 15

*Grand Canyon Education Inc (LOPE) CEO Brian Mueller on Q4 2018 Results – Earnings Call Transcript*, Seeking Alpha (Feb. 20, 2019, 10:55 PM), available at: <https://seekingalpha.com/article/4242733-grand-canyon-education-inc-lope-ceo-brian-mueller-on-q4-2018-results-earnings-call-transcript> ..... 15

Henry Hansmann, *The Role of Nonprofit Enterprise*, 89 Yale L.J. 835 (1980) ..... 5, 6

*Higher Education Emergency Relief Fund (HEERF) II Public and Private Nonprofit Institution (a)(1) Programs (CFDA 84.425E and 84.425F) Frequently Asked Questions*, U.S. Dep’t of Educ. (Mar. 19, 2021), available at: <https://www2.ed.gov/about/offices/list/ope/updateda1faqsheerfii.pdf>..... 4

1 Nonprofit Conversions and Student Success: Recommendations for  
 2 Accreditors,” Student Defense, *available at:*  
 3 <https://www.defendstudents.org/news/body/quality-assurance/Student-Defense-Quality-Assurance-Initiative-Nonprofit-Conversions.pdf> ..... 9

4 Paul Fain, *Education Department Explains Grand Canyon Decision*, Inside  
 5 Higher Ed (Nov. 13, 2019), *available at:*  
 6 <https://www.insidehighered.com/quicktakes/2019/11/13/education-department-explains-grand-canyon-decision> ..... 2

7 Restatement of Charitable Nonprofits § 1.01 cmt. (Am. Law Inst.  
 8 forthcoming 2021) ..... 5

9 National Student Legal Defense Network, Comment Letter on the  
 10 Oversight of For-Profit Institutions Converting to, or Attempting to  
 11 Convert to, Non-Profit Entities (May 9, 2018), *available at:*  
 12 <https://www.defendstudents.org/comment-letter-20180509.pdf> ..... 10

13 Vivien Lee & Adam Looney, Brookings Institution, Understanding the  
 14 90/10 Rule: How reliant are public, private, and for-profit institutions  
 15 on federal aid? (Jan. 2019), *available at:* [https://www.brookings.edu/wp-content/uploads/2019/01/ES\\_20190116\\_Looney-90-10.pdf](https://www.brookings.edu/wp-content/uploads/2019/01/ES_20190116_Looney-90-10.pdf) ..... 6

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**MOTION TO INTERVENE**

Defendant-Intervenor, the National Student Legal Defense Network (“Student Defense”) respectfully moves pursuant to Federal Rule of Civil Procedure 24(b) for an order permitting it to intervene as a defendant in this action (“Main Action”), in which Plaintiff Grand Canyon University (“GCU”) challenges the decision of Defendants United States Department of Education and Secretary of Education Miguel Cardona, in his official capacity, (collectively, the “Department” or “Defendants”) to deny its application for change in ownership from for-profit to nonprofit status. This motion is supported by the accompanying Memorandum of Points and Authorities and proposed Answer in Intervention (attached hereto as Exhibit A). Undersigned counsel reached out to counsel for the parties to obtain consent to intervention. GCU does not consent, and the Department stated that it does not take a position at this time.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**INTRODUCTION**

Under the Higher Education Act of 1965, 20 U.S.C. § 1001 *et seq.* (“HEA”), the Department must determine whether institutions of higher education can participate in the Federal Student Aid programs authorized by Title IV of that Act, and thus serve as conduits for students to receive federal student loans and grants. In this regard, the HEA requires the Department to assess certain facts relating to an institution when determining whether the institution can participate. Two of those factors are relevant here.

*First*, when “qualifying” an institution to participate in the Title IV programs, the Department must consider the institution’s ownership. HEA § 498, 20 U.S.C. § 1099c. Because the Department is required to consider ownership, and factors relating to both ownership and corporate control, a participating college must obtain approval from the Department when undergoing a “change in ownership that results in a change in control.”

1 *See generally* 34 C.F.R. § 600.31. *Second*, at all times, the Department must determine  
2 whether an institution qualifies as a “public,” “proprietary,” (*i.e.*, for-profit) or “other  
3 nonprofit” institution as those terms are defined in the Department’s regulations. *See*  
4 HEA §§ 101–102, 20 U.S.C. § 1001–1002; *see also* 34 C.F.R. §§ 600.4–600.5.

5 Therefore, when an institution undergoes a “change in ownership resulting in a change in  
6 control,” the Department must reconsider the institution’s status as a public, proprietary,  
7 or nonprofit institution. 34 C.F.R. § 600.31.

8 This case involves an institution that sought to undergo a change in ownership that  
9 it believed would change its status with the Department from that of a proprietary  
10 institution to that of a nonprofit institution. *See generally* Compl. ¶¶ 1–3. In 2018, GCU  
11 submitted an application to the Department under which the institution would no longer  
12 be owned by the for-profit Grand Canyon Education, Inc. (“GCE”). *Id.* ¶ 61. Instead,  
13 GCU proposed an arrangement to the Department where it would purchase real property,  
14 tangible assets, and intangible assets from GCE, and then obtain services from GCE in  
15 exchange for fees paid pursuant to a Master Services Agreement (“MSA”). *Id.* ¶¶ 39, 62.

16 On November 6, 2019, the Department wrote to Brian Mueller, President and  
17 CEO of GCE and GCU, and informed him that it approved the change in ownership from  
18 GCE to GCU (referred to in the letter as “Gazelle”) and would allow GCU to continue  
19 participating in the Title IV programs. *Id.* Nevertheless, after applying its three-part test  
20 to determine whether GCU qualified as a nonprofit, *see* 34 C.F.R. § 600.2 (definition of  
21 “[n]onprofit institution”), the Department determined, *inter alia*, that “the primary  
22 purpose” of the transaction was “to drive shareholder value for GCE,” and GCU therefore  
23 did not meet the definition of a nonprofit institution. Letter from Michael Frola, Dir.,  
24  
25

1 Multi-Reg'l & Foreign Schs. Participation Div., U.S. Dep't of Educ., to Brian Mueller,  
2 President, Grand Canyon Univ. (Nov. 6, 2019) (“Frola Ltr.”).<sup>1</sup>

3 GCU attempted to convince the Department that its November 2019 decision was  
4 erroneous. *See* Compl. ¶¶ 98–101. Unable to do so, GCU and GCE entered into a new  
5 Master Services Agreement (the “Amended MSA”), which altered aspects of the original  
6 arrangement. *Id.* ¶¶ 102–05. But on January 12, 2021, the Department issued a second  
7 decision “again declining to recognize GCU as a nonprofit for Title IV purposes.” *Id.* ¶  
8 128. The January 2021 decision affirmed that, even under the Amended MSA, “GCU will  
9 still not meet the requirement that both the primary activities of the organization and its  
10 stream of revenue benefit the nonprofit itself.” *Id.* ¶ 129.

11 GCU filed this lawsuit on February 2, 2021. On the one hand, this is a dispute  
12 between a regulated entity and its regulator about corporate restructuring, tax laws, and  
13 the applicable regulations. But it is more than that because of the intended beneficiaries  
14 of the entire regulatory structure: students. Thousands of third party intended  
15 beneficiaries—namely *the current and future students* who enroll at GCU—are impacted  
16 by the transaction and whether the institution is beholden to GCE or is, more broadly,  
17 operating in the public interest as a *bona fide* nonprofit institution. But remarkably,  
18 neither the 2019 decision nor the 2021 reconsideration decision discuss or describe the  
19 impacts on students that flow from the proposed conversion.

20 For students, there are immediate consequences should the Department reverse  
21 course. Under the Coronavirus Response and Relief Supplemental Appropriations Act,  
22

---

23 <sup>1</sup> This letter was linked in an Insider Higher Ed article. See Paul Fain, *Education*  
24 *Department Explains Grand Canyon Decision*, Inside Higher Ed (Nov. 13, 2019),  
25 *available at:* <https://www.insidehighered.com/quicktakes/2019/11/13/education-department-explains-grand-canyon-decision>. A direct URL to the letter is:  
<https://www.documentcloud.org/documents/6548148-Grand-Canyon-University-Decision-on-CIO-11-06-19.html>

1 2021 (“CRRSAA”) (Pub. L. 116-260, 134 Stat. 1182) and the American Rescue Plan  
2 (“ARP”) (Pub. L. 117-2, 135 Stat. 4), Congress provided substantial COVID-19 relief  
3 funds to institutions of higher education through the Higher Education Emergency Relief  
4 Funds (“HEERF”). But in so doing, Congress carved out a distinction for proprietary  
5 schools, which must use 100 percent of HEERF awards to provide emergency financial  
6 aid grants directly to students. Were GCU to be considered a nonprofit institution, it  
7 would be allowed to retain portions of those funds for institutional purposes, including,  
8 for example, covering lost revenue and reimbursement for expenses already incurred. *See*  
9 *Higher Education Emergency Relief Fund (HEERF) II Public and Private Nonprofit*  
10 *Institution (a)(1) Programs (CFDA 84.425E and 84.425F) Frequently Asked Questions*,  
11 U.S. Dep’t of Educ. (Mar. 19, 2021), *available at*:  
12 <https://www2.ed.gov/about/offices/list/ope/updatedalfaqsheerfii.pdf>. The current  
13 designation of GCU as a proprietary institution ensures that these federal funds solely  
14 benefit students, rather than GCU shareholders.

15 Under the Amended MSA terms, the for-profit, publicly traded GCE will take  
16 roughly 59% of the revenues that GCU derives from student tuition, housing, and fees  
17 (which may or may not include federal COVID-19 relief funding), Compl. ¶ 104, but  
18 there is no party to this matter currently advocating for how that revenue will be used to  
19 serve students.<sup>2</sup> Despite this, GCU asserts that the Department of Education—which  
20 provided more than \$950 million in federal student loans and grants to Grand Canyon in  
21 2019-20—is wrong to continue to treat the institution as anything other than a nonprofit  
22 institution. Students have a unique interest ensuring that GCU and GCE do not paper  
23

---

24 <sup>2</sup> Notably, Congress has placed certain limitations on the Department’s authorities.  
25 For example, the Department is not authorized to “exercise any direction, supervision, or  
control over the curriculum, program of instruction, administration, or personnel of any  
educational institution[.]” 20 U.S.C. § 3403(b).

1 over their profit arrangements simply by rebranding GCU as a “nonprofit.” For this and  
2 other reasons, explained more fully below, Student Defense seeks to intervene in this  
3 proceeding to ensure that the student voice is heard.

## 4 BACKGROUND

### 5 I. For-Profit and Nonprofit Institutions under the Higher Education Act

6 The HEA creates an important distinction between “public,” “nonprofit,” and  
7 “proprietary” institutions for purposes of participation in the Title IV student aid  
8 programs. But Congress did not define these terms. *See* HEA § 101–102, 20 U.S.C. §  
9 1001–1002. The Department, however, has adopted definitions by regulation, which  
10 establish that a nonprofit institution is one that (1) is legally authorized to operate as a  
11 nonprofit in the states in which it is physically located; (2) is determined by the IRS to be  
12 an organization under 26 U.S.C. § 501(c)(3); and (3) “[i]s owned and operated by one or  
13 more nonprofit corporations or associations, no part of the net earnings of which benefits  
14 any private shareholder or individual[.]” 34 C.F.R. § 600.2 (definition of “[n]onprofit  
15 institution”); *see also* Frola Ltr. at 9–10; 34 C.F.R. § 600.5 (defining “proprietary  
16 institution” as an “institution of higher education” that is, *inter alia*, “not a public or  
17 private non-profit” institution).

18 In nonprofit law, the requirement that no part of the net earnings benefit any  
19 private shareholder or individual is referred to as the “nondistribution constraint”<sup>3</sup> and  
20 generally is considered essential to the enhanced trust that stakeholders and regulators  
21 afford nonprofit organizations over organizations not so constrained.<sup>4</sup> The nondistribution  
22

---

23 <sup>3</sup> *See* Restatement of Charitable Nonprofits § 1.01 cmt. (Am. Law Inst.  
24 forthcoming 2021).

25 <sup>4</sup> *See, e.g.,* Henry Hansmann, *The Role of Nonprofit Enterprise*, 89 Yale L.J. 835,  
847 (1980) (explaining that “because of the legal constraints under which it must  
operate” a nonprofit warrants greater trust from donors and other consumers).

1 constraint is essential for diverse stakeholders to make an informed choice to trust a  
2 nonprofit organization to prioritize its *mission* over the financial interests of those who  
3 control the organization.<sup>5</sup> Without the nondistribution constraint, those stakeholders have  
4 less assurance that the organization will pursue its mission rather than pursuing private  
5 financial interests.<sup>6</sup>

6 Congress recognized these divergent incentives when it set requirements specific  
7 to for-profit institutions. One of these statutory provisions, commonly referred to as the  
8 “90/10 Rule,” requires for-profit schools to derive at least 10% of their revenues from  
9 sources other than federal student aid programs. 20 U.S.C. § 1094(a)(24). The 90/10 Rule  
10 was intended to protect students at for-profit colleges by ensuring that “if an institution is  
11 providing a valuable education, someone other than the federal government should be  
12 willing to pay for students to attend.”<sup>7</sup> When a school converts from a for-profit to a  
13 nonprofit, it must report compliance with 90/10 for the first year following its conversion.  
14 Another requirement, for example, is that virtually all programs offered by for-profit  
15 institutions must “prepare students for gainful employment in a recognized occupation,” a  
16 requirement inapplicable to public or nonprofit degree programs. 20 U.S.C. §§  
17 1002(b)(1)(A)(i), (c)(1)(A).

## 18 II. The GCU-GCE Transaction

19 The transaction proposed by GCE and GCU would allow the two companies to  
20 hide behind a façade of nonprofit designation in order to avoid adhering to statutory  
21

---

22 <sup>5</sup> *Id.* at 844–45.

23 <sup>6</sup> *Id.* at 873 (describing the nondistribution constraint as “the essential characteristic  
24 that permits nonprofit organizations to serve effectively as a response to contract failure”).

25 <sup>7</sup> Vivien Lee & Adam Looney, Brookings Institution, *Understanding the 90/10 Rule: How reliant are public, private, and for-profit institutions on federal aid?* (Jan. 2019), available at: [https://www.brookings.edu/wp-content/uploads/2019/01/ES\\_20190116\\_Looney-90-10.pdf](https://www.brookings.edu/wp-content/uploads/2019/01/ES_20190116_Looney-90-10.pdf).

1 protections enacted by Congress to protect for-profit college students. Under the  
2 proposed structure, the entities would continue functioning in a manner substantially  
3 similar to its current operations as a for-profit college, because GCE will provide services  
4 to GCU at a cost that far exceeds their value, using funds derived from student tuition,  
5 housing, and other fees. Frola Ltr., at 2–4.

6 According to the Department, the original MSA required GCU to pay GCE a fee  
7 equal to 60% of GCU’s Adjusted Gross Revenue (which includes tuition and revenue  
8 generated from student housing, student meal plans, student activities, athletic and  
9 recreation revenue, and student use of online communication and learning services). *Id.* at  
10 3. However, under the arrangement, GCE would only be responsible for 28% of GCU’s  
11 operating costs. *Id.* at 3, 6. Under the MSA, if GCU were not to renew the agreement at  
12 end of the 15-year initial term or after each automatic 5-year renewal term, a massive  
13 non-renewal fee would be imposed on GCU. *Id.* at 3–4. GCU could only terminate the  
14 agreement if it first paid off the balance of the \$800 million loan from GCE that it took  
15 out to “purchase” the existing campus. *Id.* at 2–4.

16 In January 2020, GCU and GCE amended the MSA, capping the fee structure at  
17 59% of GCU’s total revenue, only marginally less than the original 60%. Compl. ¶¶ 102,  
18 104. The Amended MSA also allowed GCU to invoke its right to terminate sooner and  
19 reduced the termination fee. *Id.* ¶¶ 105. The transaction was also problematic in that it was  
20 structured such that many members of the GCU Executive Leadership Team would  
21 remain employed by GCE. Significantly, Brian Mueller, CEO of GCE, would continue to  
22 serve as President of GCU. Letter from Martina Fernandez-Rosario, Dir., Sch. Eligibility  
23 & Oversight Serv. Grp., U.S. Dep’t of Educ., to Brian Mueller, President, Grand Canyon  
24 Univ. (Jan. 12, 2021), at 17–19.

25

### 1           **III.    The Department’s November 2019 Decision**

2           The genesis of this litigation stems from the Department’s application of the third  
3 prong of the definition of “nonprofit institution” in the regulations to deny nonprofit  
4 status to GCU: the requirement that no part of the net earnings benefit any private  
5 shareholder or individual. *See supra* pp. 5–6. The Department did not dispute that GCU is  
6 authorized to operate as a nonprofit in the states in which it is physically located (prong  
7 1), nor did it take a position regarding the IRS’s determination (prong 2). Rather, after  
8 applying the third prong of the definition the Department concluded that GCU was not a  
9 nonprofit. Accordingly, when the Department approved the change in ownership  
10 application, it approved GCU as a proprietary (for-profit) institution for the purposes of  
11 its continued participation in Title IV, HEA Programs. *Frola Ltr.*, at 16-17.

12           In November 2019, the Department informed GCU that it would be subject to  
13 regulatory requirements of for-profit institutions such as compliance with “90/10  
14 eligibility requirements described in 34 C.F.R. § 668.28 and any applicable gainful  
15 employment program requirements set out in 34 C.F.R. § Subpart Q.” *Id.* at 17. The  
16 Department noted that GCU met two of three criteria that define a nonprofit under 34  
17 C.F.R. § 600.2: (1) the IRS determined GCU to be a 501(c)(3) nonprofit and (2) GCU is  
18 legally authorized to operate as a nonprofit in the state that it was physically located.  
19 However, the Department determined that GCU did not meet the requirement that no part  
20 of the net earnings benefit any private shareholder or individual.

21           In reaching the determination that GCU failed to show that no part of the net  
22 earnings benefitted GCE and its shareholders, the Department found that the MSA  
23 requires GCU to pay significant portions of its revenue to GCE. *Frola Ltr.*, at 14; *see also*  
24 *Fernandez-Rosario Letter*, at 3–4, The Department also raised concerns related to the  
25 nondistribution constraint, highlighting that GCU appears to be GCE’s captive client.

1 Frola Ltr., at 14. The Department noted the non-renewal fees and the buy-out requirement  
2 to terminate the agreement. In addition to the financial constraints, the nonprofit GCU  
3 Board of Trustees would be governed by people who currently sit on the for-profit GCU  
4 board. *Id.* at 16. This structure makes it highly improbable, from a practical standpoint,  
5 that GCU could end its contractual relationship in the event that GCE fails to deliver  
6 student services or meet the demands of GCU. In spite of the Department’s thorough  
7 technical analyses of the transaction, students—the intended beneficiaries of Title IV  
8 programs—are absent from its discussions.

#### 9 **IV. Proposed Intervenors**

10 Student Defense is a nonprofit, non-partisan organization, recognized as tax  
11 exempt under section 501(c)(3) of the Internal Revenue Code that works to advance  
12 students’ rights to educational opportunity and to ensure that higher education provides a  
13 launching point for economic mobility. Declaration of Aaron Ament at ¶ 3–4 (attached  
14 hereto as Exhibit B). Student Defense has represented numerous students who have been  
15 harmed by the ramifications of attempted nonprofit conversions and changes in  
16 ownership of their institutions.<sup>8</sup> Student Defense frequently represents students who are  
17 targeted by for-profit, often online institutions of higher education, including veterans,  
18 students of color, and those with financial hardships. Ament Decl. ¶ 4.

19 Student Defense has particular expertise in policies that are intended to protect  
20 students after a nonprofit conversion. In 2019, Student Defense published a report,  
21 “Nonprofit Conversions and Student Success,” including recommendations for higher  
22 education accrediting agencies to protect students during conversions.<sup>9</sup> In 2018, Student

---

23 <sup>8</sup> See *Dunagan et al. v. Ill. Inst. of Art, et al.*, No. 19-cv-00809 (N.D. Ill. Mar. 30,  
24 2021); *Digit. Media Sols. v. South University*, 1:19-CV-00145 (N.D. Ohio Jan. 18, 2019).

25 <sup>9</sup> “Nonprofit Conversions and Student Success: Recommendations for

1 Defense submitted a detailed comment to the National Advisory Committee on  
2 Institutional Quality and Integrity (“NACIQI”), a Federal Advisory Committee  
3 established by the HEA, in response to an invitation from NACIQI to provide analysis  
4 regarding increased oversight of institutions converting, or attempting to convert to,  
5 nonprofit status.<sup>10</sup>

### 6 LEGAL STANDARD

7 Under Fed. R. Civ. P. 24(b)(1)(B), the Court may permit intervention by any party  
8 who “has a claim or defense that shares with the main action a common question of law  
9 or fact.” Courts in the Ninth Circuit require parties to satisfy three threshold elements in  
10 order to permissively intervene: (1) an independent ground for jurisdiction; (2) a timely  
11 motion; and (3) a common question of law and fact between the movant’s claim or  
12 defense and the Main Action. *See, e.g., Blum v. Merrill Lynch Pierce Fenner & Smith*  
13 *Inc.*, 712 F.3d 1349, 1353 (9th Cir. 2013) (citing *Beckman Indus. v. Int’l Ins. Co.*, 966  
14 F.2d 470, 473 (9th Cir. 1992)). In addition, a motion to intervene must “be accompanied  
15 by a pleading that sets out the claim or defense for which intervention is sought.” Fed. R.  
16 Civ. P. 24(c). Student Defense is contemporaneously filing a proposed Answer (attached  
17 hereto as Exhibit A).

18 Once these requirements are satisfied, the Court may grant permissive  
19 intervention. *Id.* “In exercising its discretion, the court must consider whether the  
20 intervention will unduly delay or prejudice the adjudication of the original parties’

21  
22 \_\_\_\_\_  
23 Accreditors,” Student Defense, *available at:*  
<https://www.defendstudents.org/news/body/quality-assurance/Student-Defense-Quality-Assurance-Initiative-Nonprofit-Conversions.pdf>.

24 <sup>10</sup> National Student Legal Defense Network, Comment Letter on the Oversight of  
25 For-Profit Institutions Converting to, or Attempting to Convert to, Non-Profit Entities  
(May 9, 2018), *available at:* <https://www.defendstudents.org/comment-letters/document/comment-letter-20180509.pdf>.

1 rights.” Fed. R. Civ. P. 24(b)(3); *accord Blum*, 712 F.3d at 1354. *See also, e.g., Ctr. for*  
2 *Biological Diversity v. Zinke*, No. CV-18-00047-TUC-JGZ, 2018 WL 3497081, at \*4 (D.  
3 Ariz. July 20, 2018) (granting permissive intervention where there was “no suggestion”  
4 of prejudice).

## 5 **ARGUMENT**

6 Student Defense seeks to intervene at the start of this litigation because if GCU  
7 prevails in challenging the Department’s decision, students are at substantial risk of harm.  
8 Student Defense does not raise any claims or questions of law not presented in the Main  
9 Action. Furthermore, Student Defense will align its position with the Department’s  
10 reasoning under the HEA and APA for denying GCU’s participation in Federal Student  
11 Aid programs as a nonprofit institution. For these reasons, intervention presents no  
12 jurisdictional concerns and poses no risk of delaying the Main Action or prejudicing the  
13 original parties to the case.

14 Importantly, Student Defense brings unique perspective and subject matter expertise  
15 to this case. Not only is Student Defense a voice for students, whose lives are most  
16 impacted by this action, but it is also staffed by individuals who are experts at the  
17 intersection of consumer protection and higher education, including individuals with high  
18 level government experience working on related issues. Accordingly, the Court should  
19 exercise its discretion to permit Student Defense to intervene as a defendant in this case.

### 20 **I. Student Defense Satisfies the Three Threshold Requirements for Permissive** 21 **Intervention**

#### 22 **A. Student Defense has an Independent Ground for Jurisdiction**

23 As a proposed defendant-intervenor in a federal question case, Student Defense  
24 need not show an independent ground for jurisdiction. *Freedom from Religion Found. v.*  
25 *Geithner*, 644 F.3d 836, 844 (9th Cir. 2011) (“[I]n federal-question cases, the identity of

1 the parties is irrelevant and the district court’s jurisdiction is grounded in the federal  
2 question(s) raised by the plaintiff.”). For this reason, the independent jurisdictional  
3 grounds requirement “does not apply to proposed intervenors in federal-question cases  
4 when the proposed intervenor is not raising new claims” or is a defendant. *Id.* (citing 7C  
5 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Fed. Practice & Proc.* § 1917  
6 (3d ed. 2010) (“In federal-question cases there should be no problem of jurisdiction with  
7 regard to an intervening defendant . . . .)); *see also Zinke*, 2018 WL 3497081, at \*4.

### 8 **B. The Motion to Intervene is Timely**

9 This Motion is undeniably timely. The Ninth Circuit has identified three factors  
10 relevant to determining whether a motion is timely: “(1) the stage of the proceeding at  
11 which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the  
12 reason for and length of any delay.” *Peruta v. Cnty. of San Diego*, 824 F.3d 919, 940 (9th  
13 Cir. 2016) (en banc) (citation omitted). Moving “at an early stage of the proceedings,”  
14 when “intervention would not cause disruption or delay in the proceedings,” “are  
15 traditional features of a timely motion.” *Citizens for Balanced Use v. Mont. Wilderness*  
16 *Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011) (citing *Nw. Forest Res. Council v. Glickman*, 82  
17 F.3d 825, 836 (9th Cir. 1996)); *see also Arizonans for Fair Elections v. Hobbs*, 335  
18 F.R.D. 261, 265–66 (D. Ariz. 2020) (internal quotations omitted) (finding a motion  
19 timely when filed “at the outset of litigation” and before defendants filed an answer).

20 Student Defense is filing this motion at the beginning of the litigation, before  
21 Defendants file a responsive pleading. Granting this motion will cause neither delay nor  
22 prejudice to either party. *See, e.g., Glickman*, 82 F.3d at 837 (holding that a motion to  
23 intervene was timely where it was filed “before the [Defendant] had filed an answer, and  
24 before any proceedings had taken place”).

25



1 Zinke, 2018 WL 3497081, at \*4 (finding no prejudice where intervenor’s motion was  
2 timely filed and did not propose to bring new questions of law or fact into the dispute).

3 *Second*, intervention is particularly appropriate where the intervenors’ interests  
4 may not be adequately represented by other parties. *Perry v. Proposition 8 Official*  
5 *Proponents*, 587 F.3d 947, 955 (9th Cir. 2009) (quoting *Spangler v. Pasadena City Bd. of*  
6 *Educ.*, 552 F.2d 1326, 1329 (9th Cir.1977)); *Citizens for Balanced Use*, 647 F.3d at 898–  
7 900 (reversing denial of intervention where, despite sharing an ultimate objective, the  
8 original defendant might not adequately represent the applicant’s interests). This factor is  
9 satisfied where, as here, the Department and Student Defense share an ultimate objective  
10 but have different interests. *Sw. Ctr. For Biological Diversity v. Berg*, 268 F.3d 810, 823  
11 (9th Cir. 2001) (“Just as the City could not successfully negotiate the Plans without some  
12 private sector participation from Applicants, so too the City in this case cannot be  
13 expected successfully to safeguard Applicants’ legally protectable interests.”).

14 There is no question that the interests of students and the Department are not the  
15 same. Whereas both the 2019 decision and 2021 reconsideration decision are premised on  
16 issues of technical noncompliance with a complicated regulatory regime, Student  
17 Defense is focused primarily on the real-world impacts on students that may result if  
18 GCU modifies the transaction to appease issues of technical noncompliance. For  
19 instance, whereas Department has analyzed numerous “valuation” reports, a “transfer  
20 pricing planning report,” a “transfer pricing study,” and an “economic profit split”  
21 analysis, the primary focus of Student Defense is the impact that the transaction would  
22 have on students. *See, e.g.* Fernandez-Rosario Ltr. at 4–9. If GCU is permitted to convert  
23 to a nonprofit while effectively remaining a for-profit institution, the majority of revenues  
24 from tuition and fees that students pay the school (*i.e.*, 59% under the Amended MSA)  
25

1 will go to benefit GCE and its shareholders, rather than to directly benefit the educational  
2 institution and its students.

3 GCU—but presumably not the Department—is similarly focused on these real-  
4 world consequences, albeit from the opposite perspective. For instance, GCE reported to  
5 investors that “ED’s determination to treat GCU as a proprietary institution for Title IV,  
6 HEA purposes could adversely impact GCU’s enrollment.” Grand Canyon Education,  
7 Inc., Annual Report (Form 10-K) (Feb. 20, 2019) at 24, *available at*:  
8 <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001434588/000155837020001013/lope-20191231x10ka0a80b.htm>. GCE also stated that any limitations on GCU’s ability to  
9 “identify itself as a nonprofit university in its advertising or other materials” could “have  
10 a material adverse effect on its enrollment and, consequently, on [GCU’s] and [GCE’s]  
11 financial condition, results of operations and cash flows.” *Id.*<sup>11</sup>

12  
13 For students, the consequences of the proposed conversion are even more tangible.  
14 As part of recent COVID-19 relief packages, Congress placed restrictions on how for-  
15 profit colleges spend pandemic-related grant funds. These restrictions have significant  
16 implications for students. As a for-profit, GCU received over \$18 million under the  
17 CRRSAA formula (governing the second COVID-19 relief package), all of which must  
18 be provided to students to cover cost of attendance or pandemic-related emergency costs  
19 such as healthcare, childcare, food and housing. If, however, GCU was permitted to

---

20 <sup>11</sup> Notably, after it began advertising as a nonprofit school, GCU hit a record high  
21 of new student enrollment. *See Grand Canyon Education Inc (LOPE) CEO Brian*  
22 *Mueller on Q4 2018 Results – Earnings Call Transcript*, Seeking Alpha (Feb. 20, 2019,  
23 10:55 PM), *available at*: <https://seekingalpha.com/article/4242733-grand-canyon-education-inc-lope-ceo-brian-mueller-on-q4-2018-results-earnings-call-transcript>. GCE  
24 attributed this increase—and the concurrent revenue growth—specifically to GCU’s  
25 nonprofit status, with CEO Mueller boasting that being a nonprofit “has provided a  
tailwind from a new student growth perspective” and that the numbers are “evidence that  
being out there now a million times a day saying, we’re non-profit, has had an impact.”  
*Id.*

1 participate as a non-profit, GCU will only be required to provide \$11.175 million in  
2 direct student aid to students.

3 In contrast, CRRSAA provides far more flexibility to nonprofit and public  
4 institutions. While nonprofit and public institutions are required to give at least the same  
5 amount in direct financial aid grants to students as they were required to provide under a  
6 formula adopted under the prior “CARES Act,” governing an initial round of COVID-19  
7 funding, institutions may use remaining grant funds for institutional needs, such as lost  
8 revenue. This distinction is critical, because whereas nonprofit institutions’ primary  
9 stakeholders are their students, for-profit institutions have a fiduciary obligation to  
10 shareholders with financially motivated interests. If GCU were able to spend the stimulus  
11 funds under the provisions afforded to nonprofit institutions, there is a significant risk of  
12 large portions of these taxpayer funds flowing to GCE.

13 The implications for GCU students will continue under a new round of funding  
14 (HEERF III) that was included in Section 2003 of the ARP, signed into law on March 11,  
15 2021. While allocations have not yet been determined, the spending requirements are  
16 similar to those established under the CRRSAA: for-profit institutions must spend all  
17 funding on student aid grants while nonprofit and public institutions are only required to  
18 spend only half on student aid, with remaining funds going to the institution itself. Yet  
19 again, if considered a nonprofit under this formula, students would be at risk of GCU  
20 spending emergency grants to prioritize GCE shareholders, not students.

21 *Third*, intervention is appropriate where the proposed intervenor “would likely  
22 offer important elements to the proceedings that the existing parties would likely  
23 neglect.” *Berg*, 268 F.3d at 823; *see also Spangler*, 552 F.2d at 1329 (asserting that a  
24 court should consider “whether parties seeking intervention will significantly contribute  
25 to full development of the underlying factual issues in the suit, and . . . the legal questions

1 presented”); *Am. Civil Liberties Union of N. Cal. v. Burwell*, No. 16-CV-03539-LB, 2017  
2 WL 492833, at \*3 (N.D. Cal. Feb. 7, 2017) (granting United States Conference of  
3 Catholic Bishop’s motion to intervene in Establishment Clause challenge where  
4 intervention would “contribute to the development of the factual and legal landscape”).  
5 As described above, the Department has focused exclusively in its letters on technical  
6 legal compliance, without significant consideration to the implications that this case will  
7 have on students. Without Student Defense’s intervention, the impact on students may  
8 not be addressed.

9 If GCU is granted nonprofit status without adequate student protections, the risks  
10 for students are high. Student Defense is uniquely positioned to advocate on behalf of  
11 students and provide the court with a necessary perspective on how the legal issues  
12 presented impact students.

### 13 CONCLUSION

14 Defendant-Intervenor Student Defense respectfully requests that the Court grant  
15 its motion for permissive intervention. Student Defense meets all of the requirements of  
16 permissive intervention under Federal Rule of Civil Procedure 24(b)(1)(B) and its  
17 participation will materially assist the resolution of issues in this case.

18 Respectfully submitted,

19 /s/ J. Henk Taylor  
20 J. Henk Taylor, A.Z. Bar #016321  
21 RYAN RAPP UNDERWOOD &  
22 PACHECO, P.L.C.  
23 3200 N. Central Avenue, Suite 2250  
24 Phoenix, Arizona 85012  
25 Telephone: (602) 280-1000  
Facsimile: (602) 265-1495  
htaylor@rrulaw.com

Aaron S. Ament, D.C. Bar #1602164  
(*pro hac vice* forthcoming)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Daniel A. Zibel, D.C. Bar #491377  
(*pro hac vice* forthcoming)  
Maya H. Weinstein\*, N.C. Bar #56621  
(*pro hac vice* forthcoming)  
NATIONAL STUDENT LEGAL  
DEFENSE NETWORK  
1015 15th Street NW, Suite 600  
Washington, D.C. 20005  
(202) 734-7495  
[aaron@defendstudents.org](mailto:aaron@defendstudents.org)  
[dan@defendstudents.org](mailto:dan@defendstudents.org)  
[maya@defendstudents.org](mailto:maya@defendstudents.org)

Brian Galle, N.Y. Bar #419154  
(*pro hac vice* forthcoming)  
Georgetown University Law Center  
600 New Jersey Avenue NW  
Washington, D.C. 20001  
(202) 662-4039  
[brian.galle@georgetown.edu](mailto:brian.galle@georgetown.edu)

*Attorneys for Proposed Intervenor-  
Defendant Student Defense*

\* Admitted to practice law only in North  
Carolina; Supervised by organizational  
principals while D.C. Bar application is  
pending.

April 22, 2021

# **EXHIBIT A**

1 J. Henk Taylor, A.Z. Bar #016321  
2 RYAN RAPP UNDERWOOD & PACHECO, P.L.C.  
3 3200 N. Central Avenue, Suite 2250, Phoenix, Arizona 85012  
4 Telephone: (602) 280-1000  
5 Fascimile: (602) 265-1495  
6 htaylor@rrulaw.com

7 Aaron S. Ament, D.C. Bar #1602164 (*pro hac vice* forthcoming)  
8 Daniel A. Zibel, D.C. Bar #491377 (*pro hac vice* forthcoming)  
9 Maya H. Weinstein\*, N.C. Bar #56621 (*pro hac vice* forthcoming)  
10 NATIONAL STUDENT LEGAL DEFENSE NETWORK  
11 1015 15th Street NW, Suite 600, Washington, D.C. 20005  
12 (202) 734-7495  
13 aaron@defendstudents.org  
14 dan@defendstudents.org  
15 maya@defendstudents.org

16 Brian Galle, N.Y. Bar #419154 (*pro hac vice* forthcoming)  
17 Georgetown University Law Center  
18 600 New Jersey Avenue NW, Washington, D.C. 20001  
19 (202) 662-4039  
20 brian.galle@georgetown.edu

21 Attorneys for Proposed Intervenor-Defendant Student Defense  
22 \* Admitted to practice law only in North Carolina; Supervised by organizational  
23 principals while D.C. Bar application is pending.

24 **IN THE UNITED STATES DISTRICT COURT**  
25 **FOR THE DISTRICT OF ARIZONA**

26 Grand Canyon University,

27 Plaintiff,

28 v.

Miguel Cardona, in his Official Capacity as  
Secretary of the United States Department  
of Education, and the United States  
Department of Education.

Defendants,

and

National Student Legal Defense Network,

Applicant to Intervene.

No.: 2:21-cv-00177

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**INTERVENOR-DEFENDANT’S ANSWER**

Defendant-Intervenor National Student Legal Defense Network, by and through undersigned counsel, hereby states as follows as an Answer to the Complaint of Plaintiff Grand Canyon University in the above-captioned action.

1. Intervenor-Defendant admits that GCU is a private Christian university in Phoenix, Arizona, and that from its inception in 1949 until 2004, GCU operated as an Arizona nonprofit institution. Except as so stated, Intervenor-Defendant lacks information sufficient to admit or deny, and therefore denies, the allegations in this Paragraph.

2. Intervenor-Defendant lacks information sufficient to admit or deny, and therefore denies, the allegations in this Paragraph.

3. Intervenor-Defendant admits that “new GCU” was recently formed. Except as so stated, Intervenor-Defendant lacks information sufficient to admit or deny, and therefore denies, the allegations in this Paragraph.

4. Intervenor-Defendant admits that the IRS and GCU’s accreditor approved GCU’s nonprofit status. Except as so stated, Intervenor-Defendant lacks information sufficient to admit or deny, and therefore denies, the allegations in this Paragraph.

5. Intervenor-Defendant admits that the Department has denied GCU’s application to be considered a nonprofit institution of higher education, as that term is used with reference to Title IV of the Higher Education Act (“HEA) and its regulations. Except as so stated, Intervenor-Defendant denies the allegations in this Paragraph.

6. Deny.



1 Department reinforced the position stated in the previous sentence in its January 12, 2021  
2 letter. The final two sentences of this Paragraph constitute legal conclusions to which no  
3 response is required.

4 12. This allegation, including its subparts, contains legal conclusions to which  
5 no response is required. To the extent a response is required, Intervenor-Defendant denies  
6 the allegations.

7 13. This allegation makes and characterizes a legal conclusion, so no response  
8 is required. To the extent a response is required, Intervenor-Defendant denies the  
9 allegations.

10 14. Intervenor-Defendant lacks information sufficient to admit or deny, and  
11 therefore denies, the allegations in this Paragraph.

12 15. Intervenor-Defendant admits that Paragraph 15 describes Plaintiff's claims  
13 and denies that Plaintiff is entitled to any relief on its claims.

14 **PARTIES**

15 16. Intervenor-Defendant admits that GCU is incorporated as a nonprofit  
16 corporation in the State of Arizona, with its principal place of business at 3300 West  
17 Camelback Road – Phoenix, AZ 85017. Intervenor-Defendant further admits that GCU  
18 has been recognized by the Internal Revenue Service as a tax-exempt organization under  
19 section 501(c)(3) of the Internal Revenue Code. Except as so stated, the allegations are  
20 denied.

21 17. Intervenor-Defendant admits that Miguel Cardona is the Secretary of the  
22 Department and has been sued in his official capacity. Intervenor-Defendant further  
23 admits that the official address of the Department and Secretary Cardona is 400 Maryland  
24 Avenue SW, Washington, DC 20202. Except as so stated, the allegations are denied.

25 18. Admit.

**JURISDICTION AND VENUE**

1  
2           19.       This paragraph sets forth Plaintiff’s jurisdictional allegations that present  
3 legal conclusions and questions of law to be determined solely by the Court, to which no  
4 answer is required.

5           20.       This paragraph sets forth Plaintiff’s jurisdictional allegations that present  
6 legal conclusions and questions of law to be determined solely by the Court, to which no  
7 answer is required.

8           21.       This paragraph sets forth Plaintiff’s venue allegations that present legal  
9 conclusions and questions of law to be determined solely by the Court, to which no  
10 answer is required. To the extent a response is required, Intervenor-Defendant admits that  
11 the proper venue is determined under 28 U.S.C. § 1391.

**FACTUAL ALLEGATIONS**

**A. Background**

12  
13  
14           22.       Intervenor-Defendant admits that GCU is a private Christian university  
15 located in Phoenix, Arizona. Except as so stated, Intervenor-Defendant lacks information  
16 sufficient to admit or deny, and therefore denies, the allegations in this Paragraph.

17           23.       Intervenor-Defendant admits that GCU was founded in 1949. Except as so  
18 stated, Intervenor-Defendant lacks information sufficient to admit or deny, and therefore  
19 denies, the allegations in this Paragraph.

20           24.       Intervenor-Defendant lacks information sufficient to admit or deny, and  
21 therefore denies, the allegations in this Paragraph.

22           25.       Intervenor-Defendant denies that GCU “be[came] a publicly traded  
23 institution in 2008.” Intervenor-Defendant admits that GCE became a publicly- traded  
24 entity in 2008. Except as so stated, Intervenor-Defendant lacks information sufficient to  
25 admit or deny, and therefore denies, the allegations in this Paragraph.

1           26.     Intervenor-Defendant lacks information sufficient to admit or deny, and  
2 therefore denies, the allegations in this Paragraph.

3           27.     Intervenor-Defendant admits that GCE was a publicly traded company.  
4 Except as so stated, Intervenor-Defendant lacks information sufficient to admit or deny,  
5 and therefore denies, the allegations in this Paragraph.

6           28.     Intervenor-Defendant lacks information sufficient to admit or deny, and  
7 therefore denies, the allegations in this Paragraph.

8           29.     Intervenor-Defendant lacks information sufficient to admit or deny, and  
9 therefore denies, the allegations in this Paragraph.

10          30.     Intervenor-Defendant lacks information sufficient to admit or deny, and  
11 therefore denies, the allegations in this Paragraph.

12          31.     Intervenor-Defendant admits that Plaintiff entered into a partnership with  
13 the City of Phoenix Police Department. Except as so stated, Intervenor-Defendant lacks  
14 information sufficient to admit or deny, and therefore denies, the remaining allegations in  
15 this Paragraph.

16          32.     Intervenor-Defendant admits that Plaintiff partnered with Habitat for  
17 Humanity. Except as so stated, Intervenor-Defendant lacks information sufficient to  
18 admit or deny, and therefore denies, the remaining allegations in this Paragraph.

19          33.     Intervenor-Defendant admits that Plaintiff established centers called  
20 Learning Lounges® in the community that offer free in-person and online tutoring and  
21 mentoring to English and Spanish speaking K–12 students in the Phoenix area. Except as  
22 so stated, Intervenor-Defendant lacks information sufficient to admit or deny, and  
23 therefore denies, the remaining allegations in this Paragraph.

24          34.     Intervenor-Defendant lacks information sufficient to admit or deny, and  
25 therefore denies, the allegations in this Paragraph.

1           35.     Intervenor-Defendant admits that Plaintiff opened a regional point-of-  
2 dispensing site for the Pfizer coronavirus vaccine. Except as so stated, Intervenor-  
3 Defendant lacks information sufficient to admit or deny, and therefore denies, the  
4 remaining allegations in this Paragraph.

5           **B. GCU Converts Back to Nonprofit Status**

6           36.     Intervenor-Defendant lacks information sufficient to admit or deny, and  
7 therefore denies, the allegations in this Paragraph.

8           37.     Intervenor-Defendant lacks information sufficient to admit or deny, and  
9 therefore denies, the allegations in this Paragraph.

10          38.     Intervenor-Defendant lacks information sufficient to admit or deny, and  
11 therefore denies, the allegations in the first two sentences of this Paragraph. Intervenor-  
12 Defendant denies the remaining allegations in this Paragraph.

13           **The Transaction**

14          39.     Intervenor-Defendant admits that GCU publicly announced its intent to  
15 convert to nonprofit status in 2014 and admits that GCU stated at that time that the  
16 remainder of the allegations in this Paragraph would be true. Except as so stated,  
17 Intervenor-Defendant lacks sufficient information to admit or deny, and therefore denies,  
18 the allegations in this Paragraph.

19          40.     Intervenor-Defendant lacks information sufficient to admit or deny, and  
20 therefore denies, the allegations in this Paragraph.

21          41.     Intervenor-Defendant lacks information sufficient to admit or deny, and  
22 therefore denies, the allegations in this paragraph, including its subparts.

23          42.     Intervenor-Defendant lacks information sufficient to admit or deny, and  
24 therefore denies, the allegations in this Paragraph.

25

1           43.     Intervenor-Defendant lacks information sufficient to admit or deny, and  
2 therefore denies, the allegations in this Paragraph.

3           44.     Intervenor-Defendant lacks information sufficient to admit or deny, and  
4 therefore denies, the allegations in this Paragraph.

5           45.     Intervenor-Defendant admits that each of the named entities reviewed the  
6 transaction and recognized GCU as a nonprofit organization under their own respective  
7 standards. Except as so stated, the allegations in this Paragraph are denied.

8                   **GCU Follows IRS, HLC and Department Requirements in Obtaining**  
9                   **Nonprofit Status**

10  
11           46.     Intervenor-Defendant lacks information sufficient to admit or deny, and  
12 therefore denies, the allegations in this paragraph.

13           47.     Intervenor-Defendant lacks information sufficient to admit or deny, and  
14 therefore denies, the allegations in this Paragraph.

15           48.     Intervenor-Defendant lacks information sufficient to admit or deny, and  
16 therefore denies, the allegations in this Paragraph and its subparts.

17           49.     Intervenor-Defendant admits that GCU's IRS determination letter was  
18 dated November 9, 2015, and that the IRS approved its 501(c)(3) nonprofit status at that  
19 time. Except as so stated, Intervenor-Defendant lacks information sufficient to admit or  
20 deny, and therefore denies, the allegations in this Paragraph.

21           50.     Intervenor-Defendant admits that the transaction closed on July 1, 2018.  
22 Except as so stated, Intervenor-Defendant lacks information sufficient to admit or deny,  
23 and therefore denies, the allegations in this Paragraph.

24           51.     Intervenor-Defendant lacks information sufficient to admit or deny, and  
25 therefore denies, the allegations in this Paragraph.

1           52.     Intervenor-Defendant lacks information sufficient to admit or deny, and  
2 therefore denies, the allegations in this Paragraph.

3           53.     Intervenor-Defendant admits that HLC initially denied GCU's request for  
4 approval. Except as so stated, Intervenor-Defendant lacks information sufficient to admit  
5 or deny, and therefore denies, the allegations in this Paragraph.

6           54.     Intervenor-Defendant admits that in 2017, HLC changed its guidelines  
7 regarding service agreements. Except as so stated, Intervenor-Defendant lacks  
8 information sufficient to admit or deny, and therefore denies, the allegations in this  
9 Paragraph.

10          55.     Intervenor-Defendant admits that Plaintiff submitted an updated application  
11 to HLC in August 2017. Intervenor-Defendant lacks information sufficient to admit or  
12 deny, and therefore denies, the remaining allegations in this Paragraph.

13          56.     Intervenor-Defendant lacks information sufficient to admit or deny, and  
14 therefore denies, the allegations in this Paragraph.

15          57.     Intervenor-Defendant admits that HLC is a recognized accreditor. Except as  
16 so stated, Intervenor-Defendant denies the allegations in this Paragraph.

17          58.     Admit.

18          59.     Admit.

19          60.     Admit.

20          61.     Admit.

21          62.     Intervenor-Defendant admits that GCU provided a copy of a proposed  
22 MSA, a draft asset purchase agreement, a draft credit agreement, and a proposed  
23 corporate structure to the Department. Except as so stated, Intervenor-Defendant denies  
24 the allegations in this Paragraph.

25

1           63.     Insofar as this Paragraph including its subparts describes the content of the  
2 pre-acquisition review request, Intervenor-Defendant admits that the best evidence of the  
3 content of that request is the request itself.

4           64.     Intervenor-Defendant lacks information sufficient to admit or deny, and  
5 therefore denies, the allegations in this Paragraph.

6           65.     Intervenor-Defendant lacks information sufficient to admit or deny, and  
7 therefore denies, the allegations in this Paragraph.

8           66.     Intervenor-Defendant admits to the first sentence of this Paragraph. Except  
9 as so stated, Intervenor-Defendant lacks information sufficient to admit or deny, and  
10 therefore denies, the allegations in the final sentence of this Paragraph.

11           67.     Intervenor-Defendant admits that HLC typically requires transactions to  
12 close within 30 days of approval. Except as so stated, Intervenor-Defendant lacks  
13 information sufficient to admit or deny, and therefore denies, the remaining allegations in  
14 this Paragraph.

15           68.     Intervenor-Defendant lacks information sufficient to admit or deny, and  
16 therefore denies, the allegations in this Paragraph.

17           69.     Intervenor-Defendant lacks information sufficient to admit or deny, and  
18 therefore denies, the allegations in this Paragraph.

19           70.     Intervenor-Defendant lacks information sufficient to admit or deny, and  
20 therefore denies, the allegations in this Paragraph.

21           71.     This Paragraph states a legal conclusion as to which no response is  
22 required. To the extent a response is required, Intervenor-Defendant admits.

23           72.     This Paragraph states a legal conclusion as to which no response is  
24 required. To the extent a response is required, Intervenor-Defendant admits.

25           73.     Deny.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

74. Admit.

75. Intervenor-Defendant admits that Plaintiff filed additional supporting documentation with the Department on August 31, 2018. Intervenor-Defendant lacks information sufficient to admit or deny, and therefore denies, the remaining allegations in this Paragraph.

76. This Paragraph states a legal conclusion to which no response is required. To the extent a response is required, Intervenor-Defendant denies the allegations.

77. Deny.

- a. Deny.
- b. Admit.
- c. Admit.

78. Intervenor-Defendant admits the allegations in the first sentence of the paragraph. Intervenor-Defendant further admits that Plaintiff sent a letter to the Department on October 1, 2018. Except as so stated, Intervenor-Defendant denies allegations in the Paragraph.

79. Intervenor-Defendant admits that Paragraph 79, including its subparts, describes generally the content of Plaintiff’s letter to the Department, but avers that the best evidence of the contents of the letter is the letter itself. To the extent the allegations state a legal conclusion regarding the Department’s applications of its standards, Intervenor-Defendant denies the remaining allegations in this Paragraph.

80. Intervenor-Defendant admits that Paragraph 80, including its subparts, describes generally the content of Plaintiff’s letter to the Department, but avers that the best evidence of the contents of the letter is the letter itself. To the extent the allegations state a legal conclusion regarding the Department’s applications of its standards, Intervenor-Defendant denies the remaining allegations in this Paragraph.

1           81.     Intervenor-Defendant lacks information sufficient to admit or deny, and  
2 therefore denies, the allegations in the first two sentences of this Paragraph. Intervenor-  
3 Defendant admits that Plaintiff remains an independent, private university, accorded  
4 nonprofit status by the State of Arizona and tax-exempt status under Section 501(c)(3) of  
5 the Internal Revenue Code by the IRS.

6                   **The Department’s November 6, 2019 Decision Letter Is Arbitrary and**  
7                   **Without Justification**

8           82.     Deny.

9           83.     Intervenor-Defendant lacks information sufficient to admit or deny, and  
10 therefore denies, the allegations in this Paragraph.

11           84.     Intervenor-Defendant denies the allegation to the extent it characterizes the  
12 contents of an email, the best evidence of which is the email itself. Except as so stated,  
13 Intervenor-Defendant lacks information sufficient to admit or deny, and therefore denies,  
14 the allegations in this Paragraph.

15           85.     Intervenor-Defendant lacks information sufficient to admit or deny, and  
16 therefore denies, the allegations in this Paragraph.

17           86.     Admit.

18           87.     Deny.

19           88.     Deny.

20           89.     Intervenor-Defendant admits that the IRS made a determination regarding  
21 GCU’s status under section 501 of the Internal Revenue Code. Except as so stated,  
22 Intervenor-Defendant denies the allegations in this Paragraph.

23           90.     Intervenor-Defendant admits that the IRS made a determination regarding  
24 GCU’s status under section 501 of the Internal Revenue Code. Except as so stated,  
25 Intervenor-Defendant denies the allegations in this Paragraph.

1           91.     Insofar as this Paragraph describes the content of the November 2019  
2 decision, Intervenor-Defendant admits that the best evidence of the content of that letter  
3 is the letter itself. Except as so stated, Intervenor-Defendant denies the allegations in this  
4 Paragraph.

5           92.     Insofar as this Paragraph describes the content of the November 2019  
6 decision, Intervenor-Defendant admits that the best evidence of the content of that letter  
7 is the letter itself. Except as so stated, Intervenor-Defendant denies the allegations in this  
8 Paragraph, including its subparts.

9           93.     Insofar as this Paragraph describes the content of the November 2019  
10 decision, Intervenor-Defendant admits that the best evidence of the content of that letter  
11 is the letter itself. With respect to subparagraph (d), Intervenor-Defendant also admits  
12 that the Department approved GCU's Title IV participation as a for-profit, or proprietary  
13 institution. Except as so stated, Intervenor-Defendant denies the allegations in this  
14 Paragraph, including its subparts.

15           94.     Insofar as this Paragraph describes the content of the November 2019  
16 decision, Intervenor-Defendant admits that the best evidence of the content of that letter  
17 is the letter itself. Except as so stated, Intervenor-Defendant denies the allegations in this  
18 Paragraph.

19           95.     This allegation contains legal conclusions to which no response is required.  
20 To the extent a response is required, and insofar as the allegation includes only a  
21 summary of 34 C.F.R. § 668.25, Intervenor-Defendant denies the allegation in this  
22 Paragraph.

23           96.     Insofar as this Paragraph describes the content of the November 2019  
24 decision, Intervenor-Defendant admits that the best evidence of the content of that letter  
25

1 is the letter itself. Except as so stated, Intervenor-Defendant denies the allegations in this  
2 Paragraph.

3 97. Deny.

4 **GCU Proposes to Amend the MSA as an Alternative Solution to**  
5 **Litigating the November 6, 2019 Decision**

6 98. Intervenor-Defendant lacks information sufficient to admit or deny, and  
7 therefore denies, the allegations in this Paragraph.

8 99. Intervenor-Defendant lacks information sufficient to admit or deny, and  
9 therefore denies, the allegations in this Paragraph.

10 100. Intervenor-Defendant lacks information sufficient to admit or deny, and  
11 therefore denies, the allegations in this Paragraph.

12 101. Intervenor-Defendant lacks information sufficient to admit or deny, and  
13 therefore denies, the allegations in this Paragraph.

14 102. Intervenor-Defendant lacks information sufficient to admit or deny, and  
15 therefore denies, the allegations in this Paragraph.

16 103. Intervenor-Defendant lacks information sufficient to admit or deny, and  
17 therefore denies, the allegations in this Paragraph.

18 104. Intervenor-Defendant admits that the fee structure under the original MSA  
19 was capped at 60% payment required. Except as so stated, Intervenor-Defendant lacks  
20 information sufficient to admit or deny, and therefore denies, the allegations in this  
21 Paragraph.

22 105. Intervenor-Defendant lacks information sufficient to admit or deny, and  
23 therefore denies, the allegations in this Paragraph.

24 106. Intervenor-Defendant lacks information sufficient to admit or deny, and  
25 therefore denies, the allegations in this Paragraph.

1           107. Intervenor-Defendant lacks information sufficient to admit or deny, and  
2 therefore denies, the allegations in this Paragraph.

3           108. Intervenor-Defendant lacks information sufficient to admit or deny, and  
4 therefore denies, the allegations in this Paragraph.

5           109. Intervenor-Defendant lacks information sufficient to admit or deny, and  
6 therefore denies, the allegations in this Paragraph.

7           110. Intervenor-Defendant lacks information sufficient to admit or deny, and  
8 therefore denies, the allegations in this Paragraph.

9           111. Intervenor-Defendant lacks information sufficient to admit or deny, and  
10 therefore denies, the allegations in this Paragraph.

11           112. Intervenor-Defendant lacks information sufficient to admit or deny, and  
12 therefore denies, the allegations in this Paragraph.

13           113. Intervenor-Defendant lacks information sufficient to admit or deny, and  
14 therefore denies, the allegations in this Paragraph.

15           114. Intervenor-Defendant lacks information sufficient to admit or deny, and  
16 therefore denies, the allegations in this Paragraph.

17           115. Intervenor-Defendant lacks information sufficient to admit or deny, and  
18 therefore denies, the allegations in this Paragraph.

19           116. Deny.

20           117. Deny.

21           118. Intervenor-Defendant lacks information sufficient to admit or deny, and  
22 therefore denies, the allegations in this Paragraph.

23           119. Intervenor-Defendant lacks information sufficient to admit or deny, and  
24 therefore denies, the allegations in this Paragraph, including its subparts.  
25

1           120. Intervenor-Defendant lacks information sufficient to admit or deny, and  
2 therefore denies, the allegations in this Paragraph.

3           121. Intervenor-Defendant lacks information sufficient to admit or deny, and  
4 therefore denies, the allegations in this Paragraph.

5           122. Intervenor-Defendant lacks information sufficient to admit or deny, and  
6 therefore denies, the allegations in this Paragraph.

7           123. Intervenor-Defendant lacks information sufficient to admit or deny, and  
8 therefore denies, the allegations in this Paragraph.

9           124. Intervenor-Defendant lacks information sufficient to admit or deny, and  
10 therefore denies, the allegations in this Paragraph.

11           125. Intervenor-Defendant lacks information sufficient to admit or deny, and  
12 therefore denies, the allegations in this Paragraph.

13           126. Intervenor-Defendant lacks information sufficient to admit or deny, and  
14 therefore denies, the allegations in this Paragraph.

15                   **The Department Again Refuses to Recognize GCU's Nonprofit Status**

16           127. Admit.

17           128. Admit.

18           129. Insofar as this Paragraph describes the content of the January 12, 2021  
19 decision, Intervenor-Defendant admits that the best evidence of the content of that letter  
20 is the letter itself. Except as so stated, Intervenor-Defendant denies the allegations in this  
21 Paragraph.

22           130. Insofar as this Paragraph describes the content of the January 12, 2021  
23 decision, Intervenor-Defendant admits that the best evidence of the content of that letter  
24 is the letter itself. Except as so stated, Intervenor-Defendant denies the allegations in this  
25 Paragraph.

1           131. Insofar as this Paragraph describes the content of the January 12, 2021  
2 decision, Intervenor-Defendant admits that the best evidence of the content of that letter  
3 is the letter itself. Except as so stated, Intervenor-Defendant denies, the allegations in this  
4 Paragraph.

5           132. Intervenor-Defendant lacks information sufficient to admit or deny, and  
6 therefore denies, the allegations in this Paragraph.

7           133. Intervenor-Defendant lacks information sufficient to admit or deny, and  
8 therefore denies, the allegations in this Paragraph.

9           134. Insofar as this Paragraph describes the content of the January 12, 2021  
10 decision, Intervenor-Defendant admits that the best evidence of the content of that letter  
11 is the letter itself. Except as so stated, Intervenor-Defendant lacks information sufficient  
12 to admit or deny, and therefore denies, the allegations in this Paragraph.

13           135. This Paragraph contains legal conclusions to which no response is required.  
14 Insofar as a response is required, Intervenor-Defendant denies the allegations in this  
15 Paragraph.

16           136. Deny.

17           137. Insofar as this Paragraph describes the content of the January 12, 2021  
18 decision, Intervenor-Defendant admits that the best evidence of the content of that letter  
19 is the letter itself. Except as so stated, Intervenor-Defendant lacks information sufficient  
20 to admit or deny, and therefore denies, the allegations in this Paragraph.

21           138. Intervenor-Defendant lacks information sufficient to admit or deny, and  
22 therefore denies, the allegations in this Paragraph.

23           139. This allegation contains legal conclusions to which no response is required.  
24 Insofar as a response is required, Intervenor-Defendant denies the allegations in this  
25 Paragraph.

1           140. This allegation contains legal conclusions to which no response is required.  
2 Insofar as a response is required, Intervenor-Defendant denies the allegations in this  
3 Paragraph, including its subparts.

4           141. This allegation contains legal conclusions to which no response is required.  
5 Insofar as a response is required, Intervenor-Defendant denies the allegations in this  
6 Paragraph.

7           142. This allegation contains legal conclusions to which no response is required.  
8 Insofar as a response is required, Intervenor-Defendant denies the allegations in this  
9 Paragraph.

10           143. Intervenor-Defendant lacks information sufficient to admit or deny, and  
11 therefore denies, the allegations in this Paragraph.

12           144. Deny.

13           145. Insofar as this Paragraph describes the content of the January 12, 2021  
14 decision, Intervenor-Defendant admits that the best evidence of the content of that letter  
15 is the letter itself. Intervenor-Defendant lacks information sufficient to admit or deny, and  
16 therefore denies, the allegations in this Paragraph.

17           146. Intervenor-Defendant lacks information sufficient to admit or deny, and  
18 therefore denies, the allegations in this Paragraph.

19           147. Insofar as this Paragraph describes the content of a written communication,  
20 Intervenor-Defendant admits that the best evidence of the content of that communication  
21 is the communication itself.

22           148. The first two sentences of this Paragraph constitute legal conclusions to  
23 which no answer is required. With respect to the remainder of the allegations, Intervenor-  
24 Defendant admits that the best evidence of the content of that decision is the decision  
25 itself. Except as so stated, Intervenor-Defendant denies the allegations in this Paragraph.

1           **C. The Department Lacks Authority Under Its Regulations to Determine**  
2           **Nonprofit Status**

3                   **The Department’s Regulations About Nonprofit Conversions**

4           149. This allegation constitutes a legal conclusion to which no response is  
5 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
6 in this Paragraph.

7           150. This allegation constitutes a legal conclusion to which no response is  
8 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
9 in this Paragraph.

10          151. This allegation constitutes a legal conclusion to which no response is  
11 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
12 in this Paragraph.

13          152. This allegation constitutes a legal conclusion to which no response is  
14 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
15 in this Paragraph.

16          153. This allegation constitutes a legal conclusion to which no response is  
17 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
18 in this Paragraph.

19          154. This allegation constitutes a legal conclusion to which no response is  
20 required. To the extent a response is required, Intervenor-Defendant admits the allegation  
21 in this Paragraph.

22          155. This allegation constitutes a legal conclusion to which no response is  
23 required. To the extent a response is required, Intervenor-Defendant admits the allegation  
24 in this Paragraph.

25

1           156. This allegation constitutes a legal conclusion to which no response is  
2 required. To the extent a response is required, Intervenor-Defendant admits the allegation  
3 in this Paragraph.

4           157. This allegation constitutes a legal conclusion to which no response is  
5 required.

6           158. This allegation constitutes a legal conclusion to which no response is  
7 required.

8                           **The Department’s Past Statements About Nonprofit Status**

9           159. This allegation constitutes a legal conclusion to which no response is  
10 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
11 in this Paragraph.

12           160. Deny.

13           161. Admit.

14           162. This allegation constitutes a legal conclusion to which no response is  
15 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
16 in this Paragraph.

17           163. This allegation constitutes a legal conclusion to which no response is  
18 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
19 in this Paragraph.

20           164. Insofar as this Paragraph describes the content of Congressional testimony,  
21 Intervenor-Defendant admits that the best evidence of the content of that testimony is the  
22 record of such testimony. Except as so stated, Intervenor-Defendant denies the  
23 allegations in this Paragraph.

24           165. Intervenor-Defendant denies the allegation to the extent it characterizes the  
25 contents of what was “[i]mplicit” in a federal agency’s statement to the United States

1 Congress, the best evidence of which is the statement itself. Except as so stated,  
2 Intervenor-Defendant lacks information sufficient to admit or deny, and therefore denies,  
3 the allegation in this Paragraph.

4 166. This allegation constitutes a legal conclusion to which no response is  
5 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
6 in this Paragraph.

7 167. Intervenor-Defendant denies the first sentence of the Paragraph and admits  
8 that in 2010, the Department added a new paragraph to 34 C.F.R. § 600.2 defining  
9 foreign nonprofit institutions. Except as so stated, Intervenor-Defendant denies the  
10 allegation in this Paragraph.

11 168. Intervenor-Defendant admits that the quotation appears in the cited  
12 reference. Except as so stated, this allegation constitutes a legal conclusion to which no  
13 response is required. To the extent a response is required, Intervenor-Defendant denies  
14 the allegation in this Paragraph.

15 169. Admit.

16 170. This allegation constitutes a legal conclusion to which no response is  
17 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
18 in this Paragraph.

19 171. Intervenor-Defendant lacks information sufficient to admit or deny, and  
20 therefore denies, the allegations in this Paragraph.

21 172. This allegation constitutes a legal conclusion to which no response is  
22 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
23 in this Paragraph.

24 173. Admit.

25 174. Admit.

1           175. Intervenor-Defendant denies that the allegations in Paragraph 175 reflect  
2 the context and full scope of the language in the proposed rules.

3           176. Intervenor-Defendant admits that Paragraph 176 describes the  
4 Department's support of the proposed rule, but denies the allegations to the extent that  
5 Plaintiff does not contextualize the quotation and misconstrues its true meaning.

6           177. This allegation constitutes a legal conclusion to which no response is  
7 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
8 in this Paragraph.

9           178. This allegation constitutes a legal conclusion to which no response is  
10 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
11 in this Paragraph.

12                           **The Department's Past Practice With Nonprofit Conversion**

13           179. Deny.

14           180. Insofar as this Paragraph describes the content of Congressional testimony,  
15 Intervenor-Defendant admits that the best evidence of the content of that testimony is the  
16 record of such testimony. Except as so stated, Intervenor-Defendant denies the  
17 allegations in this Paragraph.

18           181. Admit.

19           182. Deny.

20           183. Intervenor-Defendant lacks information sufficient to admit or deny, and  
21 therefore denies, the allegations in this Paragraph.

22           184. Intervenor-Defendant lacks information sufficient to admit or deny, and  
23 therefore denies, the allegations in this Paragraph.

24           185. Intervenor-Defendant lacks information sufficient to admit or deny, and  
25 therefore denies, the allegations in this Paragraph.

**The Department's Departure From Its Longstanding Practice**

1  
2 186. Intervenor-Defendant lacks information sufficient to admit or deny, and  
3 therefore denies, the allegations in this Paragraph.

4 187. Admit.

5 188. Insofar as this Paragraph describes the content of the Department's August  
6 2016 decision, Intervenor-Defendant admits that the best evidence of the content of that  
7 decision is the decision itself. Except as so stated, Intervenor-Defendant denies the  
8 allegations in this Paragraph.

9 189. Insofar as this Paragraph describes the content of the Department's August  
10 2016 decision, Intervenor-Defendant admits that the best evidence of the content of that  
11 decision is the decision itself. Except as so stated, Intervenor-Defendant admits the  
12 allegations in this Paragraph.

13 190. Insofar as this Paragraph describes the content of the Department's August  
14 2016 decision, Intervenor-Defendant admits that the best evidence of the content of that  
15 decision is the decision itself. Except as so stated, Intervenor-Defendant denies the  
16 allegations in this Paragraph.

17 191. Insofar as this Paragraph describes the content of the Department's August  
18 2016 decision, Intervenor-Defendant admits that the best evidence of the content of that  
19 decision is the decision itself. Except as so stated, Intervenor-Defendant denies the  
20 allegations in this Paragraph.

21 192. Insofar as this Paragraph describes the content of the Department's prior  
22 communication, Intervenor-Defendant admits that the best evidence of the content of that  
23 communication is a copy of the communication itself. Except as so stated, Intervenor-  
24 Defendant lacks information sufficient to admit or deny, and therefore denies, the  
25 allegations in this Paragraph.

1           193. Intervenor-Defendant lacks information sufficient to admit or deny, and  
2 therefore denies, the allegations in this Paragraph.

3           194. Intervenor-Defendant lacks information sufficient to admit or deny, and  
4 therefore denies, the allegations in this Paragraph.

5           195. Intervenor-Defendant lacks information sufficient to admit or deny, and  
6 therefore denies, the allegations in this Paragraph.

7           196. Intervenor-Defendant lacks information sufficient to admit or deny, and  
8 therefore denies, the allegations in this Paragraph and its subparts.

9           197. Intervenor-Defendant admits that through a notice published in the Federal  
10 Register in July 2019, the Department repealed the gainful employment rules. Except as  
11 so stated, Intervenor-Defendant denies the remaining allegations in this Paragraph.

12                           **The Department's Inconsistent Treatment of Similarly Situated**  
13                           **Institutions**

14           198. This allegation constitutes a legal conclusion to which no response is  
15 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
16 in this Paragraph.

17           199. Deny.

18           200. Intervenor-Defendant admits that the Department denied GCU's nonprofit  
19 status and admits that it approved a transaction between Purdue University and Kaplan  
20 University. Except as so stated, Intervenor-Defendant denies the allegations in this  
21 Paragraph.

22           201. Intervenor-Defendant lacks information sufficient to admit or deny, and  
23 therefore denies, the allegations in this Paragraph.

1           202. Insofar as this Paragraph describes the content of the Department's  
2 decision, Intervenor-Defendant admits that the best evidence of the content of the  
3 decision is the decision itself.

4           203. Defendant-Intervenor admits that Purdue created a 501(c)(3) nonprofit,  
5 Purdue University Global, to purchase the credential-issuing side of Kaplan's higher  
6 education business. Except as so stated, Intervenor-Defendant denies the allegations in  
7 this Paragraph.

8           204. Admit.

9           205. Admit.

10          206. Insofar as this Paragraph describes the content of the Department's  
11 decision, Intervenor-Defendant admits that the best evidence of the content of the  
12 decision is the decision itself. Except as so stated, Intervenor-Defendant denies the  
13 allegations in this Paragraph.

14          207. Insofar as this Paragraph describes the content of the Department's  
15 decision, Intervenor-Defendant admits that the best evidence of the content of the  
16 decision is the decision itself. Except as so stated, Intervenor-Defendant admits the  
17 allegations in this Paragraph.

18          208. Admit.

19          209. Insofar as this Paragraph describes the content of the Department's  
20 decision, Intervenor-Defendant admits that the best evidence of the content of the  
21 decision is the decision itself. Except as so stated, Intervenor-Defendant admits the  
22 allegations in this Paragraph.

23          210. Insofar as this Paragraph characterizes the contents of the MSA, Intervenor-  
24 Defendant admits that the best evidence of the contents of the MSA is the MSA itself.  
25

1           211. Insofar as this Paragraph characterizes the contents of the MSA, Intervenor-  
2 Defendant admits that the best evidence of the contents of the MSA is the MSA itself.  
3 Except as so stated, Intervenor-Defendant lacks information sufficient to admit or deny,  
4 and therefore denies, the allegations in this Paragraph.

5           212. Insofar as this Paragraph characterizes the contents of the Department's  
6 decision, Intervenor-Defendant admits that the best evidence of the contents of the  
7 decision is the decision itself. Except as so stated, Intervenor-Defendant lacks  
8 information sufficient to admit or deny, and therefore denies, the allegations in this  
9 Paragraph.

10           213. Insofar as this Paragraph characterizes the contents of the Department's  
11 decision, Intervenor-Defendant admits that the best evidence of the contents of the  
12 decision is the decision itself. Except as so stated, Intervenor-Defendant lacks  
13 information sufficient to admit or deny, and therefore denies, the allegations in this  
14 Paragraph.

15           214. Intervenor-Defendant lacks information sufficient to admit or deny, and  
16 therefore denies, the allegations in this Paragraph.

17           215. Intervenor-Defendant lacks information sufficient to admit or deny, and  
18 therefore denies, the allegations in this Paragraph.

19           216. Intervenor-Defendant lacks information sufficient to admit or deny, and  
20 therefore denies, the allegations in this Paragraph.

21           217. Intervenor-Defendant lacks information sufficient to admit or deny, and  
22 therefore denies, the allegations in this Paragraph.

23           218. Intervenor-Defendant lacks information sufficient to admit or deny, and  
24 therefore denies, the allegations in this Paragraph.

25

1           219. This allegation constitutes a legal conclusion to which no response is  
2 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
3 in this Paragraph.

4                           **The Department’s End-Run Around Negotiated Rulemaking**

5           220. This allegation constitutes a legal conclusion to which no response is  
6 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
7 in this Paragraph.

8           221. This allegation constitutes a legal conclusion to which no response is  
9 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
10 in this Paragraph.

11           222. This allegation constitutes a legal conclusion to which no response is  
12 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
13 in this Paragraph.

14                           **D. Even Assuming the Department Has Authority to Determine Nonprofit**

15                                   **Status for Title IV Purposes, the Decision is Arbitrary and Capricious**

16   **Under Its Own Reading, the Department Exceeded Its Authority**

17           223. This allegation constitutes a legal conclusion to which no response is  
18 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
19 in this Paragraph.

20           224. Insofar as this Paragraph characterizes the contents of the Department’s  
21 decision, Intervenor-Defendant admits that the best evidence of the contents of the  
22 decision is the decision itself. Except as so stated, Intervenor-Defendant denies the  
23 allegations in this Paragraph.

24

25

1           225. This allegation constitutes a legal conclusion to which no response is  
2 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
3 in this Paragraph.

4           226. This allegation constitutes a legal conclusion to which no response is  
5 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
6 in this Paragraph.

7           227. This allegation constitutes a legal conclusion to which no response is  
8 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
9 in this Paragraph.

10          228. This allegation constitutes a legal conclusion to which no response is  
11 required. To the extent a response is required, Intervenor-Defendant admits the allegation  
12 in this Paragraph.

13          229. This allegation constitutes a legal conclusion to which no response is  
14 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
15 in this Paragraph.

16          230. Deny.

17          231. This allegation constitutes a legal conclusion to which no response is  
18 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
19 in this Paragraph.

20          232. This allegation constitutes a legal conclusion to which no response is  
21 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
22 in this Paragraph.

23                           **The Department Misapplied the Primary Purpose Test**  
24  
25

1           233. This allegation constitutes a legal conclusion to which no response is  
2 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
3 in this Paragraph.

4           234. Intervenor-Defendant lacks information sufficient to admit or deny, and  
5 therefore denies, the allegations in this Paragraph.

6           235. This allegation constitutes a legal conclusion to which no response is  
7 required. To the extent a response is required, Intervenor-Defendant admits that the  
8 quotation from *United States v. Dykema* is accurately transcribed, but does not describe  
9 the Department's obligations under the law.

10           236. Intervenor-Defendant lacks information sufficient to admit or deny, and  
11 therefore denies, the allegations in this Paragraph.

12           237. Intervenor-Defendant lacks information sufficient to admit or deny, and  
13 therefore denies, the allegations in this Paragraph.

14           238. Intervenor-Defendant lacks information sufficient to admit or deny, and  
15 therefore denies, the allegations in this Paragraph.

16           239. Intervenor-Defendant lacks information sufficient to admit or deny, and  
17 therefore denies, the allegations in this Paragraph.

18           240. Intervenor-Defendant lacks information sufficient to admit or deny, and  
19 therefore denies, the allegations in this Paragraph.

20           241. Intervenor-Defendant denies the allegations as to the January 12, 2021  
21 Decision. Intervenor-Defendant lacks information sufficient to admit or deny, and  
22 therefore denies, the allegations pertaining to the August 20, 2020 letter.

23           242. This allegation constitutes a legal conclusion to which no response is  
24 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
25 in this Paragraph.

1           243. Intervenor-Defendant lacks information sufficient to admit or deny, and  
2 therefore denies, the allegations in this Paragraph.

3           244. Intervenor-Defendant lacks information sufficient to admit or deny, and  
4 therefore denies, the allegations in this Paragraph.

5           245. Intervenor-Defendant lacks information sufficient to admit or deny, and  
6 therefore denies, the allegations in this Paragraph.

7           246. Intervenor-Defendant lacks information sufficient to admit or deny, and  
8 therefore denies, the allegations in this Paragraph.

9           247. Insofar as this Paragraph characterizes the evidence, Intervenor-Defendant  
10 admits that the best evidence is the evidence itself. The remaining allegations constitute  
11 legal conclusions to which no response is required.

12           248. Admit.

13           249. Deny.

14           250. Intervenor-Defendant lacks information sufficient to admit or deny, and  
15 therefore denies, the allegations in this Paragraph.

16           251. Intervenor-Defendant lacks information sufficient to admit or deny whether  
17 Barclays advised GCE on the Transaction, and the ramifications of that advice.  
18 Intervenor-Defendant denies that the assessment of how GCU benefits under the MSA is  
19 an essential consideration under the IRS's primary purpose test.

20           252. Intervenor-Defendant lacks information sufficient to admit or deny, and  
21 therefore denies, the allegations in this Paragraph.

22           253. Intervenor-Defendant lacks information sufficient to admit or deny, and  
23 therefore denies, the allegations in this Paragraph.

24           254. Intervenor-Defendant lacks information sufficient to admit or deny, and  
25 therefore denies, the allegations in this Paragraph.

1           255. Intervenor-Defendant lacks information sufficient to admit or deny, and  
2 therefore denies, the allegations in the first sentence of this Paragraph. Intervenor-  
3 Defendant denies the allegation in the second sentence in this Paragraph.

4           256. Intervenor-Defendant lacks information sufficient to admit or deny, and  
5 therefore denies, the allegations in this Paragraph.

6           257. Deny.

7           258. This allegation constitutes a legal conclusion to which no response is  
8 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
9 in this Paragraph.

10          259. Deny.

11          260. This allegation constitutes a legal conclusion to which no response is  
12 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
13 in this Paragraph.

14          261. This allegation constitutes a legal conclusion to which no response is  
15 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
16 in this Paragraph.

17                   **GCU's Net Earnings Do Not Improperly Benefit GCE**

18          262. This allegation constitutes a legal conclusion to which no response is  
19 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
20 in this Paragraph.

21          263. Admit.

22          264. This allegation constitutes a legal conclusion to which no response is  
23 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
24 in this Paragraph.  
25

1           265. Intervenor-Defendant lacks information sufficient to admit or deny, and  
2 therefore denies, the allegations in this Paragraph.

3           266. Intervenor-Defendant lacks information sufficient to admit or deny, and  
4 therefore denies, the allegations in this Paragraph.

5           267. This allegation constitutes a legal conclusion to which no response is  
6 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
7 in this Paragraph.

8           268. This allegation constitutes a legal conclusion to which no response is  
9 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
10 in this Paragraph.

11           269. This allegation constitutes a legal conclusion to which no response is  
12 required. To the extent a response is required, Intervenor-Defendant avers that the best  
13 evidence of the contents of the Department's decision is the decision itself. Except as so  
14 stated, Intervenor-Defendant denies the allegation in this Paragraph.

15           270. This allegation constitutes a legal conclusion to which no response is  
16 required. To the extent a response is required, Intervenor-Defendant avers that the best  
17 evidence of the contents of the Department's decision is the decision itself. Except as so  
18 stated, Intervenor-Defendant lacks information sufficient to admit or deny, and therefore  
19 denies, the allegation in this Paragraph.

20           271. Intervenor-Defendant lacks information sufficient to admit or deny, and  
21 therefore denies, the allegations in this Paragraph.

22           272. This allegation constitutes a legal conclusion to which no response is  
23 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
24 in this Paragraph.

25

1           273. This allegation constitutes a legal conclusion to which no response is  
2 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
3 in this Paragraph.

4                           **Brian Mueller’s Dual Role Is Irrelevant to GCU’s Nonprofit Status**

5           274. Admit.

6           275. This allegation constitutes a legal conclusion to which no response is  
7 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
8 in this Paragraph.

9           276. This allegation constitutes a legal conclusion to which no response is  
10 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
11 in this Paragraph.

12           277. This allegation constitutes a legal conclusion to which no response is  
13 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
14 in this Paragraph.

15           278. This allegation constitutes a legal conclusion to which no response is  
16 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
17 in this Paragraph.

18           279. This allegation constitutes a legal conclusion to which no response is  
19 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
20 in this Paragraph.

21           280. Admit.

22           281. Intervenor-Defendant lacks information sufficient to admit or deny, and  
23 therefore denies, the allegations in this Paragraph.  
24  
25

1           282. This allegation constitutes a legal conclusion to which no response is  
2 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
3 in this Paragraph.

4           283. This allegation constitutes a legal conclusion to which no response is  
5 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
6 in this Paragraph.

7           284. Intervenor-Defendant admits that the best evidence of the GCU IRS Form  
8 1023 is the form itself. Except as so stated, Intervenor-Defendant lacks information  
9 sufficient to admit or deny, and therefore denies, the allegations in this Paragraph.

10           285. Intervenor-Defendant admits that the best evidence of the content of the  
11 MSA is the MSA. Except as so stated, Intervenor-Defendant lacks information sufficient  
12 to admit or deny, and therefore denies, the allegations in this Paragraph.

13           286. Intervenor-Defendant admits that GCU's Bylaws adopted on December 15,  
14 2017, delegate oversight of the MSA to a "Master Service Agreement Committee" which  
15 precludes any participation from interested persons. Except as so stated, Intervenor-  
16 Defendant lacks information sufficient to admit or deny, and therefore denies, the  
17 allegations in this Paragraph.

18           287. Intervenor-Defendant lacks information sufficient to admit or deny, and  
19 therefore denies, the allegations in this Paragraph.

20           288. Intervenor-Defendant lacks information sufficient to admit or deny, and  
21 therefore denies, the allegations in this Paragraph.

22           289. Intervenor-Defendant lacks information sufficient to admit or deny, and  
23 therefore denies, the allegations in this Paragraph.

24           290. Deny.  
25

1           291. Intervenor-Defendant admits that in its November 6, 2019, and January 12,  
2 2021, letters the Department stated that it “does not take a position with respect to  
3 Gazelle’s non-profit 501(c)(3) status with the Internal Revenue Service.” Except as so  
4 stated, Intervenor-Defendant denies the allegations in this Paragraph.

5           292. Intervenor-Defendant lacks information sufficient to admit or deny, and  
6 therefore denies, the allegations in this Paragraph.

7           293. Admit.

8           294. Admit.

9           295. Intervenor-Defendant lacks information sufficient to admit or deny, and  
10 therefore denies, the allegations in this Paragraph.

11           296. Intervenor-Defendant lacks information sufficient to admit or deny, and  
12 therefore denies, the allegations in this Paragraph.

13           297. This allegation constitutes a legal conclusion to which no response is  
14 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
15 in this Paragraph.

16           298. This allegation constitutes a legal conclusion to which no response is  
17 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
18 in this Paragraph.

19           299. Intervenor-Defendant lacks information sufficient to admit or deny, and  
20 therefore denies, the allegations in this Paragraph.

21           300. This allegation constitutes a legal conclusion to which no response is  
22 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
23 in this Paragraph.

24           301. Deny.

25           302. Deny.

**The MSA Does Not Allow GCE to Operate GCU**

1  
2 303. The first sentence allegation constitutes a legal conclusion to which no  
3 response is required. To the extent a response is required, Intervenor-Defendant denies  
4 the allegation in this Paragraph. Intervenor-Defendant admits the second sentence of the  
5 Paragraph.

6 304. This allegation constitutes a legal conclusion to which no response is  
7 required. To the extent a response is required, Intervenor-Defendant admits the allegation  
8 in this Paragraph.

9 305. Intervenor-Defendant admits that the quoted language is included in 34  
10 C.F.R. § 668.25(a). Except as so stated, Intervenor-Defendant denies the allegation in this  
11 Paragraph.

12 306. Deny.

13 307. Deny.

14 308. This allegation constitutes a legal conclusion to which no response is  
15 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
16 in this Paragraph.

17 309. Deny.

18 310. Intervenor-Defendant lacks information sufficient to admit or deny, and  
19 therefore denies, the allegations in this Paragraph.

20 311. Intervenor-Defendant lacks information sufficient to admit or deny, and  
21 therefore denies, the allegations in this Paragraph.

22 312. Intervenor-Defendant lacks information sufficient to admit or deny, and  
23 therefore denies, the allegations in this Paragraph.

24 313. Intervenor-Defendant lacks information sufficient to admit or deny, and  
25 therefore denies, the allegations in this Paragraph.

1           314. Intervenor-Defendant lacks information sufficient to admit or deny, and  
2 therefore denies, the allegations in this Paragraph.

3           315. This allegation constitutes a legal conclusion to which no response is  
4 required. To the extent a response is required, Intervenor-Defendant denies the  
5 allegations in this Paragraph.

6           316. Intervenor-Defendant lacks information sufficient to admit or deny, and  
7 therefore denies, the allegations in this Paragraph.

8           317. This allegation constitutes a legal conclusion to which no response is  
9 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
10 in this Paragraph.

11           318. Admit.

12           319. Intervenor-Defendant admits that in its November 6, 2019 letter the  
13 Department stated that it “does not take a position with respect to Gazelle’s non-profit  
14 501(c)(3) status with the Internal Revenue Service” and in its January 12, 2021 letter the  
15 Department stated that “the fact that HLC may have reached a different conclusion is  
16 neither binding nor persuasive.” Except as so stated, Intervenor-Defendant denies the  
17 allegations in this Paragraph.

18           320. This allegation constitutes a legal conclusion to which no response is  
19 required. To the extent a response is required, Intervenor-Defendant denies the allegation  
20 in this Paragraph.

21                   **E. The Department’s Licensing Regime Is an Unconstitutional Prior**  
22                   **Restraint**

23           321. Intervenor-Defendant admits that Plaintiff was previously approved to  
24 operate as a nonprofit business by the State of Arizona and the IRS. Except as so stated,  
25 Intervenor-Defendant denies the remaining allegations in this Paragraph.





1 Department violated “notices of notions, due process, and equal protection.” Intervenor-  
2 Defendant further denies that the Department acted contrary to law.

3 341. This allegation constitutes a legal conclusion to which no response is  
4 required. To the extent a response is required, Intervenor-Defendant denies that Plaintiff  
5 is entitled to any relief on its claims.

6 **COUNT III**

7 342. Intervenor-Defendant correspondingly incorporates the preceding  
8 paragraphs as if set forth fully herein.

9 343. This allegation constitutes a legal conclusion to which no response is  
10 required. To the extent a response is required, Intervenor-Defendant admits that HEA  
11 § 492 sets forth the Department’s obligations to promulgate rules through negotiated  
12 rulemaking. Except as so stated, Intervenor-Defendant denies the allegations in this  
13 Paragraph.

14 344. This allegation constitutes a legal conclusion to which no response is  
15 required. To the extent a response is required, Intervenor-Defendant admits that 5 U.S.C.  
16 § 553 sets forth certain requirements that agencies must follow. Except as so stated,  
17 Intervenor-Defendant denies the allegation in this Paragraph.

18 345. This allegation constitutes a legal conclusion to which no response is  
19 required. To the extent a response is required, Intervenor-Defendant denies the  
20 allegations in this Paragraph.

21 346. This allegation constitutes a legal conclusion to which no response is  
22 required. To the extent a response is required, Intervenor-Defendant denies the  
23 allegations in this Paragraph.

24

25

**COUNT IV**

1  
2           347. Intervenor-Defendant correspondingly incorporates the preceding  
3 paragraphs as if set forth fully herein.

4           348. This allegation constitutes a legal conclusion to which no response is  
5 required. To the extent a response is required, Intervenor-Defendant denies the  
6 allegations in this Paragraph.

7           349. This allegation constitutes a legal conclusion to which no response is  
8 required. To the extent a response is required, Intervenor-Defendant denies the  
9 allegations in this Paragraph.

10           350. This allegation constitutes a legal conclusion to which no response is  
11 required. To the extent a response is required, Intervenor-Defendant denies the  
12 allegations in this Paragraph.

13           351. This allegation constitutes a legal conclusion to which no response is  
14 required. To the extent a response is required, Intervenor-Defendant denies the  
15 allegations in this Paragraph.

16           352. This allegation constitutes a legal conclusion to which no response is  
17 required. To the extent a response is required, Intervenor-Defendant denies the  
18 allegations in this Paragraph.

19           353. This allegation constitutes a legal conclusion to which no response is  
20 required. To the extent a response is required, Intervenor-Defendant denies the  
21 allegations in this Paragraph.

22           354. This allegation constitutes a legal conclusion to which no response is  
23 required. To the extent a response is required, Intervenor-Defendant denies the  
24 allegations in this Paragraph.  
25



1 programs and denies that Plaintiff is entitled to an order requiring the Department to issue  
2 GCU a new PPA recognizing GCU as a nonprofit institution of higher education.

3 6. Defendant-Intervenor denies that Plaintiff is entitled to attorneys' fees and  
4 costs.

5 7. Defendant-Intervenor denies that Plaintiff is entitled to any relief.

6 8. Defendant-Intervenor denies any and all allegations not specifically  
7 admitted herein.

8 **GENERAL DENIAL**

9 Defendant-Intervenor denies any and all allegations not specifically admitted herein.

10 DATED this 22nd day of April, 2021

11 Respectfully submitted,

12 /s/ J. Henk Taylor

13 J. Henk Taylor, A.Z. Bar #016321  
14 RYAN RAPP UNDERWOOD & PACHECO,  
P.L.C.  
15 3200 N. Central Avenue, Suite 2250  
Phoenix, Arizona 85012  
16 Telephone: (602) 280-1000  
Fascimile: (602) 265-1495  
17 htaylor@rrulaw.com

18 Aaron S. Ament, D.C. Bar #1602164  
(*pro hac vice* forthcoming)  
19 Daniel A. Zibel, D.C. Bar #491377  
(*pro hac vice* forthcoming)  
20 Maya H. Weinstein\*, N.C. Bar #56621  
(*pro hac vice* forthcoming)  
21 NATIONAL STUDENT LEGAL DEFENSE  
NETWORK  
22 1015 15th Street NW, Suite 600  
Washington, D.C. 20005  
23 (202) 734-7495  
aaron@defendstudents.org  
24 dan@defendstudents.org  
25 maya@defendstudents.org

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Brian Galle, N.Y. Bar #419154  
(*pro hac vice* forthcoming)  
Georgetown University Law Center  
600 New Jersey Avenue NW  
Washington, D.C. 20001  
(202) 662-4039  
brian.galle@georgetown.edu

*Attorneys for Proposed Intervenor-Defendant  
Student Defense*

\* Admitted to practice law only in North  
Carolina; Supervised by organizational  
principals while D.C. Bar application is  
pending.

# **EXHIBIT B**

1 J. Henk Taylor, A.Z. Bar #016321  
RYAN RAPP UNDERWOOD & PACHECO, P.L.C.  
2 3200 N. Central Avenue, Suite 2250, Phoenix, Arizona 85012  
Telephone: (602) 280-1000  
3 htaylor@rrulaw.com

4 Aaron S. Ament, D.C. Bar #1602164 (*pro hac vice* forthcoming)  
Daniel A. Zibel, D.C. Bar #491377 (*pro hac vice* forthcoming)  
5 Maya H. Weinstein\*, N.C. Bar #56621 (*pro hac vice* forthcoming)  
NATIONAL STUDENT LEGAL DEFENSE NETWORK  
6 1015 15th Street NW, Suite 600, Washington, D.C. 20005  
(202) 734-7495  
7 aaron@defendstudents.org  
dan@defendstudents.org  
8 maya@defendstudents.org

9 Brian Galle, N.Y. Bar #419154 (*pro hac vice* forthcoming)  
Georgetown University Law Center  
10 600 New Jersey Avenue NW, Washington, D.C. 20001  
(202) 662-4039  
11 brian.galle@georgetown.edu

12 \* Admitted to practice law only in North Carolina; Supervised by organizational  
principals while D.C. Bar application is pending.

13 *Attorneys for Proposed Intervenor-Defendant Student Defense*

14 **IN THE UNITED STATES DISTRICT COURT**  
15 **FOR THE DISTRICT OF ARIZONA**

16 Grand Canyon University,  
17 Plaintiff,

18 v.

No.: 2:21-cv-00177

19 Miguel Cardona, in his Official Capacity as  
20 Secretary of the United States Department  
of Education, and the United States  
21 Department of Education.

22 Defendants,

23 and

24 National Student Legal Defense Network,  
25 Applicant to Intervene.

1                   **DECLARATION OF AARON AMENT IN SUPPORT OF APPLICANT'S**  
2                   **MOTION TO INTERVENE AS A DEFENDANT**

3                   Pursuant to 28 U.S.C. § 1746, I, Aaron Ament, declare:

4                   1.       I have served as President of the National Student Legal Defense Network  
5 ("Student Defense") since its creation in 2017. I am over 18 years of age and have  
6 personal knowledge of the facts stated herein.

7                   2.       Student Defense is a non-partisan, non-profit 501(c)(3) organization  
8 founded in 2017 by former U.S. Department of Education officials with significant  
9 expertise in federal higher education policies, regulations, and other issues that impact  
10 students.

11                  3.       Student Defense's mission and objectives are to engage in litigation and  
12 advocacy work to advance students' rights to educational opportunity and to ensure that  
13 higher education provides a launching point for economic mobility. Student Defense  
14 frequently represents students who attend for-profit, often online institutions of higher  
15 education, such as veterans, students of color, and those with financial hardships.

16                  4.       Student Defense represents students who are misled by for-profit college  
17 marketing and recruitment practices and has represented numerous students who have  
18 been harmed by the ramifications of attempted non-profit conversions and changes in  
19 ownership of their institutions of higher education. For example, Student Defense  
20 represents students seeking damages after being misled and harmed by the Illinois  
21 Institute of Art; its parent companies, Dream Center Education Holdings, Inc. and the  
22 Dream Center Foundation; and its executives, in *Dunagan et al. v. Illinois Institute of Art,*  
23 *LLC, et al.*, No. 19-cv-0809 (N.D. Ill.) and in *Digital Media Solutions v. South*  
24 *University*, 1:19-CV-00145 (N.D. Ohio).

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

5. In 2018, Student Defense also submitted an extensive comment for the record to the National Advisory Committee on Institutional Quality and Integrity on the need for increased oversight of for-profit institutions converting to nonprofit entities.

For all of the reasons stated above, Student Defense requests permission to intervene in this case as a defendant.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 22nd day of April, 2021, in Silver Spring, Maryland.



Aaron Ament

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Grand Canyon University,

Plaintiff,

v.

Miguel Cardona, in his Official Capacity as  
Secretary of the United States Department  
of Education, and The United States  
Department of Education.

Defendants,

and

National Student Legal Defense Network,

Applicant to Intervene.

Case No.: 2:21-cv-00177

**ORDER**

Upon consideration of the motion filed by the National Student Legal Defense Network (“Applicant”), Applicant’s memorandum in support, and any opposition thereto, the Court finds that the applicants meet the requirements for intervention under Federal Rule of Civil Procedure 24(b).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Accordingly, it is **ORDERED** that:

1. Applicant’s Motion to Intervene as Defendants is **GRANTED**, and Applicants are given leave to participate as a party to this action as an Intervenor-Defendant; and
2. Applicant’s Answer, previously lodged with the Court, is hereby deemed filed.