

Nos. 22-506, 22-535

In The Supreme Court of the United States

JOSEPH R. BIDEN, PRESIDENT OF THE UNITED STATES,
ET AL.,

Petitioners,

v.

STATE OF NEBRASKA, ET AL.,
Respondents.

DEPARTMENT OF EDUCATION, ET AL.,
Petitioners,

v.

MYRA BROWN, ET AL.,
Respondents.

On Writs of Certiorari to the
United States Courts of Appeals
for the Fifth and Eighth Circuits

**AMICUS BRIEF OF AMERICAN CENTER FOR LAW
AND JUSTICE IN SUPPORT OF RESPONDENTS**

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INTEREST OF AMICUS*

Amicus, the American Center for Law and Justice (ACLJ) is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have frequently appeared before this Court as counsel either for a party, *e.g.*, *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009), or for amicus, *e.g.*, *Carson v. Makin*, 142 S. Ct. 1987 (2022). The proper resolution of this case is a matter of utmost concern to the ACLJ and more than 4500 supporters of our sister organization, ACLJ Action, Inc.¹ because of their commitment to separation of powers.

The ACLJ offers this brief to provide a catalog of Congress’s extensive legislative activity on federal student loan debt forgiveness. This brief also argues that construing the term “national emergency” to include a pandemic in the HEROES Act—not to mention the numerous other federal statutes that contain the term—wrenches the term from the Act’s context and purpose.

*No counsel for any party in this case authored this brief in whole or in part. No person or entity aside from Amicus, its members, or its respective counsel made a monetary contribution to the preparation or submission of this brief.

¹ ACLJ Action, Inc., is a separate organization from the American Center for Law and Justice and is committed to liberty, constitutional government, and religious freedom in the United States and abroad.

SUMMARY OF THE ARGUMENT

The Secretary of Education, Miguel Cardona's student loan forgiveness program is the latest, and perhaps most alarming, example of the executive branch's effort to dictate a major national policy through administrative fiat. This Court's recent decisions in *West Virginia v. EPA*, *Nat'l Fed'n of Indep. Bus. v. OSHA*, and *Ala. Ass'n of Realtors v. HHS* regrettably have not deterred the executive branch from adopting sweeping administrative mandates to coerce policies that Congress declined to adopt. The Founders would be distraught at the escalating disregard for the separation of powers.

Secretary Cardona's discovery in the HEROES Act of Congressional authority to forgive hundreds of billions of dollars in federal student loans violates the separation of powers under the major questions doctrine. The Secretary's program is of vast economic and political significance. Congress did not give clear authorization to the Secretary to grant nationwide student loan forgiveness.

Contemporaneous legislative activity on a national issue is a significant indication that administrative agency initiatives are legislative "work-arounds," attempting to achieve what Congress did not. Congress's intensive efforts to pass laws proposing various levels of federal student loan forgiveness have spanned a decade. The 116th and 117th Congresses alone have considered no fewer than twenty-two such bills, many of which proposed loan forgiveness programs akin to the Secretary's program. It should be axiomatic that when Congress

considers multiple bills addressing a major national policy, it is because Congress retained its power to do so, has not yet chosen to exercise that power, and did not somehow forget that it had delegated that power to the executive branch.

Nothing in the HEROES Act supports the Secretary's claim that Congress delegated legislative power over an en masse student loan forgiveness program. Congress passed the HEROES Act in the wake of the 9/11 terrorist attack—the Act's purpose was to protect military service members against adverse financial consequences resulting from student loan default during military service.

The Secretary's innovative authorization argument rests primarily on construing “national emergency” to include COVID-19 and “affected individuals” to include student borrowers, irrespective of whether they served in the military. The fact that the pandemic was declared a national emergency does not resolve the question of how the statutory term should be construed in the context of the HEROES Act—not to mention the over 200 other federal statutes that contain the term.

A cardinal rule of statutory interpretation is that statutes must be read as a whole, with the meaning dependent on context. Close attention to the context of statutory terms often reveals a more limited purpose than those terms, wrenched from their context, might support. The Secretary's broad reading of “national emergency” and “affected individuals” stuffs the proverbial elephant into the mousehole by detaching both terms from the HEROES Act's limited purpose.

Other federal statutes addressing military and national security matters employ the term “national emergency” often in conjunction with “war,” as does the HEROES Act. Construing the phrase to include a pandemic regardless of statutory context is incompatible with the statutes’ purposes, and would, in many instances, lead to absurd results. For example, reading “national emergency” in the Atomic Energy Act to include a pandemic would result in COVID-19 triggering authorization for the Atomic Energy Commission to suspend development licenses granted under the Act.

The Secretary’s loan forgiveness program deserves the same fate as OSHA’s vaccine mandate, the CDC’s eviction moratorium, and the EPA’s carbon dioxide emissions regulations—all of which this Court held invalid.

ARGUMENT

The Secretary of Education, Miguel Cardona, hijacked HEROES Act language intended for the limited purpose of aiding military veterans to attain higher education and converted it into carte blanche authorization to spend \$400 billion of taxpayer funds forgiving student loan indebtedness, irrespective of the borrowers’ status as veterans. The Secretary’s loan cancellation program violates separation of powers and the major questions doctrine and is therefore unconstitutional.

I. The Secretary of Education, Miguel Cardona’s Twisting of the HEROES Act Violates Separation of Powers, Which Prevents the Executive Branch from Dictating National Policy by Administrative Fiat.

Separation of powers is an essential safeguard against the threat to individual liberty that results from the concentration of power in the hands of a single branch. Article I of the Constitution vests federal legislative power in Congress. U.S. Const. art. I, § 1. Protecting legislative power and the power of the purse is “vital to the integrity and maintenance of the system of government ordained by the Constitution.” *Marshall Field & Co. v. Clark*, 143 U.S. 649, 692 (1892). The corollary principle that Congress cannot delegate legislative power to the President protects another of the Constitution’s most foundational precepts: the sovereignty of the American people and the political accountability of those who govern. “The genius of republican liberty seems to demand . . . not only that all power should be derived from the people, but that those entrusted with it should be kept in dependence on the people.” The Federalist No. 37, at 4 (James Madison) (J. & A. McLean eds., 1788) (quotations omitted).

“Money is the instrument of policy and policy affects the lives of citizens. The individual loses liberty in a real sense if that instrument is not subject to traditional constitutional constraints.” *Clinton v. City of New York*, 524 U.S. 417, 451 (1998) (Kennedy, J., concurring). Congressionally

unauthorized administrative mandates with nationwide scope and multi-billion-dollar price tags rend the fabric of separation of powers and threaten the liberty of all citizens. Within the past 18 months alone, this Court has accordingly invalidated several administrative agency mandates of breathtaking scope because Congress did not clearly authorize them. *See West Virginia v. EPA*, 142 S. Ct. 2587 (2022); *Nat’l Fed’n of Indep. Bus. v. OSHA*, 142 S. Ct. 661 (2022) (per curiam) (“*NFIB*”); *Ala. Ass’n of Realtors v. HHS.*, 141 S. Ct. 2485 (2021) (per curiam). These mandates, like the one here, were adopted to coerce policies that Congress declined to adopt. *See, e.g., NFIB*, 142 S. Ct. at 668 (Gorsuch, J., joined by Thomas, Alito, JJ. concurring) (noting that OSHA pursued its regulatory initiative only as a legislative “work-around” and that a majority of the Senate voted to disapprove OSHA’s vaccine mandate); *West Virginia*, 142 S. Ct. at 2610 (“Congress had conspicuously and repeatedly declined to enact” carbon dioxide emissions regulations that the EPA claimed authority to adopt.); *Ala. Ass’n of Realtors*, 141 S. Ct. at 2486 (noting that the CDC seized the authority to extend the eviction moratorium only after Congress expressly declined to do so).

The Framers would be “rubbing their eyes” in disbelief at these brazen trespasses against Article I limits. *City of Arlington v. FCC*, 569 U.S. 290, 313 (2013) (Roberts, C.J., dissenting). The laws governing Americans are increasingly “nothing more than the will of the current President.” Stephen Breyer, *Making Our Democracy Work: A Judge’s*

View 110 (2010); *see also* The Federalist No. 47, at 303 (James Madison) (Clinton Rossiter ed., 1961) (“When the legislative and executive powers are united in the same person or body, there can be no liberty. . .”).

The Secretary’s discovery in the HEROES Act of Executive authority to forgive hundreds of billions of dollars in federal student loans is another such encroachment on Congress’s legislative powers.

II. The Secretary of Education, Miguel Cardona’s Distorted Reading of the HEROES Act Also Violates the Major Questions Doctrine.

Like OSHA’s vaccine mandate,² the EPA’s carbon emissions program,³ and the CDC’s eviction moratorium,⁴ the Secretary’s student loan forgiveness program runs afoul of the major questions doctrine. The major questions doctrine requires a government agency to “point to clear congressional authorization for the power it claims” to have. *West Virginia*, 142 S. Ct. at 2609. The requirement of clear congressional authorization protects separation of powers and political accountability by ensuring that the legislative branch answers directly to the citizenry for major national policies. *Id.* at 2609, 2613. The requirement derives from the “presumption of continuity for

² *Nat’l Fed’n of Indep. Bus. v. OSHA*, 142 S. Ct. 661.

³ *West Virginia v. EPA*, 142 S. Ct. 2587.

⁴ *Ala. Ass’n of Realtors v. HHS*, 141 S. Ct. 2485.

major policies unless and until Congress has deliberated about and enacted a change in those major policies.” William N. Eskridge, Jr., *Interpreting Law: A Primer on How to Read Statutes and the Constitution* 288–89 (2016). And the major questions doctrine applies when an agency regulation governs an area of “vast economic and political significance.” *West Virginia*, 142 S. Ct. at 2605.

The HEROES Act did not clearly authorize the Secretary to foist a massive student loan forgiveness program on the Country. The loan forgiveness program is of vast economic and political significance and is just the latest example of an executive branch “work-around” of Congress’s refusal to do the executive branch’s bidding. The Secretary’s loan program therefore violates the major questions doctrine.

A. The HEROES Act Has a Noble But Limited Purpose that Does Not Clearly Authorize the Secretary’s Program.

A statute must be read as a whole, and the meaning of statutory language depends on context. *Home Depot U.S.A., Inc. v. Jackson*, 139 S. Ct. 1743, 1748 (2019); Antonin Scalia & Bryan Garner, *Reading Law* 167 (2012). “Words are not pebbles in alien juxtaposition; they have only a communal existence; and not only does the meaning of each interpenetrate the other, but all in their aggregate take their purport from the setting in which they are used.” *King v. St. Vincent’s Hosp.*, 502 U.S. 215, 221

(1991). Close attention to the context of statutory terms often reveals a “more limited purpose” than those terms, construed in isolation, might support. *See Shell Oil Co. v. Iowa Dep’t of Revenue*, 488 U.S. 19, 24-26 (1988).

The HEROES Act authorizes the Secretary of Education to “waive or modify any statutory or regulatory provision applicable to the student financial assistance programs under [20 U.S.C. §§ 1070–1070h] as the Secretary deems necessary in connection with a war or other military operation or national emergency.” 20 U.S.C. § 1098bb(a)(1). “The term ‘national emergency’ means a national emergency declared by the President of the United States.” *Id.* § 1098ee(4). The waiver or modification must also “be necessary to ensure that” certain objectives are achieved. *Id.* § 1098bb(a)(2).

Congress passed the HEROES Act in the wake of the September 11, 2001 attacks and the onset of the Global War on Terror. Its purpose was to ensure that the “[h]undreds of thousands of Army, Air Force, Marine Corps, Navy, and Coast Guard reservists and members of the National Guard [who] ha[d] been called to active duty or active service” would not be “placed in a worse position financially in relation to that financial assistance” because of their military service. *See id.* §§ 1098aa(b)(4), 1098bb(a)(2)(A). Congress stated that “[t]here is no more important cause . . . than to support the members of the United States military and provide assistance with their transition into and out of active duty and active service.” *Id.* § 1098aa(6).

Claiming the textualist mantle⁵ in disregard of the HEROES Act’s purpose, the Secretary’s loan forgiveness program labels the COVID-19 pandemic as a qualifying “national emergency,” 87 Fed. Reg. 61,512, 61,513 (Oct. 12, 2022), even though President Biden declared that the pandemic was “over” weeks before the Department announced the program.⁶ The whole nation was characterized as a “disaster area,” and all people receiving applicable federal student assistance, regardless of whether they served in the military, were labeled “affected individuals” under the program. 87 Fed. Reg. at 61,513. Ignoring the obvious purpose and provisions of the HEROES Act, the Secretary’s loan forgiveness program, by executive fiat, provides \$20,000 in debt relief to qualified Pell Grant recipients and \$10,000 to other qualified debtors, with no connection to military service or emergency. 87 Fed. Reg. at 61,513–14.

Contrary to the Secretary’s strained reading of the HEROES Act, this Court has often rejected broad readings of a single statutory term where the context supported a narrower meaning. In *Jackson*, Home Depot argued that the statutory term “defendant” encompassed third-party counterclaim defendants. Though acknowledging that Home Depot’s reading was “plausible,” the Court rejected it because it was

⁵ See Pet’r’s Br. 34–42 (arguing that “[t]he plain text of the HEROES Act authorizes the plan”).

⁶ See Kate Sullivan et al., *Biden: ‘The Pandemic Is Over’*, CNN Politics, <https://www.cnn.com/2022/09/18/politics/biden-pandemic-60-minutes> (Sept. 18, 2022, 9:39 PM). It is therefore questionable whether COVID-19 is a valid “national emergency” under the HEROES Act.

unsupported by the contexts of both the general removal statute, 28 U.S.C. §1441(a), and the Class Action Fairness Act of 2005. *Jackson*, 139 S. Ct. at 1748, 1750; *see also Owasso Indep. Sch. Dist. No. I-011 v. Falvo*, 534 U.S. 426, 433 (2002) (dictionary definition of “maintained” is broader than the correct reading of the word as used in FERPA).

The Secretary’s reading of “national emergency” and “affected individual,” 20 U.S.C. § 1098ee(2), (4), wrenches the terms from the HEROES Act’s context and purpose. Congress’s purpose was to protect military service members from adverse financial consequences resulting from student loan default during their military service. *See* 20 U.S.C. §§ 1098aa(b)(4)–(5), 1098bb(a)(2)(A). Reading “national emergency” to include a pandemic and “affected individuals” to include student borrowers who never served in the military drives a tank through the HEROES Act’s limited purpose.

The more than two hundred other federal statutes⁷ that employ the term “national emergency” demonstrate that the term cannot always be construed in context to include a pandemic. In fact, equating “national emergency” with a pandemic in those statutes would lead to absurdity, a result always to be avoided. *See McNeill v. United States*, 563 U.S. 816, 822 (2011); Scalia & Garner, *supra*, at

⁷ A Lexis search turned up 225 federal statutes using the term “national emergency.” As in the HEROES Act, 20 U.S.C. § 1098bb(a)(1), national emergency is often joined with “war” or “military action.” *See, e.g.*, 14 U.S.C. § 2127 (conferring authority on the Secretary of Homeland Security “[i]n time of war or national emergency” to “order any regular officer on the [U.S. Coast Guard’s] retired list to active duty”).

235 (“What the rule of absurdity seeks to do is what all rules of interpretation seek to do: make sense of the text.”). Always construing “national emergency” to include a pandemic would make no sense in the context of many of these statutes, which, like the HEROES Act, address military matters.

Under the Secretary’s broad reading of “national emergency,” a pandemic could trigger

- The Secretary of Homeland Security’s authority to order any regular officer on the U.S. Coast Guard’s retired list to active duty. 14 U.S.C. § 2127.
- The Atomic Energy Commission’s authority to suspend licenses granted under the Atomic Energy Act. 42 U.S.C. § 2138.
- The Executive Branch’s authority to “suspend the operation of any provision of law relating to the promotion, involuntary retirement, or separation of commissioned officers of the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard Reserve.” 10 U.S.C. § 123.
- Restrictions on American construction, sale, mortgage, lease, charter, or delivery of vessels to foreign entities unless approved by the Secretary of Transportation. 46 U.S.C. § 56102.
- The executive branch’s authority to dispose of materials in the national defense stockpile. 50 U.S.C. § 98f (conferring authority on the executive branch “in time of war” or “during a national emergency”).

Notably, political leaders, including President Biden himself and members of his party, previously acknowledged the obvious—that the HEROES Act has nothing to do with general student loan forgiveness. During the 117th Congress, Speaker Pelosi (D) was unequivocal that Congress, not the President, had sole authority to regulate student loan forgiveness: “People think that the president of the United States has the power for debt forgiveness. . . He does not. He can postpone, he can delay, but he does not have that power. That has to be [accomplished through] an act of Congress.”⁸ President Biden began his presidency “deeply skeptical of the idea of writing off large chunks of student loan debt.”⁹

Secretary Cardona’s predecessor agreed with Speaker Pelosi and then-Candidate Biden that Congress did not delegate its power over student loan forgiveness, concluding instead that the Department of Education lacked authority under the HEROES Act to link COVID-19 with en masse loan forgiveness. The predecessor Secretary explained that the Department of Education

⁸ Lauren Camera, *Pelosi: Biden Lacks Authority to Cancel Student Debt*, U.S. News & World Report (July 28, 2021, 3:16 PM), <https://www.usnews.com/news/education-news/articles/2021-07-28/pelosi-biden-lacks-authority-to-cancel-student-debt>.

⁹ Michael Stratford & Eugene Daniels, *How Biden Finally Got to ‘Yes’ on Canceling Student Debt*, Politico (Aug. 25, 2022), <https://www.politico.com/news/2022/08/25/biden-canceling-student-debt-00053826>.

has never relied on the HEROES Act or any other statutory, regulatory, or interpretative authority for the blanket or mass cancellation, compromise, discharge, or forgiveness of student loan principal balances, and/or the material change of repayment amounts or terms, and rightly so, for the statutory text does not permit, authorize, or support such action. We believe it is impossible to escape the conclusion that Congress funds student loans with the expectation that such loans will be repaid in full with interest, except in identified circumstances, and did not authorize you to countermand or undermine that expectation.

Reed Rubinstein, Memorandum to Betsy DeVos Secretary of Education, U.S. Dep't of Educ., Off. of the Gen. Couns. 6, <https://static.politico.com/d6/ce/3edf6a3946afa98eb13c210afd7d/ogcmemohealoans.pdf>. Mr. Rubinstein was right.

The HEROES Act is a provision solely for the benefit of the nation's military personnel. The Act does not contain clear Congressional authorization for the Secretary's blanket student loan forgiveness program.

B. Democrat Leaders in Congress and Then-Candidate Biden Conceded that Loan Forgiveness Is an Issue of Immense Economic and Political Significance that Congress Alone May Regulate.

As the Secretary concedes, the vast economic significance of the Secretary's loan forgiveness program is beyond dispute.¹⁰ At the end of the second quarter of 2022, student federal loan debt approximated \$1.62 trillion.¹¹ A one-time maximum debt forgiveness of \$10,000 per borrower will cost taxpayers from \$300 to \$400 billion.¹² Indeed, the Secretary's loan forgiveness program dwarfs the price tag of the CDC's eviction moratorium program struck down in *Ala. Ass'n of Realtors*. See 141 S. Ct. at 2489 (\$50 billion).

¹⁰ See Pet'r's Br. 47–48 (arguing instead that the HEROES Act clearly authorized the Secretary's interpretation).

¹¹ Christopher H. Schroeder, Assistant Att'y Gen., U.S. Dep't of Just., Off. of Legal Couns., Use of the Heroes Act of 2003 to Cancel the Principal Amounts of Student Loans, Mem. Op. for the Gen. Couns., U.S. Dep't of Educ., 46 Op. O.L.C. ___, Slip. Op. at 2 (Aug. 23, 2022); Federal Student Loan Portfolio, U.S. Dep't of Educ., <https://studentaid.gov/data-center/student/portfolio> (last visited January 13, 2023).

¹² Forgiven Student Loans: Budgetary Costs and Distributional Impact (Aug. 23, 2022), <https://budgetmodel.wharton.upenn.edu/issues/2022/8/23/forgiving-student-loans#:~:text=Summary%3A%20We%20estimate%20that%20forgiving,percent%20of%20the%20income%20distribution.>

Federal student loan debt is a major national concern,¹³ reportedly among the top five matters that Americans write about to the President.¹⁴ Congress has considered and rejected student loan forgiveness legislation since at least 2013.¹⁵ During his presidential campaign, President Biden promised to take steps to “forgive all undergraduate tuition-related federal student debt from two- and four-year public colleges and universities for debt-holders earning up to \$125,000.”¹⁶ After the election, he called on Congress to pass legislation fulfilling that promise¹⁷—not the Secretary to bypass Congress with a sweeping rule not grounded in statute.

A telling sign of a legislative work-around is that “Congress has ‘considered and rejected’ bills authorizing something akin to the agency’s proposed

¹³ There is substantial public support for reducing federal student loan debt. See Hillary Hoffower & Madison Hoff, *The Case for Cancelling Student Debt Isn’t Political—It’s Practical. Here Are the Benefits of Erasing \$1.6 Trillion, No Strings Attached*, Bus. Insider (Feb. 17, 2021, 10:26 AM), <https://www.businessinsider.com/economic-benefits-of-student-debt-forgiveness-2020-12>.

¹⁴ Stratford & Daniels, *supra* note 8.

¹⁵ See, e.g., Student Loan Fairness Act, H.R. 1330, 113th Cong. (2013); Student Loan Fairness Act, H.R. 5487, 114th Cong. (2016); Student Loan Fairness Act, H.R. 1127, 115th Cong. (2017); Student Loan Relief Act, H.R. 8514, 116th Cong. (2020).

¹⁶ Joe Biden, *Joe Biden Outlines New Steps to Ease Economic Burden on Working People*, Medium (Apr. 9, 2020), <https://medium.com/@JoeBiden/joe-biden-outlines-new-steps-to-ease-economic-burden-on-working-people-e3e121037322>.

¹⁷ See Annie Nova, *Biden Will Call on Congress to Forgive \$10,000 in Student Debt for All Borrowers*, CNBC (Jan. 8, 2021), <https://www.cnbc.com/2021/01/08/student-loan-forgiveness-could-be-more-likely-but-challenges-remain-.html>.

course of action.” See *West Virginia*, 142 S. Ct. at 2620–21 (Gorsuch, J., concurring) (quotations omitted); *Gonzales v. Oregon*, 546 U.S. 243, 267 (2006) (stating that “earnest and profound debate across the country” renders even more suspect the “oblique form of the claimed delegation”).

Congressional efforts to pass student loan forgiveness legislation far outstrip the legislative activity deemed “telling” in *West Virginia*, *NFIB*, and *Ala. Ass’n of Realtors*. See *West Virginia*, 142 S. Ct. 2587, 2614 (citing four failed bills that attempted to accomplish the same purpose as the EPA’s proposed regulation); *id.* at 2621–22 (Gorsuch, J., concurring) (citing a House subcommittee hearing on climate change); *NFIB*, 142 S. Ct. at 662–63 (“[A]lthough Congress has enacted significant legislation addressing the COVID-19 pandemic, it has declined to enact any measure similar to what OSHA has promulgated here.”); *id.* at 666 (citing the American Rescue Plan Act of 2021, Pub. L. 117-2, 135 Stat. 4., which did not authorize agencies to issue vaccine mandates, and a Senate resolution opposing OSHA’s vaccine mandate); *id.* at 667–68 (Gorsuch, J., concurring) (“Congress has adopted several major pieces of legislation aimed at combating COVID-19. But Congress has chosen not to afford OSHA—or any federal agency—the authority to issue a vaccine mandate.”); *Ala. Ass’n of Realtors*, 141 S. Ct. at 2486–87 (citing Congress’s initial 120-day eviction moratorium and its one-month extension of the CDC’s own eviction moratorium, before the CDC eventually extended it for six months).

During the 116th and 117th Congresses, no fewer than twenty-two bills addressing student loan indebtedness were introduced. For example, during the 116th Congress, Senator Elizabeth Warren (D) introduced a bill to provide \$50,000 in debt forgiveness for those who make under \$100,000. Student Loan Debt Relief Act, S. 2235, 116th Cong. (2019). The House version of the same bill, H.R. 3887, was sponsored by Representative James Clyburn (D). Representative Vicente Gonzales (D) introduced the Student Loan Relief Act, which required the Department of Education to cancel or repay up to \$25,000 in outstanding student loan debt for each borrower. H.R. 8514, 116th Cong. (2020).¹⁸

Democrats in the 117th Congress proposed multiple bills with various student loan forgiveness proposals. *See, e.g.*, Second Chance at Public Service Loan Forgiveness Act, S. 4581, 117th Cong. (2022), introduced by Senator Robert Menendez (D), to improve the public service loan forgiveness program under section 455(m) of the Higher Education Act of 1965; Income-Driven Student Loan Forgiveness Act, H.R. 2034, 117th Cong. (2021), sponsored by Representative Al Lawson (D), proposing to forgive the outstanding loan balance of all borrowers who

¹⁸ One other student debt forgiveness bill introduced in the 116th Congress was the Frontline Healthcare Worker Student Loan Assistance Act, H.R. 8393 (2020), sponsored by Representative Van Drew Jefferson (R), to provide student loan forgiveness to health care workers who are on the frontline in response to COVID-19. Other bills have also sought to provide student loan forgiveness for COVID-19 frontline workers. *See, e.g.*, Student Loan Forgiveness for Frontline Health Workers Act, H.R. 2418, 117th Cong. (2021).

make under \$100,000 individually or \$200,000 if married and filing taxes jointly.¹⁹

Once it became clear that the President planned to reverse course, endorsing administrative agency fiat to achieve what Congress could not, Republican Members on the other side of the aisle introduced legislation to thwart the executive branch's strategy. Senator Rick Scott (R) introduced the Debt Cancellation Accountability Act, S. 4483, 117th Cong. (2022), a bill which prevented loan forgiveness for Federal student loans without the explicit appropriation of funds by Congress. Representative Scott Des Jarlais (R) introduced a bill to forbid the Secretary of Education from authorizing mass cancellation of student debt because "[s]tatutory

¹⁹ The House version of Senator Menendez's bill was sponsored by Representative Donald Norcross (D). H.R. 8474, 117th Cong. (2022). *See also, e.g.*, Loan Forgiveness for Educators Act, H.R. 8856, 117th Cong. (2022), sponsored by Representative Teresa Leger Fernandez (D); Loan Forgiveness for Educators Act, S. 4867, 117th Cong. (2022), sponsored by Senator Ben Lujan (D); Student Loan Forgiveness for Farmers and Ranchers Act, S. 5296, 117th Cong. (2022), sponsored by Senator Chris Murphy (D); Student Loan Borrower Relief Act, H.R. 7530, 117th Cong. (2022), sponsored by Representative Frederica Wilson (D); Simplifying and Strengthening Public Service Loan Forgiveness Act, S. 4345, 117th Cong. (2022), sponsored by Senator Sheldon Whitehouse (D); Strengthening and Improving Public Service Loan Forgiveness Act, H.R. 8330, 117th Cong. (2022), sponsored by Representative Joe Courtney (D); Student Loan Relief for Medicare and Social Security Recipients Act, H.R. 9558, 117th Cong. (2022), sponsored by Representative Adam Schiff (D); Public Service Reward Act, H.R. 9097, 117th Cong. (2022), sponsored by Representative James Clyburn (D); Young Farmer Success Act, H.R. 8549, 117th Cong. (2022), sponsored by Joe Courtney (D).

authority has not been provided to the executive branch of the Federal Government to cancel student loans on a mass scale.” Student Loan Accountability Act, H.R. 8102, 117th Cong. (2022).²⁰

The sheer volume of legislative activity by members of the President’s own party since the 2020 presidential election is dispositive evidence that the Secretary’s program is an unconstitutional legislative “work-around.”

²⁰ Other Republican-sponsored bills include the Senate version of H.R. 8102, introduced by Senator Mitt Romney (R), prohibiting the Departments of Education, Justice, or the Treasury from taking any action to cancel or forgive the outstanding balances, or portion of balances, of Federal Family Education Loans, Federal Direct Loans, Federal Perkins Loans, and loans under the Health Education Assistance Loan Program. Student Loan Accountability Act, S. 4253, 117th Cong. (2022). Representative Glenn Grothman (R) introduced the Fairness for Responsible Borrowers Act, H.R. 8496, 117th Cong. (2022). Representative Greg Murphy (R) sponsored the Stop Reckless Student Loan Actions Act, H.R. 7656, 117th Cong. (2022), restricting the Secretary of Education’s authority under the HEROES Act.

CONCLUSION

Amicus respectfully requests this Court to affirm the Eighth Circuit's injunction and reverse the district court's judgment.

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