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Supreme Court Holds Biden Administration's Mass Student Loan-Cancellation Program Unlawful

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Decided June 30, 2023 ***Biden, et al. v. Nebraska, et al.*, No. 21-869; *Department of Education, et al., v. Brown, et al.*, No. 22-535 Today, the Supreme Court held 6-3 that the HEROES Act does not authorize the Secretary of Education to cancel hundreds of billions of dollars in student loan balances. Background:** Under the Higher Education Relief Opportunities for Students Act of 2003 ("HEROES Act"), the Secretary of Education may "waive or modify any statutory or regulatory provision" governing student loans in times of "national emergency" to ensure no borrower is "placed in a worse position financially" because of the emergency. During the COVID-19 pandemic, the Secretary exercised that authority to defer student loan repayments. When lifting the deferment in August 2022, however, the Secretary purported to exercise the same authority to cancel up to $20,000 in student loan principal for approximately 43 million qualifying individuals.

Six states that service or hold federally backed student loans sued in Missouri—and two individuals who were denied loan cancellation sued in Texas—to challenge the Secretary's loan-cancellation program. The plaintiffs argued that the Secretary exceeded his power under the HEROES Act by cancelling debts, and that the program violated the Administrative Procedure Act both because it was arbitrary and capricious and because it was adopted without following the proper procedures.

Both the Eighth Circuit and a Texas district court barred enforcement of the Secretary's loan-cancellation program. In both cases the Secretary sought stays from the U.S. Supreme Court, and the Supreme Court treated the Secretary's stay applications as petitions for a writ of certiorari before judgment and granted review of both decisions.

Issues:

(1) Does at least one plaintiff have standing to challenge the Secretary's loan-cancellation program?

(2) Does the loan-cancellation program exceed the Secretary's authority under the HEROES Act?

Court's Holding:

(1) At a minimum, the state of Missouri had standing because it suffered an injury in fact to a state-created government corporation that would lose servicing fees for the cancelled loans.

(2) On the merits, the Secretary exceeded his statutory authority under the HEROES Act.

> *"The Secretary asserts that the HEROES Act grants him the authority to cancel $430 billion of student loan principal. It does not."*

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Chief Justice Roberts, writing for the Court in Biden v. Nebraska **What It Means:**

- The Court's decision rested primarily on statutory interpretation of the HEROES Act. The Court interpreted the Secretary's authority to "waive or modify" any statutory or regulatory provision applying to federal student-loan programs to allow only "modest adjustments" to existing provisions. Slip op. 13. That power did not include authority to "draft a new section of the [Higher] Education Act from scratch." *Id.* at 17.
- The Court also found support for its holding in the major-questions doctrine. Under that doctrine, courts will require a clear statement from Congress before presuming that Congress entrusted questions of deep "economic and political significance" to agencies. The Court rejected the government's argument that the major-questions doctrine should apply only to government's power to regulate, not to the provision of government benefits, remarking that the Court had "never drawn that line" because one of "Congress's most important authorities is its control of the purse." Slip op. 24.
- Justice Barrett, who joined the Court's opinion, penned a separate concurrence to elaborate on her view that the major-questions doctrine "is a tool for discerning—not departing from—the text's most natural interpretation." Justice Barrett explained that the doctrine reflects "common sense as to the manner in which Congress is likely to delegate a policy decision of such economic and political magnitude to an administrative agency." Slip. op. 2, 5.
- Today's decision represents the second time the Supreme Court has applied the "major questions doctrine" since first acknowledging the doctrine by name in *West Virginia v. EPA*, 142 S. Ct. 2587 (2022). This case also continues the Court's trend in recent years of reining in the administrative state as well as granting certiorari before judgment to resolve high-profile cases.

The Court's opinion in *Biden v. Nebraska* is available here and its opinion in *Department of Education v. Brown* is available here.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

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