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# Supreme Court Holds That Secretary of Education Cannot Implement Student Debt Relief Program

On June 30, 2023, the Supreme Court concluded that the Secretary of the Department of Education lacks the statutory authority under the Higher Education Relief Opportunities for Students Act to implement a program forgiving certain federal student loans. The Court determined that individual challengers who did not qualify for the full student debt relief benefit lacked Article III standing to challenge the Secretary's program. But the Court then concluded that, because the federal program affected the fees collected by a Missouri nonprofit governmental corporation, the State of Missouri could successfully challenge the program. The Court's opinion in *Biden v. Nebraska* reflected divisions among the Justices regarding the standing of States, the scope of the Secretary's authority in times of emergency, and the proper role of the so-called "major questions" doctrine.

## Background

In 2003, Congress enacted the Higher Education Relief Opportunities for Students Act of 2003 (HEROES Act), Pub. L. No. 108-76, § 2, 117 Stat. 904-905, which authorized the Secretary of Education to "waive or modify any statutory or regulatory provision applicable to the student financial assistance programs" under Title IV of the Higher Education Act "as the Secretary deems necessary in connection with a war or other military operation or national emergency to provide the waivers or modifications authorized by paragraph (2)." 20 U.S.C. 1098bb(a)(1). Paragraph 2, in turn, authorized the Secretary "to waive or modify" any Title IV provision "as may be necessary to ensure" that certain objectives are achieved, including that "recipients of student financial assistance under title IV of the [Education] Act who are affected individuals are not placed in a worse position financially in relation to that financial assistance because of their status as affected individuals." 20 U.S.C. 1098bb(a)(2)(A). An "affected individual" includes any individual who "resides or is employed in an area that is declared a disaster area by any Federal, State, or local official in connection with a national emergency" or who "suffered direct economic hardship as a direct result of" a "national emergency." 20 U.S.C. 1098ee(2)(C) and (D).

In March 2020, President Trump declared a "national emergency" in light of the COVID-19 pandemic, subsequently declaring all fifty States, the District of Columbia, and the territories to be "disaster areas." Shortly thereafter, then-Secretary of Education DeVos invoked the HEROES Act to pause loan repayment obligations and suspend interest accrual on all such loans. Congress directed the Secretary to extend those policies through September 2020, and both the Trump and Biden Administrations relied on the HEROES Act to further extend those policies until December 2022.

In August 2022, Secretary of Education Cardona determined that the pause on loan repayments for all borrowers should end. But, invoking the HEROES Act, the Secretary directed the Department to ensure that "borrowers are not in a worse position financially due to the pandemic with regard to their ability to repay their loans" when payment obligations resume. Accordingly, the Secretary directed the Department to issue up to \$10,000 in student loan relief to eligible borrowers with a gross income below \$125,000 and an additional \$10,000 to qualifying Pell Grant recipients.

The States of Arkansas, Iowa, Kansas, Missouri, Nebraska, and South Carolina challenged the Secretary's program in federal court. Two individuals with outstanding student loans but ineligible for the full benefit under the program also sued in federal court. The challengers claimed that the Secretary's plan exceeds his statutory authority and is arbitrary and capricious.

The district court dismissed the States' case for lack of Article III standing. But the Eighth Circuit, holding that Missouri had standing, issued a nationwide injunction pending appeal. In the individual challengers' case, the district court vacated the plan as exceeding the Secretary's statutory authority, and the Fifth Circuit denied the Department's request for a stay pending appeal. The Supreme Court granted review in both cases to determine whether the challengers have Article III standing, and whether the Secretary's plan exceeded his statutory authority, was arbitrary and capricious, or was adopted in a procedurally improper manner.

### The Supreme Court's Decision

In a unanimous opinion by Justice Alito, the Supreme Court reversed the decision in favor of the individual challengers in *Department of Education v. Brown*. The challengers argued that the HEROES Act does not exempt the Secretary's program from complying with the negotiated-rulemaking and notice-and-comment requirements. Had the Secretary followed those procedural steps, the individual challengers argued, the Secretary might have adopted a different loan-forgiveness plan, under a different statutory authority, which would have been both lawful and more favorable to them.

The Court held that the individual challengers lacked Article III standing. The Court found it "difficult to see" how anyone who might have benefitted from a program that the Secretary did not choose to adopt could have suffered an injury-in-fact to challenge the program that the Secretary did, in fact, implement. More fundamentally, however, the Court determined that the individual challengers failed to meet the Article III traceability requirement. Justice Alito recognized that the "procedural-standing case law tolerates uncertainty over whether observing certain procedures would have led to (caused) a different substantive outcome," but he reasoned that "the causal uncertainty here is not so limited." According to the Court, the Secretary's choice "to give *other* people relief under a *different* statutory scheme did not *cause* respondents not to obtain the benefits they want." That the program might have "some incidental effect on the likelihood that the Department will undertake a separate loan-forgiveness program under a different statute" was not enough.

By contrast, in *Biden v. Nebraska*, in an opinion written by Chief Justice Roberts and joined by Justices Thomas, Alito, Gorsuch, Kavanaugh, and Barrett, the Court held that at least one State had Article III standing and that the Secretary's program exceeded his statutory authority under the HEROES Act.

On the issue of Article III standing, the Court concluded that at least Missouri had standing to sue on behalf of the Missouri Higher Education Loan Authority (MOHELA), a public corporation that owned federal loans and had contracted with the Department to collect payments and provide customer service to federal borrowers. The Court explained that, due to the Secretary's student debt relief program, MOHELA could no longer service the forgiven accounts—losing \$44 million a year in fees that it otherwise would have earned. MOHELA functioned as an "instrumentality of Missouri," the Court determined, because "[i]t was created by the State to further a public purpose, is governed by state officials and state appointees, reports to the State, and may be dissolved by the State." And the State of Missouri could sue for injuries suffered by its instrumentality even though MOHELA could have sued on its own behalf.

Reaching the merits of the dispute, the Court concluded that the Secretary lacked statutory authority to implement the student debt relief program under the plain text of the HEROES Act and in light of the major questions doctrine. The Court pointed out that the HEROES Act authorizes the Secretary only to "waive or modify" existing statutory or regulatory provisions that apply to federal financial assistance programs. According to the Court, however, the Secretary did not make "modest adjustments and additions to existing provisions" but instead "rewr[ote] the statute from the ground up": even though "Congress opted to make debt forgiveness available only in a few particular exigent circumstances," the Secretary set out to "creat[e] a new program affecting 43 million Americans and \$430 billion in federal debt." If the Secretary had such power to bring about a "fundamental revision of the statute," he would be able to "unilaterally define every aspect of federal student financial aid"—a power that the

Court found to be “staggering by any measure.” For those reasons, invoking the major questions doctrine, the Court concluded that “[t]he basic and consequential tradeoffs” that are “inherent in a mass debt cancellation program” such as the Secretary’s “are ones that Congress would likely have intended for itself,” and in the absence of any “clear congressional authorization” for the Secretary’s program, the program was unlawful.

Justice Barrett filed a separate concurring opinion. She noted the “ongoing debate about [the] source and status” of the major questions doctrine, including the suggestion that it is inconsistent with textualism. According to Justice Barrett, however, the doctrine is a textual canon of statutory interpretation, which “emphasize[s] the importance of context when a court interprets a delegation to an administrative agency” and 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.”

Justice Kagan, joined by Justices Sotomayor and Jackson, wrote a dissenting opinion. She contended that Missouri, like the other States, lacked Article III standing because it was “relying on injuries” not to itself but to a “legally and financially independent public corporation.” On the merits, Justice Kagan faulted the majority for “pick[ing] the statute apart piece by piece in an attempt to escape the meaning of the whole.” According to the dissent, by implementing the student debt relief program, “the Secretary did only what Congress had told him he could,” and whether that was a “good idea” or a “bad idea” is not for the Court to decide. Yet, Justice Kagan wrote, the majority “substitute[d] itself for Congress and the Executive Branch . . . in making this Nation’s most important, as well as most contested, policy decisions,” invoking the major questions doctrine to “negate broad delegations Congress has approved.”

### Implications

The practical implications of the Court’s decisions may be limited if, consistent with the Secretary’s announcement hours after those rulings were issued, the Administration successfully identifies a different source of authority for its student debt relief program. Nonetheless, the decisions have potentially significant jurisprudential implications in other contexts.

The Court reaffirmed well-established principles of individual and State standing. Although the Article III standing requirements are somewhat relaxed in cases involving procedural injuries, the Court confirmed in *Department of Education v. Brown* that those standards still have force. But as the disagreement between the majority and the dissent in *Biden v. Nebraska* highlights, the case law on State standing remains largely favorable to State challengers—permitting lawsuits even where the alleged injury is to a legally and financially independent instrumentality of the State.

The Court’s holding, largely grounded on clear-statement rules, that the Secretary’s student debt relief program exceeds his authority under the HEROES Act confirms a recent trend towards stricter judicial review of administrative actions taken pursuant to broad delegations of authority from Congress. Whether pursuant to textual canons of interpretations or the major questions doctrine, the Court is increasingly reluctant to defer to federal administrative agencies in the absence of clear delegations of rulemaking authority from Congress. As Justice Kagan’s dissent demonstrates, the major questions doctrine has become the subject of criticism by some jurists and scholars in recent years. But, as the majority opinion and Justice Barrett’s concurrence show, the Court is increasingly interested in making it a common feature of judicial review of administrative actions.

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