

Nos. 22-506 and 22-535

In the Supreme Court of the United States

JOSEPH R. BIDEN, JR., 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 Before Judgment to the
United States Courts of Appeals
for the Eighth and Fifth Circuits**

**BRIEF FOR SIX VETERANS' ORGANIZATIONS AS
AMICI CURIAE SUPPORTING PETITIONERS**

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INTEREST OF *AMICI CURIAE*¹

Amici Curiae are six veterans' organizations committed to policy advocacy for—and the provision of direct services to—U.S. military veterans and their families. Many have filed *amicus* briefs in other litigation affecting servicemembers. This case is important to *amici* because veteran student debt affects them, their members, and the constituencies they serve.

Minority Veterans of America (“MVA”) is a nationwide, non-partisan, nonprofit organization that works to foster belonging and advance equity for the minority veteran community, many of whom have felt marginalized, underserved, and underrepresented both during their time in military service and afterward. MVA aims to transform the narrative of the American veteran by building an interconnected community, fostering greater understanding of its members' identities, and serving minority veterans through the development of targeted programming and advocacy. MVA understands that student debt affects minority veterans and seeks to reduce these obstacles to veteran success.

Transgender American Veterans Association (“TAVA”) is one of the country's largest nonprofit, non-partisan, legal services, policy, and watchdog organizations serving lesbian, gay, bisexual, transgender,

¹ No counsel for a party authored this brief in whole or in part, and no person other than the amici and their counsel has made any monetary contribution to the preparation or submission of this brief.

and queer military personnel, veterans, military spouses, family members, and allies. Founded in 2003, TAVA works to ensure that transgender veterans receive appropriate care. TAVA also helps to educate the Department of Veterans Affairs and the Department of Defense regarding fair and equal treatment of transgender and transsexual individuals. TAVA seeks to ensure its constituents specifically—and veterans broadly—are not uniquely disadvantaged by crushing student debt.

Protect Our Defenders (“POD”) honors, supports, and gives voice to the brave servicemembers and veterans who have been sexually assaulted during service, and seeks to reform the systems that consistently fail them. In light of its advocacy on behalf of veterans faced with systemic challenges and inequalities, POD has a vital interest in ensuring veteran student debt does not compound the inequities faced by its community.

The Center for Law and Military Policy (“CLMP”) is a nonprofit think tank dedicated to strengthening legal protections for those who serve our nation in uniform. CLMP conducts research and produces educational material in order to meet this goal. This matter is of particular interest to CLMP, which seeks to ensure that vulnerable military personnel are not ignored, financially exploited, or turned into second-class citizens due to the financial hardships associated with student debt.

Combat Sexual Assault (“CSA”) is a nonprofit organization focused on advocacy and education for survivors of military sexual assault. CSA’s services empower survivors of military sexual trauma by

helping them overcome barriers to justice and enabling them to receive all the benefits they have earned due to their service. CSA understands that student debt is a pressing issue for its community and seeks to ensure that veteran-survivors are neither further exploited in pursuit of their education benefits nor impoverished for attempting to reestablish new lives with new education credentials.

The Military and Veteran Women's Coalition is a national group of organizations that work collaboratively to serve and support U.S. active duty, Guard, Reserve, veteran, and retired servicewomen by uniting and elevating their voices to influence policy and improve their well-being. The Coalition's goal is for military women to be fully integrated, equally respected, and equally supported members of the military and veteran community. The Military and Veteran Women's Coalition has a strong interest in ensuring its constituents are not disadvantaged by debilitating student debt as a result of their service or their status as women.

SUMMARY OF THE ARGUMENT

In return for their valiant service, our nation promises to help military veterans to re-enter civilian life—in large part, by promoting their education. The Servicemen's Readjustment Act of 1944, commonly referred to as the G.I. Bill, has served as the principal statutory manifestation of that promise.

Over time, however, the G.I. Bill has not fully achieved its potential, leaving hundreds of thousands of veterans unable to access meaningful educational benefits. Unnecessary administrative complexities

cause some veterans to overpay on student debt or lose the support they have earned. Some for-profit educational institutions prey upon veterans, leaving them laden with debt but without a diploma. Veterans default on their debts at alarming rates.² The economic devastation of the COVID-19 pandemic has only exacerbated these policy failures.

The debt forgiveness program adopted by the Biden Administration and Secretary of Education Miguel Cardona has the potential to redress the pandemic's effects on these veterans. It is tailored to help those most affected by the pandemic emergency, including minority veterans. The Court should uphold the program.

ARGUMENT

I. SECRETARY CARDONA'S DEBT RELIEF PROGRAM WILL HELP VETERANS.

The debt relief program, authorized by the Higher Education Relief Opportunities for Students Act of 2003 (the "HEROES Act" or the "Act"), will help relieve the pandemic's financial impact on millions of borrowers—and, in particular, minority veterans impacted by the pandemic.

² Colleen Campbell, *The Forgotten Faces of Student Loan Default*, CENTER FOR AMERICAN PROGRESS (Oct. 16, 2018), <https://www.americanprogress.org/article/forgotten-faces-student-loan-default/#:~:text=The%20data%20show%20that%20veterans,not%20serve%20in%20the%20military.>

A. The COVID-19 Pandemic Has Had Particularly Adverse Financial Impacts on Veteran and Minority Veteran Borrowers.

In March 2020, the Trump Administration declared a national emergency in response to the COVID-19 pandemic.³ While the pandemic has damaged much of the nation’s health and social structures, its financial impact—especially on veterans—has been particularly devastating. During this emergency, 25 million Americans lost their jobs⁴ and homelessness in urban areas appeared to rise,⁵ among other significant economic challenges.⁶ During the pandemic, a plurality of low-income adults saved less

³ Proclamation No. 9994, Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, 85 Fed. Reg. 15,337 (Mar. 13, 2020).

⁴ Tim Henderson, *The US Has Reversed Pandemic Job Losses. Most Individual States Haven’t.*, PEW (Sept. 21, 2022), <https://www.pewtrusts.org/en/research-and-analysis/blogs/state-line/202209/21/the-us-has-reversed-pandemic-job-losses-most-individual-states-havent>.

⁵ Kriston Capps, *Why We Don’t Know How the Pandemic Affected U.S. Homelessness*, BLOOMBERG (Feb. 4, 2022), <https://www.bloomberg.com/news/articles/2022-02-04/what-covid-19-did-to-u-s-homelessness>.

⁶ Alexis Butler, *Supporting Veterans During COVID-19 and Beyond*, NATIONAL LEAGUE OF CITIES (Nov. 11, 2020), <https://www.nlc.org/article/2020/11/11/supporting-veterans-during-covid-19-and-beyond/>; Mathieu Despard et al., *COVID-19 Job and Income Loss Leading to More Hunger and Financial Hardship*, BROOKINGS (July 13, 2020), <https://www.brookings.edu/blog/up-front/2020/07/13/covid-19-job-and-income-loss-leading-to-more-hunger-and-financial-hardship/>.

money.⁷ The pandemic also disrupted supply chains, altered consumer habits, and ultimately triggered a cycle of inflation that shows little sign of abating.⁸

The communities that *amici* serve are among those who experienced the pandemic's devastation most harshly. For example, during the height of the pandemic, the veteran unemployment rate rose to 11.8 percent.⁹ The fact that the Black unemployment rate peaked at 16.8 percent suggests that minority veterans were likely to be even more dramatically

⁷ Juliana Menasce Horowitz et al., *A Year Into the Pandemic, Long-Term Financial Impact Weighs Heavily on Many Americans*, PEW RESEARCH CENTER (Mar. 5, 2021), <https://www.pewresearch.org/social-trends/2021/03/05/a-year-into-the-pandemic-long-term-financial-impact-weighs-heavily-on-many-americans/>.

⁸ Ana Maria Santacreu & Jesse LaBelle, *Global Supply Chain Disruptions and Inflation During the COVID-19 Pandemic*, FEDERAL RESERVE BANK OF ST. LOUIS (Apr. 21, 2022), <https://research.stlouisfed.org/publications/review/2022/02/07/global-supply-chain-disruptions-and-inflation-during-the-covid-19-pandemic>.

⁹ Katie Young, *How Veterans Can Offset the COVID Financial Hit That's Threatening Their Retirement*, CNBC (June 3, 2020), <https://www.cnbc.com/2020/06/03/el-financial-pain-from-coronav.html>.

affected.¹⁰ Black veterans also had a mortality rate 2.83 times the rate of white veterans.¹¹

LGBTQI+ veterans are also disproportionately affected. Even prior to the pandemic, an estimated 14,000 gay and lesbian veterans received less-than-honorable discharges as a result of the “Don’t Ask, Don’t Tell” policy, thus barring many from accessing benefits and services—including financial compensation and other direct support—from federal and state agencies supporting veterans.¹² LGBTQI+ veterans are twice as likely to receive unemployment benefits compared to non-LGBTQI+ counterparts, an injustice undoubtedly exacerbated by the COVID-19 pandemic, when employment suffered across the board.¹³

¹⁰ White House, *Pandemic Shifts in Black Employment and Wages* (Aug. 24, 2022), <https://www.whitehouse.gov/cea/written-materials/2022/08/24/pandemic-shifts-in-black-employment-and-wages/>.

¹¹ Jessica Luo et al., *Coronavirus Disease 2019 in Veterans Receiving Care at Veterans Health Administration Facilities*, NATIONAL CENTER FOR BIOTECHNOLOGY INFORMATION (Dec. 16, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7836769/>.

¹² Lindsay Mahowald, *LGBTQ+ Military Members and Veterans Face Economic, Housing and Health Insecurities*, CENTER FOR AMERICAN PROGRESS (Apr. 28, 2022), <https://www.americanprogress.org/article/lgbtq-military-members-and-veterans-face-economic-housing-and-health-insecurities/>.

¹³ *Id.*

B. The Debt Relief Program Is Rationally Connected to the Requirements of the HEROES Act.

On August 24, 2022, the Biden Administration and Secretary Cardona announced their plan to use the authority granted to the Secretary of Education under the HEROES Act to provide targeted one-time debt relief to federal student-loan borrowers affected by the pandemic. Under the debt relief program, the Department of Education (“DoE”) would provide up to \$20,000 in debt cancellation to Pell Grant recipients with loans held by the DoE, and up to \$10,000 in debt cancellation to non-Pell Grant recipients to mitigate the financial effects—including the disproportionate effects on veterans. Secretary Cardona narrowed the category of relief-eligible borrowers to individuals with a yearly income of less than \$125,000, or \$250,000 for married couples, to target those most financially affected by the pandemic.

The Biden Administration’s student loan cancellation program offers a direct and appropriate response to the pandemic’s financial consequences because it helps “ensure” that borrowers “are not placed in a worse position financially in relation to [their loans] because of their status as affected individuals.” 20 U.S.C. § 1098bb(a)(2)(A). The costs of both four-year public and private college has risen astronomically in the last forty years.¹⁴ And for veterans, the

¹⁴ Jennifer Ma & Matea Pender, *Trends in College Pricing and Student Aid 2022*, COLLEGE BOARD,

pandemic has worsened that financial burden. According to a report by the Consumer Financial Protection Bureau, the proportion of veterans with student loan debt has increased since the start of the pandemic, even as the proportion for most other groups has decreased, likely due to the benefits of the student loan repayments pause.¹⁵

With student loan payments likely to restart in 2023, borrowers, including veteran borrowers, will face an even higher risk of default.¹⁶ As the balance of this brief explains more fully, this injury compounds veterans', especially minority veterans', decades-long struggle to take full advantage of educational benefits promised by the G.I. Bill and its successors.¹⁷ More than a quarter of veteran students take out education loans despite access to Post-9/11 G.I. Bill benefits.

<https://research.collegeboard.org/media/pdf/trends-in-college-pricing-student-aid-2022.pdf>.

¹⁵ Scott Fulford et al., *Making Ends Meet in 2022*, CONSUMER FINANCIAL PROTECTION BUREAU (Dec. 2022), at 42, https://files.consumerfinance.gov/f/documents/cfpb_making-ends-meet-in-2022_report_2022-12.pdf.

¹⁶ Annie Nova, *Biden Administration Warns of 'Historically Large Increase' in Student Loan Defaults Without Debt Forgiveness*, CNBC (Nov. 16, 2022), <https://www.cnbc.com/2022/11/16/biden-administration-warns-of-historically-large-increase-in-student-loan-defaults-without-debt-forgiveness.html>.

¹⁷ Quil Lawrence, *Black Vets Were Excluded From GI Bill Benefits—A Bill in Congress Aims to Fix That*, NATIONAL PUBLIC RADIO (Oct. 18, 2022), <https://www.npr.org/2022/10/18/1129735948/black-vets-were-excluded-from-gi-bill-benefits-a-bill-in-congress-aims-to-fix-th>.

And veterans who do take on debt have a default rate of 46 percent, contrasted with 29 percent for students who did not serve in the military.

Restarting student loan payments after the COVID-19 pandemic is likely to cause massive default, especially among veterans. As the DoE notes, the risk of delinquency and default are higher after periods of forbearance, and the pandemic is no exception.¹⁸ Moreover, Pell Grant recipients are more likely to be impacted by the restart of student loan payments, further impacting veterans. Nearly 40 percent of student veterans are Pell Grant recipients,¹⁹ and 99 percent of Pell Grant recipients have incomes below \$125,000.²⁰ Forty-two percent of Pell Grant recipients default on their loans at least once, compared to just 18 percent of borrowers who did not receive Pell Grants.²¹

Student loan cancellation achieves the goals of the HEROES Act by reducing or canceling the principal balances of student loans for a broad class of borrowers—including veterans—who are

¹⁸ United States Department of Education, Memorandum re: Pandemic-Connected Loan Cancellation (Aug. 24, 2022).

¹⁹ National Association of Student Financial Aid Administrators, *Issue Brief: Doubling the Maximum Pell Grant* (Aug. 2022), https://www.nasfaa.org/issue_brief_double_pell.

²⁰ United States Department of Education, Memorandum re: Pandemic-Connected Loan Cancellation (Aug. 24, 2022).

²¹ *Id.*

disproportionately impacted by both the pandemic emergency and the student loan crisis.

II. VACATING SECRETARY CARDONA'S DEBT FORGIVENESS PROGRAM EXACERBATES PERSISTENT FAILURES IN MINORITY VETERANS' ACCESS TO EDUCATION.

The pandemic's threat to veteran borrowers—and minority veteran borrowers in particular—exacerbates nearly a century of policy failures and unfulfilled promises to deliver education benefits. The debt forgiveness program takes important steps to rectify some of the most persistent shortcomings.

A. The G.I. Bill Is an Unfulfilled Promise.

During the brutality of the Second World War, Congress enacted the G.I. Bill, which, in the words of president Franklin D. Roosevelt, assured our armed forces that “the American people do not intend to let them down.”²² The G.I. Bill established hospitals, offered low-interest mortgages and small-business loans, created job training programs, established hiring privileges, promised unemployment benefits, and famously granted stipends covering tuition and expenses for veterans to attend college or trade schools.²³ Following the start of the wars in Afghanistan and

²² Franklin D. Roosevelt, *Statement on Signing the G.I. Bill*, AMERICAN PRESIDENCY PROJECT (June 22, 1944), <https://www.presidency.ucsb.edu/documents/statement-signing-the-gi-bill>.

²³ *Id.*

Iraq, Congress passed a new post-9/11 G.I. Bill in 2008,²⁴ expanding its benefits to veterans' families.²⁵

Some veterans' groups lobbied to include robust education benefits in the G.I. Bill,²⁶ which has since promised our returning soldiers and their families an opportunity to participate in the education system. As President Reagan explained: "The GI [B]ill programs have been widely acclaimed as the best investment America has ever made. These programs have promoted quality education for our nation's veterans, providing them the opportunity to be the best that they can be. Our defense of freedom requires a willingness to sacrifice on the part of those in our Armed Forces. The provision of G.I. Bill benefits is one substantial way for the country to express its appreciation to and support of those who serve."²⁷

But this promise to veterans often fell short of its aspirations. Opaque bureaucracy, complicated

²⁴ Post-9/11 Veterans Educational Assistance Act of 2008, Pub. L. No. 110-252, 122 Stat. 2357, 2369 (2008).

²⁵ See George W. Bush, *Remarks on Signing the Supplemental Appropriations Act, 2008*, 1 Pub. Papers 891, 892 (June 30, 2008), <https://www.govinfo.gov/content/pkg/PPP-2008-book1/html/PPP-2008-book1-doc-pg891-2.htm>.

²⁶ See generally Meredith Hindley, *How the GI Bill Became Law Despite Some Veterans' Groups*, HUMANITIES, July/August 2014, <https://www.neh.gov/humanities/2014/julyaugust/feature/how-the-gi-bill-became-law-in-spite-some-veterans-groups>.

²⁷ Ronald Reagan, *Statement on Signing the New GI Bill Continuation Act*, RONALD REAGAN PRESIDENTIAL LIBRARY & MUSEUM (June 1, 1987), <https://www.reaganlibrary.gov/archives/speech/statement-signing-new-gi-bill-continuation-act>.

instructions, and unintuitive fine print catch veterans in a cycle of student debt, often accompanied by lower credit scores and other financial hardships.

For example, veterans are subject to rules and requirements that do not apply to other students and that trap them into loan-related debt. While non-veteran college students will often add or drop classes during a semester to adjust for coursework challenges or personal circumstances, a veteran must avoid dropping too many classes after the Department of Veterans Affairs (“VA”) has already processed payment for tuition and fees, because having too few credits could result in the VA declaring an “overpayment.”²⁸ In such cases, the VA’s Debt Management Center will attempt a collection process, which begins with an initial debt notification letter.²⁹ If the veteran student fails to respond to the letter within 30 days, the debt is offset from future G.I. Bill payments, reducing the veteran’s future benefits.³⁰ Worse, if the veteran fails to respond to the letter within 90 days, and “appropriate arrangements” are not made, credit reporting agencies are notified, which often leads to lowered credit scores.³¹ An initial misjudgment in course load, a lost letter, or mental health challenges—which many veterans experience as a result of their time in service—can thereby lead veteran students

²⁸ *Information About GI Bill Overpayments and Debts*, U.S. DEPARTMENT OF VETERANS AFFAIRS, https://www.benefits.va.gov/gibill/resources/education_resources/debt_info.asp.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

into unintended debt. And some veterans choose to abandon their G.I. Bill education benefits altogether, taking out student loans instead. For others, G.I. Bill education benefits do not cover the full cost of matriculation, housing, books, and supplies.³² Thus, “27% of undergraduate student veterans took out federal or private student loans during the 2015-16 academic year, an unexpected amount given their access to VA education benefits.”³³

B. Many For-Profit Educational Institutions Have Not Effectively Served Veterans.

Additional challenges face veterans attending certain for-profit post-secondary educational institutions (“FPIs”).³⁴ Of the 1.1 million students enrolled

³² Not all veterans receive a full award of education benefits, which are prorated according to the veteran’s accrued time-in-service. For the Post-9/11 G.I. Bill, an award can range from 50 percent to 100 percent of the full benefit, while Montgomery G.I. Bill payments are stepped down for veterans who served more than two but less than three years. *How We Determine Your Percentage of Post-9/11 GI Bill Benefits*, U.S. DEPARTMENT OF VETERANS AFFAIRS, <https://www.va.gov/resources/how-we-determine-your-percentage-of-post-911-gi-bill-benefits/>; *Montgomery GI Bill Active Duty (Chapter 30) Rates*, U.S. DEPARTMENT OF VETERANS AFFAIRS, <https://www.va.gov/education/benefit-rates/montgomery-active-duty-rates/>.

³³ Phillip Oliff et al., *Veteran Student Loan Debt Draws New Attention*, PEW (Sept. 13, 2021), <https://www.pewtrusts.org/en/research-and-analysis/articles/2021/09/13/veteran-student-loan-debt-draws-new-attention>.

³⁴ Christopher J. Salemme, *Unpatriotic Profit: How For-Profit Colleges Target Veterans and What the Government Must Do to Stop Them*, 32 *BYU J. Pub. L.* 85, 89-90 (2017).

in an FPI in 2008-2009, over half withdrew by mid-2010.³⁵ With a median debt load of \$32,700 and a default rate of one in five, FPI students are more likely to have higher debt loads and less likely to receive a degree with which to pay their loans back.³⁶ Student veterans at FPIs, on average, have debt loads between six and eight thousand dollars more than their counterparts at public four-year colleges.³⁷ A 2012 Senate Committee Report concluded that “[m]any of these students [found] themselves sharply worse off than if they had never enrolled in college.”³⁸

After recognizing that students at FPIs were more than twice as likely to default on loans as students at all other higher-education institutions,³⁹ the federal government began to investigate certain FPIs

³⁵ See Staff of S. Comm. on Health, Education, Labor and Pensions, 112th Cong., *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success*, 2 (Comm. Print July 30, 2012) (“Senate Committee Report”), <https://www.govinfo.gov/content/pkg/CPRT-112SPRT74931/pdf/CPRT-112SPRT74931.pdf>.

³⁶ *Id.* at 18.

³⁷ See *Postsecondary Outcomes for Undergraduate Veterans of Color*, VETERANS EDUC. SUCCESS (“*Veterans of Color Outcomes*”) at fig. 12, <https://vetsedsuccess.org/postsecondary-outcomes-for-undergraduate-veterans-of-color/>.

³⁸ See Senate Committee Report at 23.

³⁹ *Id.* at 132-33.

for abuse of financial aid programs.⁴⁰ In response, Congress passed a law that required a portion of an FPI's revenue to come from non-Title IV sources.⁴¹ Regrettably, legislation seeking to limit FPIs' reliance on federal aid had the effect of incentivizing them to recruit an even greater proportion of veterans.⁴²

As a result, some FPIs aggressively recruited on military bases and at VA hospitals, even targeting veterans with brain injuries.⁴³ Others misled veterans

⁴⁰ Vivien Lee & Adam Looney, *Understanding the 90/10 Rule: How Reliant Are Public, Private, and For-Profit Institutions on Federal Aid?*, BROOKINGS INST., at 3 (Jan. 2019), https://www.brookings.edu/wp-content/uploads/2019/01/ES_20190116_Looney-90-10.pdf.

⁴¹ *Id.* (discussing that Congress originally passed an 85/15 limit that required 15 percent of a FPI's funds to come from non-Title IV sources and later amended it to 90/10 in 1998). Title IV of the Higher Education Act authorizes programs and provisions to assist students and their families in gaining access to and financing a post-secondary education. *See also* Joselynn H. Fountain, Cong. Rsch. Serv., R43351, *The Higher Education Act (HEA): A Primer* 9 (2021), <https://crsreports.congress.gov/product/pdf/R/R43351/18>.

⁴² *See* Senate Committee Report at 78-79, 132; *see also* Kimberly Hefling, *Vets to Congress: Cut Off For-Profit Colleges' Incentive to Recruit Student Veterans*, POLITICO (Mar. 29, 2019), <https://www.politico.com/story/2019/03/29/for-profit-colleges-student-veterans-1288265>.

⁴³ *Why For-Profit Schools Are Targeting Veterans Education Benefits*, VETERANS EDUC. SUCCESS, at 2 (Jan. 1, 2014), <https://vetsedsuccess.org/wp-content/uploads/2018/09/VES-Policy-Background.pdf>; *see also* Amanda Harmon Cooley, *The Need for Legal Reform of the For-Profit Educational Industry*, 79 Tenn. L. Rev. 515, 529 (2012).

regarding the types of costs their G.I. Bill benefits would cover⁴⁴ and reportedly deceived students into attending unaccredited programs,⁴⁵ which are unauthorized to receive G.I. Bill benefits. In these instances, veterans were required to pay out-of-pocket—often by obtaining student loans—for the unexpected expenses.⁴⁶ Further, certain FPIs published misleading websites with deceptive rankings in an effort to steer veterans to their institutions.⁴⁷ And some FPIs attempted to take out loans on behalf of veteran students or deceived veterans into signing loan applications without their knowledge.⁴⁸

Veterans now attend FPIs at a higher rate than nonveterans.⁴⁹ At least 22 percent of veterans who

⁴⁴ See Senate Committee Report at 64-65, 81.

⁴⁵ See *id.* at 64-65.

⁴⁶ *Id.* at 80-81.

⁴⁷ *Id.* at 79 (“Militaryfriendlyschools.com, a lead generator site, releases a heavily advertised list of the ‘top military schools.’ The rankings, however, are not based on academic quality or other student-focused factors, but on the schools’ efforts to recruit military students.”).

⁴⁸ VETERANS EDUC. SUCCESS, *The Student Veteran Experience with Transcript Withholding* 4-5 (Mar. 11, 2022), https://vetsedsuccess.org/wp-content/uploads/2022/03/Veterans-Experience-with-Transcript-Withholding-Report.FINAL_.pdf.

⁴⁹ See *Veterans of Color Outcomes*, *supra* note 37 at fig. 4, <https://vetsedsuccess.org/postsecondary-outcomes-for-undergraduate-veterans-of-color/> (citing National Postsecondary Student Aid Study (“NPSAS”), <https://nces.ed.gov/surveys/npsas/>).

use G.I. Bill benefits attended an FPI in 2011.⁵⁰ But our veterans are not receiving the education they deserve. Of the 861 colleges that closed between 2004 and 2021, more than 80 percent were run by for-profit operators.⁵¹ A 2018 study compared veterans before and after the Post-9/11 G.I. Bill and found the percentage of veterans with debt increased from 67 percent to 75 percent.⁵² A 2017 report found that of the 1,623 institutions that served at least 100 G.I. Bill recipients, 984 institutions graduated less than half of their students within eight years.⁵³ Only 10 percent of veterans attend a school with a six-year graduation rate above 70 percent, compared to 21 percent of students overall.⁵⁴ A 2017 report identified one FPI

⁵⁰ See Harmon Cooley, *supra* note 43 at 524-25.

⁵¹ Jill Barshay, *Proof Points: 861 Colleges and 9,499 Campuses Have Closed Down Since 2004*, HECHINGER REPORT (Nov. 21, 2022), <https://hechingerreport.org/proof-points-861-colleges-and-9499-campuses-have-closed-down-since-2004/>.

⁵² Walter Ochinko & Kathy Payea, *Veteran Student Loan Debt Before and After the Post-9/11 GI Bill*, VETERANS EDUC. SUCCESS, at 20-21 (May 2018), <https://vetsedsuccess.org/wp-content/uploads/2018/10/npsas-veteran-student-debt-report-2018.pdf>.

⁵³ Michael Itzkowitz, *How Well Does Our Higher Ed System Serve Those Who Served Us?*, THIRD WAY, at 5 (Nov. 16, 2017), <http://thirdway.imgix.net/pdfs/how-well-does-our-higher-ed-system-serve-those-who-served-us.pdf>. Data from the Department of Veterans Affairs suggests this rate may be even lower for veterans. *Id.*

⁵⁴ Sindy Lopez, Emily Schwartz & Elizabeth Davidson Pisacreta, *Making the Case for Student Veterans: Building Support for Student Veteran Enrollment*, AMERICAN TALENT INITIATIVE, at 3 (Oct.

where the odds of a veteran actually graduating was “one in 100.”⁵⁵ In all, only 15 percent of full-time veteran students graduated with a two-year degree in 2014.⁵⁶

To make matters worse, some FPIs have reportedly withheld a veteran’s transcript if a veteran has incurred any debts to the entity, including debt of which the veteran may not be aware.⁵⁷ Without a transcript, veterans struggle to find employment or continue their education, and often find their eligibility for certain military promotions and programs limited.⁵⁸

C. Veterans Are Uniquely Exposed to the College Debt Crisis.

Despite the promise of the G.I. Bill, thousands of veterans are trapped in a nightmare educational experience with staggering debt and limited prospects. On average, veterans who attended FPIs have higher cumulative education debt than veterans at either

2020), https://americantalentinitiative.org/wp-content/uploads/2020/10/ATI_Veterans-Brief_r04-01.pdf.

⁵⁵ Jon Marcus, *At Some Colleges That Recruit Veterans and Their GI Bill Money, None Graduate*, HECHINGER REP. (Apr. 21, 2017), <https://hechingerreport.org/colleges-recruit-veterans-gi-bill-money-none-graduate/>.

⁵⁶ *Id.*

⁵⁷ VETERANS EDUC. SUCCESS, *supra* note 48 at 4-5.

⁵⁸ *Id.* at 3.

public or nonprofit colleges.⁵⁹ The average financially independent student, who represents most of the for-profit student body, graduated with a median debt of \$32,700, compared to a median debt of \$20,000 for independent students at public colleges, and \$24,600 at private nonprofit colleges.⁶⁰ Further exacerbating the financial woes of veterans who choose to attend FPIs is the fact that a number of FPIs had student loan default rates above 20 percent,⁶¹ and the DoE estimated that the 10-year default rate on student loan balances for FPI alumni was 46 percent.⁶² In addition, veterans attending an FPI are more likely to complete a certificate compared to their non-FPI colleagues,⁶³ and veterans who receive a certificate are likely to have

⁵⁹ See *Veterans of Color Outcomes*, *supra* note 37, at fig. 12.

⁶⁰ *Drowning In Debt: Financial Outcome of Students at For-Profit Colleges: Hearing of the Comm. on Health, Educ., Lab., and Pensions*, 112th Cong. 11-12 (2011), <https://vetsedsuccess.org/wp-content/uploads/2018/09/senate-drowning-debt-financial-outcomes-students-for-profit-colleges-june-7-2011.pdf>.

⁶¹ *Id.*

⁶² *Id.*; see also Judith Scott-Clayton, *The Looming Student Loan Default Crisis Is Worse Than We Thought*, BROOKINGS (Jan. 11, 2018), <https://www.brookings.edu/research/the-looming-student-loan-default-crisis-is-worse-than-we-thought/> (stating that data shows “default rates in the for-profit sector could ultimately approach 70 percent”).

⁶³ See *Veterans of Color Outcomes*, *supra* note 37, at fig. 6 (citing BPS).

more debt than veterans who receive associate's degrees.⁶⁴

While some programs assist veterans with student debt challenges, bureaucratic roadblocks often prevent veterans from receiving these benefits. As of January 2020, DoE data show that it denied 5,180 Department of Defense (“DoD”) borrowers out of 5,467 DoD applicants to its Public Service Loan Forgiveness (“PSLF”) program.⁶⁵ The most common reasons were insufficient loan payments to qualify for relief⁶⁶ and information missing from the application form.⁶⁷ And the PSLF program is not unique. Many veterans must navigate complex hurdles associated with the VA’s management of the G.I. Bill or other debt assistance programs, which leads to significant default rates for veterans. Veterans who take on student-loan-related debt have a default rate of 46 percent compared with 29 percent for students who did not serve in the military.⁶⁸

These defaults also disproportionately affect veterans who rely on other VA benefits to secure

⁶⁴ *See id.* at fig. 13 (citing NPSAS).

⁶⁵ U.S. GOVERNMENT ACCOUNTABILITY OFFICE, *Public Service Loan Forgiveness: DOD and Its Personnel Could Benefit from Additional Program Information* 2 (Apr. 2021), <https://www.gao.gov/assets/gao-21-65.pdf>.

⁶⁶ PSLF requires applicants to complete 120 loan payments prior to being eligible for relief. *Id.*

⁶⁷ *Id.*

⁶⁸ Campbell, *supra* note 2.

housing. Student loans affect veterans' VA housing loan eligibility by altering their debt-to-income ratio.⁶⁹ And missed payments on student loans—or worse, defaulted student loans—jeopardize employment opportunities.⁷⁰

Veterans of color face particularly steep challenges. While white veterans are more likely to use their full GI benefits, veterans of color are more likely to be denied access to their full subsidies.⁷¹ Veterans of color are also more likely than white veterans to enroll in FPIs and less likely to attend a community college, public four-year college, or nonprofit college.⁷² Veterans of color are more likely to withdraw from an

⁶⁹ See VA Pamphlet 26-7 (Revised), ch. 4, *Credit Underwriting* at 4-58, https://www.benefits.va.gov/WARMS/docs/admin26/pamphlet/pam26_7/ch04.pdf (also highlighting at 4-2 that “By law, VA may only guarantee a loan when it is possible to determine that the veteran:

- is a satisfactory credit risk, and
- has present and anticipated income that bears a proper relation to the contemplated terms of repayment”); see also 38 C.F.R. § 36.4337 (VA underwriting standards).

⁷⁰ See Jessica Silver-Greenberg, Stacy Cowley & Natalie Kitroeff, *When Unpaid Student Loan Bills Mean You Can No Longer Work*, N.Y. TIMES, Nov. 18, 2017 (highlighting that “[t]wenty states suspend people’s professional or driver’s licenses if they fall behind on loan payments”).

⁷¹ See Samuel D. Museus, María C. Ledesma, and Tara L. Parker, *Racism and Racial Equity in Higher Education*, 42 ASHE HIGHER EDUC. REP. (ASHE) 1, 51 (2015).

⁷² See *Veterans of Color Outcomes*, *supra* note 37, at fig. 3 (citing NPSAS).

FPI before receiving a degree than white veterans.⁷³ White veterans are more likely to finish a bachelor's degree in four years than veterans of color, and veterans of color are more likely than white veterans to take longer than six years to complete a degree.⁷⁴ Furthermore, veterans of color assumed over \$30,000 in college debt at FPIs on average, whereas veterans of color attending public and nonprofit schools accumulated only \$22,900 and \$26,900 in debt, respectively.⁷⁵ Many are saddled with debt from underperforming institutions, remain disadvantaged in their efforts to secure employment with their earned credentials, and struggle to take advantage of relief programs riddled with bureaucratic caveats. And Black veterans' higher-education debt burdens are not only attributable to these recent systemic failures, but also due to a history of discrimination preventing the use of G.I. Bill education benefits, which led to significant disparities in economic outcomes for these veterans throughout the history of the G.I. Bill program.⁷⁶

⁷³ *See id.* at fig. 6.

⁷⁴ *See id.* at fig. 8.

⁷⁵ *See id.* at fig. 12.

⁷⁶ Lawrence, *supra* note 17 (the post-WWII local administration of the federal G.I. Bill program allowed universities across 18 states with segregation laws to discriminate against Black veterans leading to a G.I. Bill benefit disparity for Black veterans equivalent to \$180,000).

D. The Debt Forgiveness Program Attempts to Address the Institutional Failures That Have Saddled Veterans With Crippling Student Loan Debt.

Administrations of both political parties have endeavored to improve educational opportunities for veterans. President Reagan's DoE promulgated new regulations that allowed it to limit, suspend or terminate a school's participation in federal student aid programs if its loan default rate exceeded 20 percent.⁷⁷ The Higher Education Act amendments signed by President George H.W. Bush in 1992 sought to improve the integrity of student aid programs and led to widespread closures of FPIs.⁷⁸ President Obama signed an executive order to protect military families from deceptive educational recruitment efforts,⁷⁹ and the Obama Administration forgave federal student loans for students of defunct FPIs.⁸⁰ President Trump

⁷⁷ David Whitman, *The Reagan Administration's Campaign to Rein in Predatory For-Profit Colleges*, CENTURY FOUND. (Feb. 13, 2017), <https://tcf.org/content/report/reagan-administrations-campaign-rein-predatory-profit-colleges/>.

⁷⁸ David Whitman, *When President George H.W. Bush "Cracked Down" on Abuses at For-Profit Colleges*, CENTURY FOUND. (Mar. 9, 2017), <https://tcf.org/content/report/president-george-h-w-bush-cracked-abuses-profit-colleges/>.

⁷⁹ Tamar Lewin, *Obama Signs Order to Limit Aggressive College Recruiting of Veterans*, N.Y. TIMES (Apr. 27, 2012), <https://www.nytimes.com/2012/04/28/education/obama-signs-order-to-protect-veterans-from-college-recruiters.html>.

⁸⁰ Danielle Douglas-Gabriel, *Students of Defunct For-Profit to Receive \$28 Million in Loan Forgiveness*, WASH. POST (Dec. 3,

signed an executive order discharging federal student loans for totally and permanently disabled veterans.⁸¹ President Trump's actions were estimated to have canceled approximately \$750 million in debt for about 25,000 veterans with disabilities.⁸²

President Biden's administration has built on these efforts. On June 1, 2022, the DoE announced it would discharge \$5.8 billion in loans for 560,000 borrowers who attended FPIs owned or operated by Corinthian Colleges Inc.⁸³ Less than two months later, the DoE announced another \$3.9 billion discharge for 208,000 borrowers.⁸⁴ This is on top of the \$11.5 billion

2015), <https://www.washingtonpost.com/news/grade-point/wp/2015/12/03/students-of-defunct-for-profit-to-receive-28-million-in-loan-forgiveness/>.

⁸¹ Memorandum on Discharging the Federal Student Loan Debt of Totally and Permanently Disabled Veterans, 84 Fed. Reg. 44,677 (Aug. 21, 2019), <https://www.govinfo.gov/content/pkg/DCPD-201900561/pdf/DCPD-201900561.pdf>.

⁸² Quil Lawrence, *Trump Signs Executive Order Forgiving All Federal Student Loan Debt for Disabled Vets*, NPR (Aug. 21, 2019), <https://www.npr.org/2019/08/21/753213306/trump-signs-executive-order-forgiving-all-federal-student-loan-debt-for-disabled>.

⁸³ Press Release, U.S. Dep't of Educ., *Education Department Approves \$5.8 Billion Group Discharge to Cancel All Remaining Loans for 560,000 Borrowers Who Attended Corinthian* (June 1, 2022), <https://www.ed.gov/news/press-releases/education-department-approves-58-billion-group-discharge-cancel-all-remaining-loans-560000-borrowers-who-attended-corinthian-colleges>.

⁸⁴ Press Release, U.S. Dep't of Educ., *Education Department Approves \$3.9 Billion Group Discharge For 208,000 Borrowers Who*

in federal student loans the Biden Administration discharged in its first year.⁸⁵

Yet countless veterans have fallen through the cracks. An NPR report found that only 28 percent of eligible permanently disabled borrowers identified between March 2016 and September 2019 had their loans discharged or were in the process of doing so.⁸⁶ Further, prior veteran debt relief programs were not automatic, and required action by veterans who may not know the programs exist or are wary of potential tax liabilities or scams.⁸⁷ Less than two percent of applicants to the PSLF program between 2017 and the beginning of the COVID-19 pandemic were

Attended ITT Technical Institute (Aug. 16, 2022), <https://www.ed.gov/news/press-releases/education-department-approves-39-billion-group-discharge-208000-borrowers-who-attended-itt-technical-institute>.

⁸⁵ Adam S. Minsky, *Biden's \$11.5 Billion in Student Loan Forgiveness: Some Is Automatic, Some Is Not. Here's a Breakdown*, FORBES (Nov. 2, 2021), <https://www.forbes.com/sites/adamminsky/2021/11/02/bidens-115-billion-in-student-loan-forgiveness-some-is-automatic-some-is-not-heres-a-breakdown/>.

⁸⁶ Clare Lombardo & Cory Turner, *Student Loan Borrowers with Disabilities Aren't Getting Help They Were Promised*, NPR (Dec. 4, 2019), <https://www.npr.org/2019/12/04/776058798/why-student-loan-borrowers-with-disabilities-arent-getting-the-help-they-deserve>.

⁸⁷ John R. Brooks, *Why is the Department of Education Dragging Its Feet on Debt Relief for Disabled Veterans?*, STUDENT BORROWER PROTECTION CTR. (Dec. 13, 2018), <https://protectborrowers.org/why-is-the-department-of-education-dragging-its-feet-on-debt-relief-for-disabled-veterans/>.

approved.⁸⁸ Of the more than 1,500 military personnel that applied for PSLF, only 124 people were approved,⁸⁹ and many other veterans are stuck in bureaucratic red tape mid-application.⁹⁰ In 2017, of the approximately 200,000 servicemembers who owed nearly \$3 billion in federal student loans, only 17,534 had applied for PSLF.⁹¹

The Biden Administration's August 2022 student debt relief program created a stream-lined process for eligible borrowers, eliminating many of the previous hurdles that characterized other debt relief programs. The Biden Administration created clear income eligibility requirements and a simplified form requiring little more than an applicant's name, social

⁸⁸ Steven Yoder, *Veterans Are Tangled in Red Tape Trying to Get Their Student Loans Cancelled As Promised*, HECHINGER REPORT (Apr. 22, 2022), <https://hechingerreport.org/a-student-loan-forgiveness-program-thats-frustrated-military-borrowers-improves-slowly/>.

⁸⁹ U.S. GOV'T ACCOUNTABILITY OFF., GAO-21-65, *Public Service Loan Forgiveness: DOD and Its Personnel Could Benefit from Additional Program Information*, at 13-15 (2021), <https://www.gao.gov/assets/gao-21-65.pdf>.

⁹⁰ See Yoder, *supra* note 88 (highlighting one veteran's challenges in receiving the necessary paperwork from the Air Force and U.S. Department of Veterans Affairs to apply for PSLF).

⁹¹ Student Borrower Protection Ctr., *Protecting Military Borrowers: How the Department of Education Can Restore the Promise of Public Service Loan Forgiveness for American Servicemembers*, at 7, 9 n.21 (Nov. 2020), https://protectborrowers.org/wp-content/uploads/2020/11/Protecting-Military-Borrowers_SBPC.pdf.

security number and contact information to apply.⁹² Unlike other programs, there is no need to upload supporting documents⁹³ or meet other complex requirements.⁹⁴ Further, unlike other programs, there are no caveats or hidden contingencies. The DoE expected 81 percent of eligible borrowers would apply for the student debt relief program, significantly more than the less than 50 percent that applied for debt discharge for closed schools.⁹⁵ Before the DoE stopped taking additional applications because of this and other litigation, over 26 million borrowers had applied

⁹² *Apply for Federal Student Loan Debt Relief*, FEDERAL STUDENT AID (Oct. 27, 2022), <https://web.archive.org/web/20221027004949/https://studentaid.gov/debt-relief/application>.

⁹³ Bulletin, U.S. Dep't of Educ., Update on the Biden-Harris Administration's Student Debt Relief Plan (Sept. 29, 2022), <https://content.govdelivery.com/accounts/USED/bulletins/32f1c6a>.

⁹⁴ See Adam S. Minsky, *New Data Shows Most Who Apply to This Student Loan Forgiveness Program Are Denied*, FORBES (June 14, 2021), <https://www.forbes.com/sites/adamminsky/2021/06/14/new-data-shows-most-who-apply-to-this-student-loan-forgiveness-program-are-denied/?sh=4799e367a521>.

⁹⁵ Press Release, U.S. Dep't of Educ., *U.S. Department of Education Estimate: Biden-Harris Student Debt Relief to Cost an Average of \$30 Billion Annually Over Next Decade* (Sept. 29, 2022), <https://www.ed.gov/news/press-releases/us-department-education-estimate-biden-harris-student-debt-relief-cost-average-30-billion-annually-over-next-decade>.

in less than two months,⁹⁶ more than 60 percent of the 43 million eligible borrowers.⁹⁷

The student debt relief also differentiated borrowers who received Pell Grants, as eligible for additional debt relief. The plan provides \$10,000 in relief, or \$20,000 in relief for Pell Grant recipients.⁹⁸ Nearly 40 percent of student veterans are Pell Grant recipients and eligible for the \$20,000 in relief.⁹⁹ With an average debt between \$30,400 and \$32,100 for veterans at FPIs and \$27,500 among veterans across all schools,¹⁰⁰ the student debt-relief would drastically reduce student debt among veterans in a way other programs have been unable to do.

⁹⁶ Press Release, U.S. Dep't of Educ., *Biden-Harris Administration Continues Fight for Student Debt Relief for Millions of Borrowers, Extends Student Loan Repayment Pause* (Nov. 22, 2022), <https://www.ed.gov/news/press-releases/biden-harris-administration-continues-fight-student-debt-relief-millions-borrowers-extends-student-loan-repayment-pause>.

⁹⁷ Press Release, The White House, *Fact Sheet: President Biden Announces Student Loan Relief for Borrowers Who Need It Most* (Aug. 24, 2022), <https://www.whitehouse.gov/briefing-room/state-ments-releases/2022/08/24/fact-sheet-president-biden-announces-student-loan-relief-for-borrowers-who-need-it-most/>.

⁹⁸ *Id.*

⁹⁹ See Nat'l Ass'n of Student Fin. Aid Admins., *NASFAA Issue Brief: Doubling the Maximum Pell Grant*, at 2 (Aug. 2022), https://www.nasfaa.org/uploads/documents/Issue_Brief_Double_Pell.pdf.

¹⁰⁰ See *Veterans of Color Outcomes*, *supra* note 37, at fig. 12.

The student debt relief program was created as a one-time measure to address the hardships created by the COVID-19 pandemic and the resulting financial challenges. The debt relief program's slimmed-down structure and focus on the Pell Grant ensures the relief is accessible and targeted to eligible borrowers—veterans in particular.

CONCLUSION

For the foregoing reasons, and the reasons stated in the petitioners' brief, the Court should vacate the Eighth Circuit's preliminary injunction and affirm the district court's decision in *Nebraska*. The Court should also reverse the district court's decision in *Brown*.

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