

STUDENT DEBT RELIEF *AMICI CURIAE* SUMMARIES AND HIGHLIGHTS

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Student Debt Relief *Amici Curiae* Summaries and Highlights

More than a dozen *amicus curiae* briefs were filed before the U.S. Supreme Court in *Biden v. Nebraska* and *Biden v. Brown*. See the press release announcing the briefs here: [add link].

The briefs include:

- ❖ A brief by **more than 70 legal services and borrower advocacy organizations** from across the country, filed by the Student Borrower Protection Center, available here: https://protectborrowers.org/wp-content/uploads/2023/01/22-506_22-535_Legal-Aid-Borrower-Advocacy_SBPC_AMICI-CURIAE.pdf

This brief centers the real life stories of those crushed by the weight of student debt, highlights the financial devastation caused by the pandemic which has exacerbated challenges for student loan borrowers and underscores the impact that the student debt cancellation program will yield. The brief argues notably that as the Federal government has provided direct financial support to families, small businesses, and large industries alike— President Biden’s cancellation program is legal and narrowly designed to mitigate further economic harm.

Key highlights:

“The question now is straightforward: Just like the airlines, Fortune 500 Companies, universities, small businesses, and farmers for whom the government has already delivered significant COVID relief, do student loan borrowers... get the help they need to recover from the pandemic?”

“Ultimately, the precise borrowers for whom the Higher Education Act and student loans were supposed to lift into the middle class are the same ones most likely to default when repayment begins. Absent relief comparable to the kinds that the government provided to other entities, borrowers will likely default on a scale unmatched in the history of the student loan system.”

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- ❖ A brief by the **Cities of St. Louis, Kansas City, Little Rock, and more than 3 dozen other local governments, including those in Respondent states across the country**, filed by Public Rights Project, available here: <https://protectborrowers.org/wp-content/uploads/2023/01/Biden-v.-Nebraska-Local-Govt-Amicus-Brief-01.11.23-final.pdf>

This brief rebuts the economic injury claims made by opponents of cancellation and emphasizes the local economic benefits that will result from debt cancellation. The brief demonstrates that the Secretary’s action is a reasonable and appropriate response to mitigate economic harm posed by the pandemic.

Key highlights:

“State Respondents seek to stretch the ‘special solicitude’ afforded state litigants . . . to an unrecognizable shape. They point to supposed harms from federal administrative action that would require this Court to dig into the depths of speculation, even while the clear benefits are plentiful. It cannot be the case that States—no matter what deference they receive—may run into federal courts based on policy disagreements and receive a nationwide injunction for such ephemeral harm.”

“Student debt cancellation will strengthen state and local economies and promote household financial stability and public health, reducing reliance on state safety nets. Among other things, the Secretary’s action will increase consumer spending and business development, promote homeownership, close troubling workforce gaps, and prevent rural “brain drain”—all of which are to the clear financial benefit of State Respondents and Amici Local Governments.”

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- ❖ A brief by **ArchCity Defenders and other Missouri consumer advocates**, filed by the UC Berkeley Center for Consumer Law & Economic Justice, available here: https://protectborrowers.org/wp-content/uploads/2023/01/22-506_Biden-v-NE_ArchCity-Defenders-and-LSEM_AMICI-CURIAE.pdf

This brief pushes back against the opposing States’ claims of economic injury resulting from President Biden’s debt cancellation program and argues that they fail to demonstrate standing to bring forward this suit. The brief highlights MOHELA’s statutory design as an independent entity with no financial ties to the States treasury. The brief argues further that any lost revenues from MOHELA is speculative and remote and do not constitute losses to the state. Furthermore, the brief argues that other States’ claims of injury due to lost tax revenues are speculative, unsubstantiated and factually dubious

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as student debt cancellation may well have a net positive economic impact on State treasuries.

Key highlights:

“The Respondent States—Arkansas, Iowa, Kansas, Missouri, Nebraska, and South Carolina—lack Article III standing to challenge the Secretary of Education’s plan to grant student loan relief. The States’ professed harms to their respective treasuries rest impermissibly on a series of speculative and unwarranted assumptions that fail to satisfy this Court’s requirements of an “actual or imminent” injury in fact that is “likely caused by” the Secretary’s plan. The States’ theory of standing relies principally on Missouri’s relationship to the Higher Education Loan Authority of the State of Missouri (MOHELA, or the Authority). The States contend that the Secretary’s action will completely discharge many federal student loans, including certain Federal Direct Loan accounts that MOHELA services through a contract with the Department of Education. According to the States, the elimination of those accounts will cause MOHELA to lose revenue—and by extension, cause harm to Missouri. But an injury to MOHELA does not confer an injury on the State of Missouri.”

“Over the years, MOHELA has maintained its autonomy from Missouri, ultimately evolving into a nationwide enterprise with a billion-dollar loan servicing portfolio. While Missouri has filed this lawsuit to block the Secretary’s debt relief plan, MOHELA—likely motivated by business interests and obligations that diverge from those of the State—has been working to implement the Secretary’s plan. Further, Missouri cannot rely on any predicted losses to MOHELA’s loan servicing revenue because even the purported injury to MOHELA is remote and speculative.”

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- ❖ A brief by the **Lawyers’ Committee for Civil Rights Under Law and 21 advocacy organizations**, filed with Lief Cabraser Heimann & Bernstein, LLP, available here: https://protectborrowers.org/wp-content/uploads/2023/01/22-506_22-535_Lawyers-Committee-For-Civil-Rights-Under-Law_21-Advocacy-Organizations_AMICI-CURIAE.pdf

This brief argues the legality of President Biden’s debt cancellation program by demonstrating that the debt relief reasonably and rightly mitigates the severe economic fallout that will result among all low-income borrowers, particularly Black and Latinx borrowers, due to the pandemic. The brief lays out the disproportionate economic and public health impacts of the pandemic on people of color, especially women of color, and shows how the devastation caused by the pandemic has exacerbated pre-existing economic inequality and racial wealth disparities. The brief further argues that absent relief Black and Latinx borrowers are at a heightened risk of delinquencies and default

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and that the Secretary's action is reasonable and necessary to ensure borrowers are not placed in a worse position financially due to the pandemic.

Key highlights:

"The Secretary's assessment is consistent with ample research that underscores how the debt relief program mitigates harms for all lower-income borrowers and carries particularized significance for communities of color in light of the stark racial and gender disparities deepened by COVID-19."

"Black and Latinx borrowers disproportionately suffered drastic and enduring economic setbacks from the COVID-19 pandemic. Unemployment rates spiked for all lower-income workers, but women of color shouldered the greatest losses with approximately one out of five Latina and Black women abruptly finding themselves without work during the pandemic. COVID-19 also took a disproportionate toll on the health of Black and Latinx communities with substantially higher contraction and death rates. Such effects further compounded the financial distress faced by lower-income Black and Latinx families."

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- ❖ A brief by **two dozen law scholars**, led by UC Berkeley Law Dean Erwin Chemerinsky, UC Student Loan Law Initiative founders Prof. Dalié Jiménez and Prof. Jonathan Glater, and Prof. Peter Shane at Ohio State University's Moritz College of Law, filed by Democracy Forward, available here: https://protectborrowers.org/wp-content/uploads/2023/01/20230111141538206_Brief-of-Amici-Curiae-Legal-Scholars-in-Support-of-Petitioners.pdf

This brief argues the legality of President Biden's student loan debt cancellation program by interpreting the plain text of the HEROES Act of 2003 and demonstrating that Congress delegated the precise authority exercised by the Secretary. The brief goes further to argue that contrary to the opponent's claims, due to clear Congressional authorization, the Secretary's action is not barred by the major questions doctrine and provides an analysis of relevant case law to demonstrate that the Department of Education's prior assertions of HEROES Act authority along with its traditional mission and expertise do not amount to an unheralded, transformative power.

Key highlights:

"[The Department of Education] took the exact type of action Congress empowered it to take (waiver or modification of provisions of Title IV of the Higher Education Act) in the

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precise context Congress authorized it to act (national emergencies) for the specific purpose Congress intended (relief of borrowers affected by an emergency)."

"The Secretary's action is entirely consistent with the Department's prior assertions of its HEROES Act authority, its traditional mission and expertise, and the structure of the Act."

- ❖ A brief by **conservative law scholars Prof. Samuel Bray at Notre Dame Law School and Prof. William Baude at University of Chicago Law School**, filed by Latham & Watkins, available here:

https://protectborrowers.org/wp-content/uploads/2023/01/22-506_22-535_Conservative-Law-Scholars_Latham-Watkins_AMICI-CURIAE.pdf

This brief urges the Supreme Court to reject legal challenges to debt relief because the plaintiff states in *Nebraska* lack standing. This brief argues that Missouri is not the proper party to claim any harms from the loan servicing fees that the Missouri Higher Education Loan Authority (MOHELA) might lose. It further argues that the states are engaging in extravagant overreach and that the harms they claim are too attenuated and disconnected from the remedy they seek.

Key highlights:

"The standing theories that have been thrown at the wall in these cases are wrong, and many of them would have dangerous implications."

"Not only did the states seek and obtain a national injunction—a remedy lacking any traditional basis in equity—but they obtained this exceedingly broad remedy with an unusually weak basis for standing. That combination is at odds with basic principles of standing and equity jurisprudence that are applicable in the federal courts."

- ❖ A brief by **the American Federation of Teachers, AFSCME, and AAUP** filed by Selendy and Gay, available here:

<https://protectborrowers.org/wp-content/uploads/2023/01/22-506-22-535-tsac-American-Federation-of-Teachers-Et-Al.pdf>

This brief offers insights on why student debt cancellation is essential for American workers, including teachers and nurses educating and healing our nation's students, who continue to struggle to overcome the financial setbacks caused by the COVID-19

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pandemic. The brief underscores the ways that student debt relief will help the public sector recover from the economic devastation wrought by the pandemic—including chronic teacher and nursing shortages and reduce the burden of exceedingly high educational costs which has kept talented professionals from entering the public sector field.

Key highlights:

“Student debt relief will help remediate the crushing impact of COVID-19 on teachers, who must amass substantial debt to enter their profession and who often work at low wages. The prerequisites to become a teacher, which include both higher education and licensing requirements, leave the average teacher with an outstanding student loan debt balance of \$58,500, with 1 in 8 owing more than \$105,000.”

“Financial sacrifice is, in fact, the leading reason students choose not to enter teaching.”

- ❖ A brief by **the National Education Association**, available here: https://protectborrowers.org/wp-content/uploads/2023/01/20230111134759981_Biden-v-Nebraska-22-506-NEA-Amicus-Brief.pdf

This brief argues the legality of President Biden’s debt relief plan and recognizes it as a reasonable and necessary execution of the Secretary’s authority under the HEROES Act to mitigate harm by those affected by a national emergency. The brief argues further that the Major Questions doctrine does not bar the Secretary’s action because it is not an unheralded exercise of power nor does it constitute a transformative expansion of the Department’s regulatory authority.

Key highlights:

“Educators today are under an unprecedented level of strain because of the pandemic, its attendant economic upheaval, and an increasingly dire staffing shortage affecting over half of American schools,” the brief argues. “Nearly half of educators have outstanding student loan debt, owing, on average, \$58,700. The financial challenges faced by these educators compared to their peers accelerated during the pandemic, but debt relief now would place many educators on more solid financial footing. This relief, though individual, will have implications across the profession as financially secure educators are less likely to leave the profession.”

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- ❖ A brief by **25 economists, sociologists, public policy and higher education scholars**, filed by HWG Law, available here:
https://protectborrowers.org/wp-content/uploads/2023/01/22-506_Economists_HWG-LLP_AMICI-CURIAE.pdf

This brief argues the legality and necessity of President Biden’s debt cancellation program and deems it a reasonable and appropriate response to ensure borrowers will not be in a worse position financially in relation to their student debt as a result of the COVID-19 national emergency. Experts point to the current and long term economic devastation caused by the pandemic— including high rates of job loss, the burden of sharp increases in the cost of living and reduced lifetime earnings— as an impetus for targeted relief.

Key highlights:

“[T]he economic literature shows that both recent college graduates and those who graduated many years ago are now in a worse position financially on account of the pandemic, so they are likely to have more difficulty paying off their student loans than if the pandemic had not occurred. These negative effects of the pandemic are most likely to affect borrowers who have lower income and fewer assets, such as Pell Grant recipients. The Secretary’s decision to provide additional relief to Pell Grant recipients thus targets relief to those most in need, while the income cap denies relief to those least likely to need it.”

“In addition, student loan borrowers who did not complete college are financially worse off, even when compared to individuals who never went to college. These borrowers are in double jeopardy—not only do they lack a degree that could help them earn more, they are experiencing generally diminished earnings due to the pandemic.”

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- ❖ A brief by **Congressman George Miller, author of the HEROES Act of 2003 and former Chairman of the U.S. House Committee on Education and Labor**, filed by the Constitutional Accountability Center, available here:
https://protectborrowers.org/wp-content/uploads/2023/01/22-506_22-535_Biden-v-NE_Former-Representative-George-Miller_AMICI-CURIAE.pdf

This brief argues the legality of President Biden’s debt relief program and demonstrates through the plain text of the law that Congress granted broad authority to the Education Secretary to waive and modify laws affecting federal student loans in order to address financial harms caused by national emergencies.

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Key highlights:

“[F]ar from cabining the Secretary to “relatively narrow[]” action,” [as the states challenging the plan argue,] “the Act confers significant authority on the Secretary to ease the burdens on borrowers who have been affected by unexpected national emergencies. And that is exactly what the Secretary has done here.”

“The HEROES Act’s history further confirms the breadth of the Secretary’s authority to waive and modify student loan provisions in response to national emergencies.”

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- ❖ A brief by **NAACP**, available here: https://protectborrowers.org/wp-content/uploads/2023/01/22-506_22-535_Biden-v-NE_NAACP_AMICI-CURIAE.pdf

The NAACP submits this brief to share with the Court individual stories from members and others that speak directly to the Secretary of Education’s statutory authority to discharge federal student loans. The stories make clear that the COVID-19 pandemic is responsible for the new challenges these borrowers face. The Secretary’s decision to aid these individuals, in direct response to the ravages of COVID-19, is wholly justified.

Key highlights:

“[F]or student borrowers, there is very little margin for error. And that means that the majority of student borrowers are ill-equipped to ride out the unprecedented, adverse economic conditions of the COVID-19 pandemic.”

“Arthur Stevens, a U.S. Army veteran, was employed at an aerospace manufacturing company until July 7, 2020, when, despite its Paycheck Protection Program loan, his employer laid him off due to the COVID-19 economic slowdown. Since then, his attempts to start his own company and get back on his feet financially have been frustrated by COVID-19...Due to the economic hardships caused by the COVID-19 pandemic, Mr. Stevens will be unable to make full payments toward his student loans without further help. The Secretary’s order would make it possible for him to finally pay down his remaining balance and improve his credit score enough to qualify for a Veterans Administration program to secure better housing.”

“In spring 2020, Nakia Fleming, Ph.D., a single mother and social worker, had to choose between her job and her children. Two of her sons’ kindergarten and elementary school classes became entirely virtual...Ms. Fleming was forced to change jobs... The pay cut Ms. Fleming was forced to accept threatens not only Ms. Fleming’s ability to pay her

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student debt obligations, but also her family's housing... Ms. Fleming was the first in her family to go to college. She received Pell Grants and became a therapist to help people heal from abuse and neglect. Despite eight years of working for the U.S. military, because of the COVID-19 pandemic, Ms. Fleming now faces payments on over \$170,000 in student debt from her bachelor's, master's, and Ph.D. on a substantially reduced salary. While the \$20,000 of relief she would find under the Secretary's plan as a former Pell Grant recipient would not restore her to where she was before the pandemic, it would make a significant difference in Ms. Fleming's ability to meet her monthly payments."

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- ❖ A brief by **Minority Veterans Association and five other veterans service organizations**, filed by Skadden Arps, available here: https://protectborrowers.org/wp-content/uploads/2023/01/22-506_22-535_Six-Veterans-Organizations_AMICI-CURIAE.pdf

On behalf of 10 million within the minority veteran community, this brief argues the legality and necessity of President Biden's debt cancellation plan as a way to address the pandemic's ongoing adverse financial impact on veterans— and particularly minority veterans. Long before the pandemic and despite the promise of the Post-9/11 GI Bill, military veterans— particularly minority veterans— were disproportionately impacted by the student loan debt crisis, preyed upon by for-profit schools and faced challenges paying down debt loads. The brief argues that the economic devastation caused by the pandemic has only exacerbated these pre-existing challenges and warrants one-time debt relief.

Key highlights:

"Nearly 40% of student veterans are Pell Grant recipients and eligible for the \$20,000 in relief. With an average debt between \$30,400 and \$32,100 for veterans at FPIs and \$27,500 among veterans across all schools, the student debt-relief would drastically reduce student debt among veterans in a way other programs have been unable to do."

"More than a quarter of veteran students take out education loans despite access to Post-9/11 GI Bill benefits. 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... Student loan debt 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 disproportionately impacted by both the pandemic emergency and the student loan crisis."

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- ❖ A brief by **22 State Attorneys General, led by the Massachusetts Attorney General**, available here:

https://protectborrowers.org/wp-content/uploads/2023/01/20230111134618507_Brief-of-Massachusetts-et-al.-in-Nos.-22-506-and-22-535.pdf

This brief argues the legality of President Biden’s debt cancellation plan and demonstrates that the Secretary’s action is an appropriate and targeted exercise of Congressionally authorized authority under the HEROES Act. The brief also underscores the statewide economic benefits that result from targeted policies, such as the debt relief program, that mitigate economic harm and prevent adverse outcomes for residents.

Key highlights:

“As we now continue to address the fallout from the COVID-19 pandemic, Amici States seek to ensure that the Secretary’s exercise of his statutory authority to prevent pandemic-related defaults is implemented to provide critical relief to borrowers and economic benefits to the States.”

Additional Reading

A copy of the Department of Justice’s opening brief in *Biden v. Nebraska* and *Biden v. Brown* is available here:

http://www.supremecourt.gov/DocketPDF/22/22-506/251435/20230104222942852_22-506tsUnitedStates.pdf

A compendium of lower court filings and opinions in *Biden v. Nebraska* and *Biden v. Brown* is available here:

http://www.supremecourt.gov/DocketPDF/22/22-506/251436/20230104223046549_22-506%20Biden%20v.%20Nebraska%20J.A.%20Final.pdf

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