No. 22-506

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.

On Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF OF *AMICI CURIAE* ARCHCITY DEFENDERS AND LEGAL SERVICES OF EASTERN MISSOURI IN SUPPORT OF PETITIONERS

SETH E. MERMIN
Counsel of Record
DAVID S. NAHMIAS
CENTER FOR CONSUMER LAW & ECONOMIC JUSTICE
UC BERKELEY SCHOOL OF LAW
308 Law Building
Berkeley, CA 94720-7200
(510) 393-8254
tmermin@law.berkeley.edu

January 11, 2023

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae ArchCity Defenders and Legal Services of Eastern Missouri submit this brief in support of Petitioners President Joseph R. Biden et al.

ArchCity Defenders (ACD) is a 501(c)(3) holistic legal advocacy nonprofit organization that fights against the criminalization of poverty and state violence, particularly in low-income communities and communities of color. ACD uses civil and criminal legal representation, social services, impact litigation, policy and media advocacy, and community collaboration to achieve justice and equitable outcomes for people throughout the St. Louis region and across the State of Missouri. For over 13 years, ACD has provided legal representation on behalf of consumers before administrative agencies and in both state and federal courts to bring about economic justice on issues including debtors' prisons, inequitable consumer practices, landlord-tenant matters, and utility regulations. The individuals represented by ACD will be most affected by the Court's decision.

Founded in 1956, **Legal Services of Eastern Missouri (LSEM)** is a Missouri non-profit organization that provides high quality civil legal assistance to low-income individuals and families, seniors, and

[1] No counsel for a party authored this brief in whole or in part, and no person other than *amici curiae*, their members, or their counsel made a monetary contribution to the preparation or the submission of this brief. *Amici* file this brief in accordance with the Court's amended Rule 37.

persons with disabilities in 21 Missouri counties. LSEM's consumer program assists lower-income borrowers experiencing student loan defaults or other problems related to student loan affordability. Approximately 777,000 Missourians would be eligible for student loan relief under the Secretary's debt relief plan, many of whom reside in LSEM's service area. LSEM is well suited to represent the interests of the lower income Missourians who will most benefit from the debt relief plan in this case.

Amici share an interest in the certified questions because the outcome will impact the communities we serve as legal advocates and allies in Missouri, as well as the millions of Americans burdened by federal student loan debt.

SUMMARY OF ARGUMENT

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.[2] 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

[2] *Amici* agree with Petitioners that the individual Respondents in *Department of Education v. Brown*, No. 22-535, also lack Article III standing. *See* Pet'rs' Br. at 31-33.

"likely caused by" the Secretary's plan. *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021).

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. First, MOHELA is independent from Missouri. The two entities are separate. And a financial loss to the Authority does not mean a loss to the State treasury. Second, any financial injury to MOHELA from the debt relief plan is speculative and remote.

As an initial matter, the States' hypothetical causal chain is undercut by MOHELA's statutory design as an entity independent from Missouri that has no financial ties to the State's treasury. 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.[3]

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. MOHELA is statutorily barred from transferring any assets to the state, subject to the narrow exception of the Lewis and Clark Discovery Fund. Mo. Rev. Stat. § 173.425. Yet that fund, an erstwhile mechanism by which MOHELA would contribute to specific higher education projects in the State, was suspended over a decade ago with the State's assent. Missouri may not piece together a future injury from the possible indirect effects of debt relief to an inactive fund.

Missouri's remaining contention, that the Authority is "an arm of the state," is irrelevant because that concept relates to whether MOHELA can claim sovereign immunity, not whether Missouri can claim standing based on an alleged injury to the Authority.

Because the State is not itself threatened with a cognizable injury, this Court's unequivocal standard interpreting Article III precludes Missouri from challenging the debt relief plan. *See Hollingsworth v. Perry*, 570 U.S. 693, 707 (2013) ("Article III standing 'is not to be placed in the hands of concerned bystanders.'" (quoting *Diamond v. Charles*, 476 U.S. 54, 62 (1986))).

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[3] *See infra* note 10.

The economic harm claimed by the other Respondent States likewise contravenes this Court's repeated directives against speculative claims of injury in fact. The other States' theories of standing rely on an even longer and weaker chain of possible events that may someday result in lost general tax revenue. Not only does Article III not support such a conjectural theory of injury, but it is also factually dubious as student debt cancellation may well have a net positive economic impact on State treasuries.

Because none of the Respondent States can muster the required stake in the outcome of this case, the complaint in *Nebraska v. Biden* should be dismissed.

ARGUMENT

I. Missouri's Claimed Injury is Not Cognizable Because It Relies on Speculative and Uncertain Harms to MOHELA.

Missouri lacks standing to challenge a federal action intended to benefit student loan borrowers that will not cause the State any cognizable economic injury. *See Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1650 (2017) (requiring a "personal stake in the outcome of the controversy as to justify the exercise of the court's remedial powers"). Even if the Secretary's plan were to impact MOHELA's loan servicing revenue, Missouri would not experience any adverse financial consequences because MOHELA does not have any actual economic obligations to the State.

Accordingly, Missouri fails to satisfy Article III's requirement that a "threatened injury is 'certainly impending,' or [that] there is a 'substantial risk that the harm will occur.'" *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409, 414 n.5 (2013)). Moreover, because Missouri and MOHELA are not financially linked, the State cannot establish that any future decline in higher education funding it might experience was caused by the Secretary's action. *See California v. Texas*, 141 S. Ct. 2104, 2113 (2021) (requiring a "personal injury fairly traceable to the defendant's allegedly unlawful conduct").

Missouri attempts to manufacture standing from a concatenation of events that is far too speculative to meet the requirements of Article III. *See Clapper*, 568 U.S. at 410 (2013) (declaring that a "theory of standing, which relies on a highly attenuated chain of possibilities, does not satisfy the requirement that threatened injury must be certainly impending"). The State's theory of standing hangs from a flimsy chain: (1) the Secretary's plan may completely discharge the debt of an uncertain number of borrowers; (2) because MOHELA services some of those borrowers' loans, complete debt relief may terminate those accounts; (3) MOHELA may therefore experience an indeterminate loss in service fee revenue; (4) as a result, MOHELA may incur an undefined financial loss that (5) the State, through unspecified mechanisms, may eventually bear.[4] Article

[4] The scant evidence Missouri presented to the district court of threatened financial harms to MOHELA had nothing to do with

III does not permit such a conjectural or hypothetical claim of standing. *Driehaus*, 573 U.S. at 158; *see also DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 346 (2006) ("[A] party seeking federal jurisdiction cannot rely on such 'speculative inferences to connect his injury to the challenged actions of the defendant.'" (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 45 (1976))).

A. Missouri Cannot Derive Standing From Prospective Harm to MOHELA Because MOHELA is Separate From the State.

Missouri fails to state a cognizable injury in fact because it cannot demonstrate any non-speculative economic harm to its own particular interests—as opposed to those of a separate entity like MOHELA. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (requiring an injury to "affect the plaintiff in a personal and individual way"); *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009) (declaring that the "respondents can demonstrate standing only if application of the regulations by the Government will affect *them*" (emphasis in original)). Problematically for Missouri here,

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the specific impact of the Secretary's plan on the Authority, nor did the proffered evidence demonstrate any connection between the purported impact on MOHELA and a genuine injury to the State of Missouri. *See* J.A. 45-101, 105-131. Missouri therefore failed to satisfy its evidentiary burden of establishing a risk of injury to the State itself. *See Clapper*, 568 U.S. at 414 n.5 ("[P]laintiffs bear the burden of pleading and proving concrete facts showing that the defendant's actual action has caused the substantial risk of harm.").

the State designed MOHELA to be a separate entity whose assets and debts lie firmly beyond Missouri's authority and financial control. As a result, any possible financial harm to MOHELA would not result in a specific risk to the State. *See Ill. Dep't of Transp. v. Hinson*, 122 F.3d 370, 372-74 (7th Cir. 1997) (state agency lacked standing to challenge the City of Chicago's diversion of airport fees because those fees belonged to Chicago, and "[a]lthough the City is a creature of the State of Illinois, it is not its agent for the collection of those revenues"; therefore, the department's interests were "wholly speculative"). Absent any risk that the Secretary's action will financially affect Missouri's economic position, the State cannot demonstrate a threatened injury. *Driehaus*, 573 U.S. at 158; *see also New Jersey v. EPA*, 989 F.3d 1038, 1047 (D.C. Cir. 2021) (requiring a showing of "both (i) a substantially increased risk of harm and (ii) a substantial probability of harm with that increase taken into account").[5]

[5] For the same reason, to the extent that Missouri asserts an injury to a quasi-sovereign state interest, it still cannot establish an injury in fact. *See Massachusetts v. EPA*, 549 U.S. 497, 520-21 (2007) (requiring an actual and imminent injury); *State v. Biden*, 52 F.4th 362, 369 (8th Cir. 2022) ("[E]ven if the States as sovereigns are entitled to some undefined 'special solicitude' in the standing analysis, they still must satisfy the basic requirements of Article III standing.").

1. The Text and History of MOHELA's Enabling Act Establish That MOHELA is Independent of the State for Standing Purposes.

Under the plain text of MOHELA's authorizing statute, the Authority is legally and financially uncoupled from Missouri and, as a consequence, the State cannot claim any injury that MOHELA might suffer. The Missouri General Assembly established MOHELA through the 1981 Missouri Higher Education Loan Authority Act "to assure that all eligible postsecondary education students have access to student loans" and to support capital projects and technological innovation at Missouri colleges and universities. Mo. Rev. Stat. § 173.360. The law empowers MOHELA to act independently of the State: it can issue bonds to purchase and sell student loans and service student loans originating from other states nationwide, as well as adopt its own bylaws, execute contracts, convey real property, and sue and be sued. *Id*. § 173.385.1. MOHELA's assets are isolated from Missouri's coffers and must "remain under the exclusive control and management of the authority." *Id.* § 173.425; *see id.* § 173.355.1 (defining the Authority's assets as including "income, fees, [and] revenues" and other sources). As such, the Authority's assets may neither be "deposited into the state treasury" nor made "subject to appropriation by the general assembly." *Id.* § 173.425.[6] MOHELA's

[6] The narrow exception to this prohibition against appropriation is assets that MOHELA contributes to the Lewis and Clark Discovery Fund, discussed in Section I.B below.

assets are not considered state revenue, and the Authority cannot create or pay state debts. *Id.* §§ 173.386, 173.425; *see also id.* § 173.410. The State cannot be held liable for any of MOHELA's obligations or agreements. *Id.* § 173.410. In sum, MOHELA carries out its business, raises revenue, and incurs debts without impact to the State. Any changes in MOHELA's revenue, therefore, will not have any effect on Missouri's revenue.

MOHELA's independent statutory power to issue bonds and manage its own funding without state oversight further demonstrates that Missouri cannot claim for itself any potential financial harm to the Authority. MOHELA's bonds are backed exclusively by "student loan notes and investment income," meaning that no state treasury assets are implicated in the Authority's bond transactions. Mo. Rev. Stat. § 173.390. In addition, the bonds and their proceeds are exempt from state taxes, and the State may not raise taxes or otherwise be made liable for paying the principal or interest of any bond that MOHELA issues. *Id*. §§ 173.410, 173.415. As a result, Missouri has no financial stake in MOHELA's bonds and does not have to shoulder any burden should the Authority be unable to satisfy its debts.

Legislative history corroborates the conclusion that the General Assembly designed MOHELA to be a separate bond-making institution that is financially distinct from the State. According to an analysis of MOHELA's enacting legislation, the bill's supporters sought to "creat[e] funds to be used to buy student

loans from Missouri banking institutions" and "correct" the problem in the private student loan market that "banks make student loans on a limited basis, since there is almost no readily available market for the loans."[7] Legislative analysis at the time predicted that MOHELA would be "self-supporting" and that the legislation would have "no fiscal impact on state or local funds."[8]

Missouri caselaw interpreting an analogous entity further establishes MOHELA's independence from the State and Missouri's concomitant inability to claim a cognizable injury potentially faced by the Authority. In 1979, the Missouri Supreme Court evaluated the enabling statute of the Missouri Health and Educational Facilities Authority (MOHEFA)—an independent

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[7] Natalie Tackett, 1981 H. Comm. Summaries, 81st Gen. Assemb., 1st Sess., at 60-61 (Mo. 1981), https://perma.cc/W3Z5-XH4L ("H.B. 326, HCA 1—Student Loan Program") (select "1981 81st General Assembly 1st Regular Session").

News reports also noted the intention of the bill to fill gaps in the private student loan market. *See* Terry Ganey, *Bond Signs Museum, Zoo Tax Increase Bill*, St. Louis Post-Dispatch, June 15, 1981, at 6A (reporting that the governor signed legislation enacting MOHELA and empowering it to issue "tax-exempt revenue bonds to provide more money for the student loan program. The proceeds of the bonds would be used to buy from lenders student loans guaranteed under either federal or state guaranteed loan programs."); *Capitol Briefs—Student Loan Program*, St. Louis Post-Dispatch, Mar. 27, 1981, at 10A (reporting that the legislation's sponsor wanted to "help make student loans available at a time when federal funds for such purposes is [sic] drying up").

[8] 1981 TAFP Fiscal Notes, 81st Gen. Assemb., 1st Sess., at 36 (June 17, 1981), https://perma.cc/W3Z5-XH4L ("Fiscal Note: 755").

bond-issuing entity structured similarly to MOHELA—and concluded that "the Authority is not the state." *Menorah Med. Ctr. v. Health & Educ. Facilities Auth.*, 584 S.W.2d 73, 76-78 (Mo. 1979); *see* Mo. Rev. Stat. §§ 360.080, 360.115, 360.135 (authorizing MOHEFA to issue tax-exempt bonds that are not a "debt or liability of the state," and the proceeds of which are not "revenues of the state"). The court explained that "[s]imilar bodies have been adjudged as 'separate entities' from the state," and "[t]he credit which it lends is not that of the state." *Menorah*, 584 S.W.2d at 78 (observing that because the revenue bonds are not paid through state tax revenue and do not constitute state debts, "the credit lent is that of the Authority, not that of the state of Missouri"). Only two years after *Menorah*, the Missouri General Assembly enacted a nearly identical bond-making structure for MOHELA. The legislature can be presumed to have known of the *Menorah* decision and, therefore, to have intended that MOHELA be considered a separate entity from the State. *See D.E.G. v. Juvenile Officer*, 601 S.W.3d 212, 216 (Mo. 2020) ("In construing a statute, the Court must presume the legislature was aware of the state of the law at the time of its enactment."); *cf. Hall v. United States*, 566 U.S. 506, 516 (2012) (this Court "assume[s] that Congress is aware of existing law when it passes legislation").

Because MOHELA is financially independent from the State, any loss in loan servicing revenue that MOHELA might experience from the Secretary's action will not pose a "substantial risk" to Missouri's

interests. *Driehaus*, 573 U.S. at 158; *see also Hinson*, 122 F.3d at 373 (holding Illinois department could not base injury for standing purposes on city's decisions because "[a] state cannot by creating an agency for the purpose of making life better in the state obtain a legal interest in every transaction to which an entity within the state is a party"). Even if the Secretary's plan does impact MOHELA's revenue, Missouri has also failed to show if and how student debt relief will trigger the tenuous chain reaction required to cause the State an economic injury. *See Clapper*, 568 U.S. at 414 (rejecting a "speculative chain of possibilities"). Missouri has no claim to MOHELA's assets, including the fees that MOHELA generates from servicing federal student loans, and thus any impact of student debt relief on state revenue is speculative at best and wholly insufficient to establish standing.

2. MOHELA's Response to the Secretary's Plan Further Points to the Authority's Independence.

MOHELA's actions since the Secretary announced the debt relief plan also underscore the Authority's distinctness from the State. Publicly available evidence shows that MOHELA has been cooperating with the U.S. Department of Education on its debt discharge plan, a position inconsistent with that of the State of Missouri.[9] MOHELA also dramatically staffed up in

[9] *See* Michael Stratford, *The student loan company being used to attack Biden's debt relief plan*, POLITICO (Dec. 17, 2022), https://perma.cc/KE29-UXL9 (reporting that "MOHELA, like the

anticipation of future widespread debt relief.[10] The Authority has not taken a public position on this lawsuit; it conceded in a letter to Congresswoman Cori Bush that its "executives were not involved with the decision of the Missouri Attorney General's Office to file" this lawsuit, and that it has no "contractual relationship or agreement" with Missouri related to "student debt relief."[11] Meanwhile, MOHELA has not publicly expressed any concern that the Secretary's action will reduce its loan servicing revenue but is simply "evaluating the impact of the plan on . . . [its] student loan

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Education Department's other loan servicers, had been moving ahead with implementing the Biden administration's debt relief until it was halted by the courts"). For example, the Student Borrower Protection Center obtained from MOHELA letters in draft form to borrowers confirming that loan servicers had processed student debt relief under the Secretary's plan. Student Borrower Protection Ctr., Responsive Items to MO-AG-SLR, at 7-17 (2022), https://perma.cc/N7MY-G6JH. The record also contains MOHELA's internal instructional guidelines on how to process potential loan discharges. J.A. 95-101.

[10] MOHELA, *Annual Filing* 2 (Dec. 21, 2022), https://perma.cc/TBA9-YJX3 ("MOHELA 2022 Annual Filing") ("[T]he Authority also recently hired approximately 2,400 contracted employees . . . in preparation for . . . potential debt relief for the Direct Loan portfolio.").

[11] Letter from MOHELA to the Hon. Cori Bush 1-2 (Oct. 28, 2022), https://perma.cc/8B5H-ARXZ; Stratford, *supra* note 9 (reporting that "MOHELA officials from the company have also sought to reassure Democratic congressional aides and Biden administration officials that they were not involved in the Missouri attorney general's lawsuit seeking to block debt relief").

portfolios."[12] MOHELA's actions are hardly those of an entity aligned with Missouri; instead, they illustrate that the Authority can and does act independently of the State. Consequently, any threatened harm MOHELA might suffer is distinct and does not confer a cognizable injury to Missouri's interests.

B. Missouri's Claimed Injury Through the Long-Dormant Lewis and Clark Discovery Fund is Also Not Cognizable.

Missouri fares no better with its assertion of standing through a specific state fund that it contends is supported by MOHELA's assets. Although Missouri law on its face obligates MOHELA to contribute $350 million total to the Lewis and Clark Discovery (LCD) Fund to support particular higher education-related projects, those projects were "suspended" and the Fund "became dormant" amid the 2008 financial crisis. Mo. Rev. Stat. §§ 173.385.2, 173.392.[13] With the approval of multiple governors, MOHELA has subsequently supported college scholarships, which are "more consistent with its historical mission," instead of paying into the Fund.[14] According to MOHELA's financial records, the Authority paid $245 million to the Missouri treasury by early 2008, but it then exercised its statutory right to delay its distributions based on a determination that

[12] MOHELA, *Financial Statements As of and for the Years Ended June 30, 2022 and 2021*, at 9 (2022), https://perma.cc/Q7BE-WSVB ("MOHELA 2022 Financial Statement").

[13] *See* MOHELA 2022 Annual Filing, *supra* note 10, at 5.

[14] *Id.*

"any such distribution may materially adversely effect [*sic*] . . . the economic viability of the authority." Mo. Rev. Stat. § 173.385.2.[15] MOHELA has not made any other contributions to the Fund since then, "with no Projects to fund and changes in the student loan program."[16] Missouri has granted the Authority multiple extensions to delay its contributions—most recently in 2017, when the State authorized an additional five-year extension until 2024.[17] MOHELA now does not even count its unfunded contribution as a liability on its books.[18]

Given the LCD Fund's protracted dormancy, any actual impact of MOHELA's debt to the Fund has long passed, and its future is largely uncertain. Missouri cannot now claim any actual threatened harm that this lawsuit would remedy because MOHELA has delayed its payments since 2007. *Cf. Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 107 (1998) ("Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court."). It is also wholly speculative to assume that should MOHELA lose some loan servicing revenue because of the Secretary's planned

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[15] *Id.*

[16] *Id.*; MOHELA 2022 Financial Statement, *supra* note 12, at 20-21; *see also* Susan Montee, Office of the Mo. State Auditor, *Lewis and Clark Discovery Initiative—Report No. 2010-87*, at 6 (2010), https://perma.cc/496A-AXRF (state auditor's report finding that "no state funding ha[s] been allocated to the suspended or unfunded portions of the LCDI projects as of December 2009").

[17] MOHELA 2022 Annual Filing, *supra* note 10, at 5; MOHELA 2022 Financial Statement, *supra* note 12, at 21.

[18] MOHELA 2022 Financial Statement, *supra* note 12, at 21.

debt relief, the Authority will justify another delay in making its LCD Fund contribution after 2024 because of that loss, rather than for any other reason. *See California v. Texas*, 141 S. Ct. at 2114 (finding no traceability where "there is no possible Government action that is causally connected to the plaintiffs' injury"). Indeed, the Authority could still satisfy its obligations to the LCD Fund by paying from its other liquidated assets along with or even in lieu of revenue generated from its loan-servicing business. *See United States v. Sperry Corp.*, 493 U.S. 52, 62 n.9 (1989) ("Unlike real or personal property, money is fungible.").[19] Student debt relief would therefore not impact the State regardless of its effect on MOHELA's revenue.

Furthermore, money in the LCD Fund can only be used for two "enumerated" purposes and is not considered "state funds" until the legislature appropriates it. Mo. Rev. Stat. § 173.392.1. The State cannot reasonably claim that its ability to fund higher education-related projects is threatened where it has shown no

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[19] In fact, MOHELA derived its initial $230 million contribution from liquidating student loan assets it sold in a one-time transaction. *See* MOHELA, *Financial Statements As of and for the Years Ended June 30, 2008 and 2007*, at 5, 7-8 (2008), https://perma.cc/5S2Y-HHJG; *see also* Sam Kean, *Part of Loan Agency in Missouri to Be Sold*, Chron. Higher Educ. (Sept. 8, 2006), https://perma.cc/GY39-LFLR (reporting that the deal to create the LCD Fund would require MOHELA to "sell off hundreds of millions of dollars in student loans in an open-bidding process, and then transfer the profits"). MOHELA could conceivably do the same again and not touch any fees it earned from servicing federal student loans.

intention to make appropriations for LCD Fund projects since 2009.[20]

Consideration of the LCD Fund makes Missouri's stated harm *more* speculative and uncertain, not less.

C. Missouri's "Arm of the State" Argument Incorrectly Conflates Sovereign Immunity and Standing.

Finally, whether MOHELA is an "arm of the state" of Missouri, a sovereign immunity inquiry, has no bearing on whether Missouri can claim a cognizable injury for standing purposes. *See Regents of the Univ. of Cal. v. Doe*, 519 U.S. 425, 429-30 & n.5 (1997) (arm-of-the-state jurisprudence applies "[w]hen deciding whether a state instrumentality may invoke the State's [sovereign] immunity"); *see also Port Auth. Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 312 (1990) (Brennan, J., concurring) ("The Court developed the 'arm-of-the-State' doctrine as a tool for determining which entities created by a State enjoy its Eleventh Amendment protection and which do not.").[21]

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[20] *See* MOHELA 2022 Annual Filing, *supra* note 12, at 5 (noting that "successive Governors" have instead made scholarship requests of MOHELA).

[21] Earlier in this litigation, Respondents conceded that "sovereign immunity is a distinct jurisdictional requirement from standing," but before this Court they adopted the Eighth Circuit's tenuous conclusion that MOHELA "may well be an arm of the State." *Compare* Resp'ts' Reply Br. at 5, *Nebraska v. Biden*, No. 22-0104-HEA (E.D. Mo. Oct. 11, 2022), ECF No. 31, *with* Resp. to Appl. to Vacate at 15, *Biden v. Nebraska*, No. 22-506 (U.S. Nov.

Standing and sovereign immunity are grounded in two different constitutional doctrines: separation of powers and federalism. *Compare Raines v. Byrd*, 521 U.S. 811, 820 (1997) ("[T]he law of Art. III standing is built on a single basic idea—the idea of separation of powers," and is concerned with "keeping the Judiciary's power within its proper constitutional sphere"), *with Alden v. Maine*, 527 U.S. 706, 730 (1999) (sovereign immunity is a "separate and distinct structural principle [that] is not directly related to the scope of the judicial power established by Article III, but inheres in the system of federalism established by the Constitution"). Arm-of-the-state analysis may assist in establishing whether *MOHELA* can be sued by private individuals or the federal government, but it is of no use in determining whether *Missouri* can sue here.

Because the Secretary's debt discharge plan creates no cognizable threat of harm to Missouri, the State lacks standing to challenge it.

II. The Other Respondent States Do Not Demonstrate a Significant Risk of Economic Harm Arising From the Secretary's Debt Discharge Plan.

Respondents Arkansas, Nebraska, Iowa, Kansas, and South Carolina also lack standing because their supposed threatened economic injuries are speculative and unsubstantiated.

28, 2022) (quoting *Nebraska v. Biden*, 52 F.4th 1044, 1047 (8th Cir. 2022)).

A. Any Future Loss in Tax Revenue is Too General and Contingent on a Weak Causal Chain to Confer Standing on the Other States.

Iowa, Kansas, Nebraska, and South Carolina have failed to demonstrate a cognizable injury because they have not drawn—and cannot draw—any direct link between the student debt discharge plan and a future loss of specific tax revenue. *See El Paso Cty. v. Trump*, 982 F.3d 332, 339-40 (5th Cir. 2020) (requiring a "direct link between the state's status as a collector and recipient of revenues and the action being challenged . . . such as the loss of a specific tax revenue" (quotations omitted)), *cert. denied*, 141 S. Ct. 2885 (2021).[22] The States' claimed injury through loss of tax revenue depends on a fragile chain of assumptions, all of which must occur in order to create a substantial risk of injury: (1) that there exists an unspecified number of student loan borrowers in the States who are currently repaying their loans through income-driven repayment (IDR) plans, which entail eventual loan forgiveness, and who may be eligible for the Secretary's debt relief; (2) that the Secretary's action will completely cancel the debts of those borrowers on IDR plans before they were scheduled to be discharged under the normal terms of their plans; (3) that, starting in 2026, all borrowers will once again report student loan debt discharge in their personal gross income on

[22] *Accord Wyoming v. Dep't of Interior*, 674 F.3d 1220, 1234 (10th Cir. 2012) (same); *Iowa ex rel. Miller v. Block*, 771 F.2d 347, 353 (8th Cir. 1985) (same).

their federal tax returns;[23] (4) that because certain borrowers on IDR plans will have already had their debts fully discharged, they will not report any discharge-related "income" earned from their IDR-related debt forgiveness, and accordingly, their reported adjusted federal gross income will be lower than had their debt not been relieved by the Secretary's plan; (5) that, as a result, those individual taxpayer borrowers will also report a lower income for state tax purposes; and, finally, (6) that, as a result of this chain of events, the States will collect less income tax revenue.

The States' multi-step series of cause-and-effect falls well short of establishing a "substantial risk that the harm will occur" as Article III requires. *Driehaus*, 573 U.S. at 158. To the contrary, the States' theory is vague and riddled with unanswered questions. For example, the States do not grapple with the fact that individual borrowers' income from other sources is as likely to rise as to fall; or that some borrowers might prepay their loans before their slated IDR-forgiveness, which would have the same possible revenue effect on income levels as debt cancellation, or how immediate student loan relief will affect taxpayers' personal financial decisions now versus in future years if they eventually experience IDR-related forgiveness. The theory is thus far too speculative to create a cognizable injury, particularly since it relies on actions of individual third-party taxpayers. *See Lujan v. Defenders of*

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[23] *See* 26 U.S.C. § 61(a)(11) (defining "gross income" to include debt discharge); *id.* § 108(f)(5) (excluding student loan discharge from federal gross income from 2021 until 2026).

Wildlife, 504 U.S. 555, 560 (1992) ("[T]he injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.").

Apart from resting on unwarranted assumptions, the States' dire prediction of a sweeping decline in income tax revenue is also too generalized to manifest an actual injury. *See El Paso Cty. v. Trump*, 982 F.3d at 339 (concluding that "a loss of general tax revenues as an indirect result of federal policy is not a cognizable injury in fact"); *Wyoming v. Dep't of Interior*, 674 F.3d at 1235 (holding state lacked standing to challenge agency action because it offered "no evidence that specific loss of tax revenues have [*sic*] occurred, and [petitioners'] assertions of future lost tax revenues are merely speculative").[24] The States also do not proffer any particularized state-level evidence to support their theory of threatened harm. *See Clapper*, 568 U.S. at 414 n.5; *see also Spokeo*, 578 U.S. at 339 (requiring a "particularized" injury that "must affect the plaintiff in a personal and individual way"). Instead, their sole evidence is a Government Accountability Office report that examines IDR-related loan forgiveness on a

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[24] As the Fifth and Tenth Circuits have found, this Court's decision in *Wyoming v. Oklahoma*, 502 U.S. 437, 448 (1992), is distinguishable because that case involved the loss of "a specific tax revenue" to satisfy the injury in fact requirement, as opposed to a "loss of general tax revenue," which is insufficient. *See El Paso Cty. v. Trump*, 982 F.3d at 340-41; *Wyoming v. Dep't of Interior*, 674 F.3d at 1234-35.

nationwide basis without pinpointing how individual state income taxes will be affected.[25]

Furthermore, evidence suggests that the Secretary's action may have a salutary impact on state tax revenues and would not result in any injury, thereby reinforcing the conclusion that the States' threatened harms are too speculative. Student loan debt places a significant burden on borrowers' ability to generate wealth by negatively affecting their income, their ability to start a small business, and their chance of owning a home.[26] On the other hand, researchers have found that borrowers' income, levels of homeownership, and consumer spending increase once their student loan debt is discharged.[27] Because income, homes,

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[25] Gov't Accountability Office, *Federal Student Aid: Education Needs to Take Steps to Ensure Eligible Loans Receive Income-Driven Repayment Forgiveness* 15 (2022), https://perma.cc/8NAK-7TCL.

[26] *See* Alvaro Mezza et al., *Student Loans and Homeownership*, 38 J. Lab. Econ. 215, 253 (2020), https://perma.cc/2LXC-RF5K (finding that increased student debt lowers the homeownership rate among young people); Justin Weidner, *Does Student Debt Reduce Earnings?*, at 2 (Nov. 11, 2016), https://perma.cc/83GA-KXRH (finding that higher student loan indebtedness has a negative impact on college graduates' starting incomes); Brent W. Ambrose et al., Fed. Reserve Bank of Phila., *The Impact of Student Loan Debt on Small Business Formation* 5 (2015), https://perma.cc/GE6T-7DUM (finding a negative correlation between student loan debt and small business formation).

[27] Daniel A. Collier & Dan Fitzpatrick, *Jubilee & Jubilation: An Examination of the Relationship Between Public Service Loan Forgiveness and Measures of Well-Being* 9 (2022), https://perma.cc/9KWD-5XCA (finding that borrowers in repayment were less likely to own a home than those whose students loans were forgiven under the Public Service Loan Forgiveness Program);

and goods are taxed on a state and local level through income, property, and sales taxes, an increase in borrowers' wealth would presumably cause tax revenue to rise, not fall.

B. Any Professed Injury Based on the FFEL Program is Also Speculative.

Finally, the remaining injury claimed by Arkansas, Missouri, and Nebraska, which is grounded in the Secretary's initial proposal to encourage borrowers of privately-issued Federal Family Education Loan (FFEL) program loans to consolidate their loans into federal Direct Loans, is meaningless now that the debt relief plan has been amended to exclude those borrowers.[28] The claimed injury also relies on speculation that FFEL borrowers in those States did opt to consolidate their loans in the very brief period before the Secretary's amendment. *See Clapper*, 568 U.S. at 414 (declining to speculate "about the decisions of

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Marco Di Maggio et al., *Second Chance: Life Without Student Debt* 4, 17-19 (Nat'l Bureau of Econ. Rsch, Working Paper No. 25810, 2019), https://perma.cc/JY3P-6344 (finding that discharging student debt results in an increase in borrowers' income and spending); *see also* Vincent Salandro, *The Potential Impact of Student Loan Debt Forgiveness on the Housing Market*, BuilderOnline (Sept. 1, 2022), https://perma.cc/XWN2-Q99H (student debt discharge is " 'one of the most consequential administrative actions for housing in a generation,' and would aid access to homeownership for millions").

[28] Missouri's argument that it is injured because MOHELA holds FFEL loans fails for the same reasons discussed above—because MOHELA is separate from the State of Missouri for standing purposes. *See supra* Section I.

independent actors"); *see also* Pet'rs' Br. at 24-26. Further, it is unclear what impact any FFEL consolidations that did occur had on the States. While Respondents contend that the Arkansas Student Loan Authority holds FFEL loans and the Nebraska Investment Council invests in FFEL-backed securities, the States have not presented competent evidence that links the results of any loan consolidation by FFEL borrowers to revenue loss by either entity, not to mention direct economic harm to the States.[29]

The Respondent States posit only speculative and attenuated injuries resulting from student debt relief, and they have not presented any evidence that the Secretary's action would cause them actual harm. Time and again, this Court has rebuffed similar theories of standing that are based on hypothesis and conjecture. Article III does not authorize the relief Respondents seek, and their challenge to the Secretary's plan should not proceed.

[29] In fact, at least with respect to Nebraska's claim, an analysis by Fitch Ratings estimates that investments in FFEL-backed securities would rise because of student debt cancellation, not fall. *Student Loan Forgiveness May Mitigate FFELP ABS Maturity Risk*, Fitch Ratings (Mar. 24, 2021), https://perma.cc/8R7G-WU4L.

CONCLUSION

For the foregoing reasons, the Court should vacate the Eighth Circuit's order and remand with an order to dismiss for lack of jurisdiction.

Respectfully submitted,

SETH E. MERMIN
Counsel of Record
DAVID S. NAHMIAS
CENTER FOR CONSUMER LAW & ECONOMIC JUSTICE
UC BERKELEY SCHOOL OF LAW
308 Law Building
Berkeley, CA 94720-7200
(510) 393-8254
tmermin@law.berkeley.edu

Counsel for Amici Curiae

January 11, 2023