Nos. 22-506 and 22-535

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.

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

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BRIEF OF *AMICI CURIAE* LOCAL GOVERNMENTS IN SUPPORT OF PETITIONERS

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STATEMENT OF INTEREST

Amici are a collection of city and county governments from across the country, including several within the borders of State Respondents.[1] We file this brief because our governments have an immense interest in the economic welfare and prosperity of our residents. Our cities are the economic engines of our States, creating jobs, infrastructure, and essential resources for our communities, while also playing host to colleges and universities that serve students from near and far. *Amici* also provide critical services to our most economically vulnerable residents, including shelter, job training, and other economic and health benefits.

We have seen the extreme economic toll of student debt among our residents. Standing at nearly $1.7 trillion as of this filing, it is the largest component of personal debt in America.[2] Many of our residents are financially crushed by these burdens. Many are forced to leave school early. Others enter career fields that do not align with their training or broader workforce needs. Many are required to rely on government programs for assistance. Others are overwhelmed

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[1] Pursuant to Supreme Court Rule 37, no counsel for a party authored this brief in whole or in part, and no person other than *Amici* or *Amici*'s counsel made a monetary contribution to the preparation or submission of this brief. A complete list of all *Amici* is provided at Appendix A.

[2] Federal Reserve data from Q3 2022 put total outstanding student debt at $1.57 trillion, more than all other household debt excluding home mortgages. *Household Debt and Credit Report (Q3 2022)*, Fed. Rsrv. Bank of N.Y., https://perma.cc/Z5R7-5CWR.

with stress and anxiety. Student debt burdens significant portions of our populations, not just young professionals beginning their post-education careers. It prevents older residents, who may still be paying off their own student loans, or those of their children, from being able to retire. Student debt also stymies intergenerational wealth creation and future educational opportunities for children and grandchildren.

While student debt affects broad segments of our communities, it disproportionately impacts people of color—the same communities hit hardest by the COVID-19 pandemic. Black borrowers are uniquely burdened by student debt, receive less of an economic boost from higher education, and are more likely to experience defaults. Due to lingering systemic barriers, the median white borrower has repaid nearly 95 percent of their student loans after 20 years, whereas the median Black borrower will still owe 95 percent of their original balance.[3] Student debt cancellation is crucial for addressing the racial wealth gap as well as related gaps in employment,

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[3] *Disparate Debts: How Student Loans Drive Racial Inequality Across American Cities*, Student Borrower Prot. Ctr., 6–8 (2020), https://perma.cc/T9N6-NB6C. Even before the pandemic amplified these disparities, student loan debt disproportionately affected communities of color. Researchers found that in the Bay Area neighborhoods with the highest percentage of Black and Latino residents, 19.9% of borrowers were delinquent, 15.3% were in default, and 26.9% had defaulted since 2003. *At What Cost? Student Loan Debt in the Bay Area* 29, S.F. Off. of Fin. Empowerment & Fed. Rsrv. Bank of S.F. (2019), https://perma.cc/EA9G-L3P9.

homeownership, and other sources of wealth creation.[4] All *Amici* are committed to those aims.

In sum, *Amici* are home to millions of student loan borrowers. Cancellation of student debt will lift members of our communities out of poverty, spur business innovation, enhance housing security, give residents more job opportunities to consider, especially in fields that are currently understaffed and underserved, and improve public health. Many members of our own workforces—those working in city and county government—will benefit directly from the Secretary's action, which will assist with staff retention and professional development.

SUMMARY OF ARGUMENT

State Respondents seek to stretch the "special solicitude" afforded state litigants, *see Massachusetts v. Envtl. Prot. Agency*, 549 U.S. 497, 520 (2007), 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. Secretary Cardona's student debt relief action provides myriad economic benefits to State Respondents, including directly to the several *Amici* Local Governments that are located within the

[4] Raphael Charron-Chenier et al., *Student Debt Forgiveness Options: Implications for Policy and Racial Equity*, Roosevelt Inst. (2020), https://perma.cc/6QQH-RZ7L.

borders of State Respondents. By stabilizing households and promoting entrepreneurship, the Secretary's action will result in increased tax revenues and lower reliance on state- and locally funded assistance programs. Far from suffering cognizable harm, State Respondents only point to speculative and indirect financial impacts. That is not enough—and has never been enough—to survive Article III scrutiny.

Even if this Court were to conclude that State Respondents had standing (which they don't), none of their arguments—or arguments made by other challengers—on the merits can prevail. Petitioners and other *Amici* effectively argue the statutory authority for the Secretary's determination. *Amici* Local Governments add their voice here to underscore the reasonableness of the Secretary's determination. Faced with a looming crisis of delinquency and default, the Secretary took authorized and needed action to prevent further economic fallout from the pandemic. Local governments stand on the frontlines, delivering services each day to residents, many of whom are either economically vulnerable or who have suffered from systemic discrimination, or both. Our experience, especially throughout this pandemic, demonstrates the Secretary's concern for student loan borrowers is not arbitrary and capricious. It is objectively reasonable. For these reasons, and what is set forth below, we urge this Court to reverse the lower court injunctions and dismiss the cases.

ARGUMENT

I. STATE RESPONDENTS LACK STANDING TO SUE BECAUSE THEY ARE NOT ACTUALLY HARMED BY THE SECRETARY'S ACTION

State Respondents offer a variety of claims of financial harm, either directly or indirectly through a supposed arm of the State, to support their standing to sue. However, these claims are too attenuated and speculative to meet the concreteness and particularity requirements under this Court's jurisprudence. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016). In fact, the Secretary's determination will not cause actual economic harm to the States. Instead, the benefits far exceed any speculative harm State Respondents offer in their pleadings. Even under its most deferential standards, this Court has never accepted standing on the terms offered here, nor should it.

A. This Court Has Never Found States to Have Standing When the Purported Economic Injury Is Either Uncertain or Non-Existent

While States enjoy a special status in this Court's case-and-controversy jurisprudence, they are not exempted from the requirements of standing. Rather, the standing analysis must acknowledge the array of interests, as sovereigns and otherwise, that States hold. But this analysis does not alter the fundamental calculation, which is whether a party has actually suffered harm or an injury-in-fact. *See Lujan v.*

Defenders of Wildlife, 504 U.S. 555, 560 (1992). Eroding the standing requirement, as State Respondents seek to do here, would distort both federalism and the separation of powers by turning federal judges into "virtually continuing monitors of the wisdom and soundness of Executive action," at the behest of contingents of or singular States. *Laird v. Tatum*, 408 U.S. 1, 15 (1972).[5]

Most of the typical State injuries are not applicable here. Student debt relief does not create an injury by directly regulating the States as they are not "'the object of' its requirement[s]." *West Virginia v. Envtl. Prot. Agency*, 142 S. Ct. 2587, 2606 (2022) (*quoting Lujan*, 504 U.S. at 562). It does not conscript States to participate in a federal program. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 584–85 (2012). It does not threaten their territory or natural resources. *Massachusetts v. Envtl. Prot. Agency*, 549 U.S. 497, 522–23 (2007). Nor does it impact their employment relationships with existing and future workers. *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1903 (2020). Instead, the alleged injuries are all indirect and financial. Such an attenuated argument for standing is ripe for mischief. *See, e.g.*, *Wyoming v. Oklahoma*, 502 U.S. 437, 448 (1992) ("Courts of Appeals have denied standing to States where the claim was that actions taken by United

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[5] In a recent court of appeals decision, Chief Judge Sutton raised concerns about generalized standing for States, given that almost every federal policy will impact their residents in some manner. If such effects satisfy Article III, "what limits on state standing remain?" *Arizona v. Biden*, 40 F.4th 375, 386 (6th Cir. 2022) (Sutton, C.J.).

States Government agencies had injured a State's economy and thereby caused a decline in general tax revenues.").

In the face of clear and specific financial benefits from federal action, State Respondents point to speculative and indirect financial costs. In effect, they seek to manipulate their standing through self-imposed obligations and a narrowed gaze of the relevant facts. This Court has never resolved this discrete issue, but the question has increasingly come before the Court. It was raised in 2016, when this Court was asked to review President Obama's Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program. *United States v. Texas*, 577 U.S. 1101 (2016) (granting cert.). There, standing hinged on the incremental cost of printing driver's licenses in Texas, in the face of millions of dollars in tax revenues and other benefits that would flow to the States from federal work authorization alone. *Texas v. United States*, 809 F.3d 134, 155 (5th Cir. 2015), as revised (Nov. 25, 2015). Even while the Fifth Circuit held that the license expenses supported standing, it recognized that some offsetting benefits must be considered. *Id.* at 155–56, *aff'd by an equally divided court*, *United States v. Texas*, 579 U.S. 547 (2016) (affirmed without precedential effect). This debate was recently rejuvenated in another immigration enforcement-related case, *United States v. Texas*, No. 22-58, from earlier this term, and

colloquies at argument revealed the logical fallacy of ignoring offsetting benefits.[6]

Taxpayer standing offers an appropriate analogy for this action, since any of the complained-of harms ultimately rely on contingent effects on the public fisc. *See, e.g.*, *Pennsylvania v. Kleppe*, 533 F.2d 668, 672–73 (D.C. Cir. 1976) (rejecting state standing on the basis of incidental revenue loss by analogy to taxpayer standing). In such instances, the net effects of the complained-of governmental action are relevant to the Court's analysis of standing. *See, e.g.*, *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 136–37 (2011). Offsetting benefits with a close connection to the complained-of government action can render the alleged harm nonexistent, or at least too speculative to meet Article III requirements.

As described in greater detail below, the harm here is particularly indirect and should therefore be considered against student debt relief's countervailing benefits. Contrast the indirect harm here against, for example, New York's and other States' lawsuit challenging the Census citizenship question. There, the plaintiff States' standing was clear: they complained that undercounting in the Census *caused* by the addition of the citizenship question would lead to *direct* and *specific* reduction in federal funds overall. *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2565 (2019) ("Several state respondents here have shown that if noncitizen households are

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[6] *See, e.g.*, Transcript of Oral Argument at 89:7–15, *United States v. Texas* (Nov. 29, 2022) (No. 22-58) (Kagan, J.).

undercounted by as little as 2%—lower than the District Court's 5.8% prediction—they will lose out on federal funds that are distributed on the basis of state population."). Here, the benefits of debt reduction are well understood and significant, while the complained-of harms are minor, speculative, and indirect.[7]

B. State Respondents Will Economically Benefit from the Secretary's Action on Student Debt

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.

1. Student debt cancellation spurs economic growth through business formation and consumer spending

Economic growth from debt cancellation will generate increased sales, income, and other tax

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[7] In similar cases, courts of appeals have concluded that States lacked standing where there was no net harm. *See, e.g.*, *Wyoming v. U.S. Dep't of the Interior*, 674 F.3d 1220, 1231–36 (10th Cir. 2012) (evaluating the net impact on state tax revenues of restrictions on snowmobile entries to national parks and concluding that State lacked concrete injury).

revenues. Student debt cancellation catalyzes new business activity through increased entrepreneurship, small business creation, and consumer spending. A reduction in student loan balances allows individuals to secure business loans and invest in their ideas and innovations.[8] According to recent analysis, growing student loan debt has significantly contributed to the overall decline in entrepreneurship among American college graduates over the last 40 years.[9] Student debt particularly hampers the formation of businesses with fewer than 20 employees,[10] which generate nearly 500,000 new jobs annually and account for 99.9 percent of U.S. businesses.[11] Business creation enhances taxing capacity and revenues for state and local governments.[12]

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[8] *See* Brent W. Ambrose et al., *The Impact of Student Loan Debt on Small Business Formation* (Fed. Rsrv. Bank of Phila., Working Paper No. 15-26, 2015), https://perma.cc/B2ER-2E73; Laura Checovich & Tom Allison, *At the Extremes: Student Debt and Entrepreneurship* 3, Young Invincibles (2016), https://perma.cc/ZRZ8-SXUT (analyzing survey of recent college graduates).

[9] Marta Morazzoni, *Student Debt and Entrepreneurship* 54 (Oct. 20, 2022) (unpublished manuscript), https://perma.cc/79MC-L658. The study further found that the Secretary's action to reduce student loan balances would measurably increase entrepreneurial activity among college graduates. *Id.* at 52–53.

[10] *See* Ambrose et al., *supra* note 8, at 4.

[11] Melanie Hanson, *Economic Effects of Student Loan Debt*, Educ. Data Initiative (Jan. 1, 2023), https://perma.cc/JHW6-SYED.

[12] *See, e.g.*, John D. Wong, *The Fiscal Impact of Economic Growth and Development on Local Government Revenue Capacity*, 16 J. Pub. Budgeting, Acct. & Fin. Mgmt. 413–23 (2004), https://perma.cc/8YRU-NZBE.

Student debt also constrains consumer spending, as monthly payments on student loans simply crowd out other types of purchases.[13] Debt cancellation frees up substantial household income to be spent in other ways.[14] Indeed, the current payment pause has already clearly demonstrated this effect, with consumer spending up 3.6 percent in 2021 as a direct result of student loan payment deferrals.[15] As the Secretary's action would eliminate future payments altogether for an estimated 20 million borrowers and significantly reduce payments for over 20 million more, J.A. 119, this spending boost is likely to continue. Similar to business creation, consumer spending grows the economy and increases government revenues through sales, excise, and other taxes.

2. Student debt cancellation promotes homeownership and reduces housing insecurity

The relatively recent explosion in student debt has contributed significantly to waning rates of

[13] Berrak Bahadir & Dora Gicheva, *Macroeconomic Implications of Student Debt: A State-Level Analysis*, 54 J. Money, Credit & Banking 2273 (2022); *see also* Laura Feiveson et al., *Student Loan Debt and Aggregate Consumption Growth*, Bd. of Governors of the Fed. Rsrv. Sys. (Mar. 1, 2018), https://perma.cc/NY9F-TVMS.

[14] *See* Scott Fullwiler et al., *The Macroeconomic Effects of Student Debt Cancellation* 6–7, Levy Econ. Inst. (2018), https://perma.cc/8DU9-RWWH (modeling cancellation of all outstanding student debt).

[15] Jamie Bassaline, *The Student Loan Debt's Impact on the U.S. Economy*, Equifax (Aug. 12, 2022), https://perma.cc/D2HS-PLJL.

homeownership across the country. In 2016, homeownership rates reached a 20-year low of around 63.5 percent of all American households.[16] Federal Reserve Board economists estimate that increased student loan debt conservatively accounts for 20 percent of declining homeownership rates among young people.[17] Among other things, student debt prevents borrowers from saving for down payments[18] and qualifying for mortgages,[19] both of which contribute to delays in homeownership as well as acquisition of wealth over time through sustained homeownership.[20] First-time homebuyers play a critical role in the market by increasing demand and

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[16] Richard Fry & Anna Brown, *In a Recovering Market, Homeownership Rates Are Down Sharply for Blacks, Young Adults*, Pew Rsch. Ctr. Soc. & Demog. Trends Proj. (Dec. 15, 2016), https://perma.cc/3Y6F-CE23.

[17] Alvaro Mezza et al., *Student Loans and Homeownership*, 38 J. Lab. Econ. 215, 254 (2020), https://perma.cc/Q3AJ-R5C3.

[18] Nat'l Ass'n of Realtors Rsch. Dep't & Amer. Student Assistance, *Student Loan Debt and Housing Report 2017* at 1, https://perma.cc/93CZ-FX22 (83% of survey respondents would put money towards the purchase of a home if they did not have to make student loan payments).

[19] *Consumer Housing Trends Report 2019: How Debt Makes Getting a Home Harder*, Zillow, https://perma.cc/G8TW-Q5BG (27% of purchasers with student debt experienced a mortgage denial).

[20] *See also* Ulrike Nischan & Amelia Josephson, *Weighed Down: New Yorkers Share How Student Loan Debt Is Affecting Their Lives* 7, N.Y.C. Dep't of Consumer & Worker Prot. (2021), https://perma.cc/H8SW-BZM3 (49% of surveyed New York City residents reported student loan debt impacting a major life choice like purchasing a home, starting a family, and saving for retirement).

facilitating "move-up" purchases by existing homeowners.[21]

Debt cancellation allows individuals and their families to purchase homes now and to seek higher-quality housing opportunities.[22] Among other things, student borrowers will see an immediate decrease in their debt-to-income ratios, an improvement in their credit scores, and an enhancement of disposable income that they can save for a down payment or invest in improvements to their homes.[23] Having more disposable income also puts living in a wider range of areas within financial reach, including by allowing for higher transportation costs. With increasing homeownership rates, state and local governments will see an overall increase in tax revenues through sales and recording fees, increases in appraisal

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[21] Robert H. Scott III & Steven Bloom, *Student Loan Debt and First-Time Home Buying in USA*, 15 Int'l J. of Hous. Mkts. & Analysis 80, (2021), https://perma.cc/G2ZP-7BM8 (likelihood of being a first-time home buyer decreases by 27% for people with more than the median amount of $35,000 in student loan debt).

[22] *See* Nat'l Ass'n of Realtors Rsch. Dep't & Amer. Student Assistance, *supra* note 18, at 26.

[23] *See* Jason Cohn & Caitlin Young, *Student Debt Relief Could Help Some Borrowers Access Homeownership*, Urb. Inst. (Sept. 15, 2022), https://perma.cc/75P2-NB2U (last visited Jan. 11, 2023).

values,[24] and overall upkeep of communities and neighborhoods.[25]

State and local governments also expend significant resources to combat housing insecurity by investing in housing development, down-payment assistance, rental subsidies, and other housing affordability initiatives. Housing and community development activities accounted for $57 billion in state and local government expenditures in the year preceding the pandemic, not accounting for additional billions in public welfare dollars spent to address homelessness.[26] Increased homeownership and housing security will help to alleviate this strain on state and local budgets.

3. Student debt cancellation addresses workforce gaps and enhances job opportunities across fields and regions

Student debt cancellation will alleviate pressing workforce problems facing state and local

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[24] In 2019, state and local governments collected a combined $577 billion in property tax revenue, which was 17% of general revenue. Urb. Inst., *Property Taxes*, https://perma.cc/6LU4-W9L6 (last visited Jan. 11, 2023).

[25] William M. Rohe & Leslie S. Stewart, *Homeownership and Neighborhood Stability*, 7 Hous. Pol'y Debate 37, 71 (1996), https://perma.cc/QCS2-BVHK (homeownership leads to greater neighborhood stability as measured by length of residence and property condition).

[26] Urb. Inst., *State and Local Backgrounders: Housing and Community Development Expenditures*, https://perma.cc/4ZE3-KJNT (last visited Jan. 11, 2023).

governments by allowing borrowers to pursue public interest employment and to live in more rural areas. Student debt prevents graduates from working in their fields of choice, including high-need areas such as teaching and healthcare.[27] Shortages in these fields have reached crisis levels, with all 50 States reporting a shortage of K-12 public school teachers in 2022.[28] Also in 2022, at least 20 state governors cited shortages in qualified healthcare workers in their annual state of the state addresses, with governors from Georgia to New York newly budgeting state funds to address the problem.[29] Among other reasons for these shortages are the failures of the Public Service Loan Forgiveness Program. The uneven application of programmatic rules has excluded many student loan borrowers from benefiting from loan forgiveness under the program.[30] Because of these

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[27] Jesse Rothstein & Cecilia Rouse, *Constrained After College: Student Loans and Early Career Occupational Choices*, 95 J. Pub. Econ. 149 (2011). Student debt also makes it more difficult to thrive in these fields. One survey found that 40% of teachers were likely to skip routine medical care because of student debt burdens. Melissa Hershcopf et al., *Student Loan Debt Among Educators: A National Crisis* 4, Nat'l Educ. Ass'n (2021), https://perma.cc/8AZB-LG66.

[28] Emma Garcia et al., *Are We at a Crisis Point with the Public Teacher Workforce? Education Scholars Share Their Perspectives*, Brookings (Aug. 26, 2022), https://perma.cc/3KRF-URVM (citing Department of Education teacher shortage data).

[29] Michael Ollove, *Health Worker Shortage Forces States to Scramble*, Pew (Mar. 25, 2022), https://perma.cc/ZK4U-372E. States have even allocated funds to repay student loans for healthcare providers. *Id*.

[30] Robert Wu, *America's Unforgiving Forgiveness Program: Problems and Solutions for Public Service Loan Forgiveness*, 72

challenges, workers are likely to leave public interest jobs in the name of a more certain and lucrative private sector position.[31] The Secretary's action will help to reduce some of these financial pressures to exit public service and will allow States to attract and retain the workforce they need to carry out essential functions.

Reduced debt burdens also will alleviate pressure for borrowers to relocate to higher-wage urban centers.[32] Rural areas in particular struggle to attract and retain workers with advanced training and degrees (such as teachers and healthcare providers). Car ownership may be a prerequisite for employment[33] and rental housing often can be

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Hastings L.J. 959, 964 (2021) (noting that borrowers currently face shifting interpretations over which positions qualify for forgiveness). Among other places, San Francisco has seen strong demand for financial education related to student loans from thousands of public service employees.

[31] *See id.* at 991.

[32] *See* Stephan Whitaker, *Are Millennials with Student Loans Upwardly Mobile?* 2, Fed. Rsrv. Bank of Cleveland (2015), https://perma.cc/BPD5-Y9BD (finding that millennials with more debt are more likely to move farther away when forming their own households); PJ Tabit & Josh Winters, *"Rural Brain Drain": Examining Millennial Migration Patterns and Student Loan Debt*, 1 Fed. Res. Consumer & Community Context 7, 9 (2019), https://perma.cc/DR5M-W4GJ (finding that student loan borrowers are less likely to remain in rural areas).

[33] *See Changing Attitudes and Transportation Choices: 2017 National Household Travel Survey* 9, Fed. Highway Admin. (2019), https://perma.cc/SX94-Y3L3 (noting that 80% of rural residents use a car daily, average 15.6 miles one-way to commute

scarce.[34] The inability to buy a car or a house may deter student borrowers from moving to a rural area, even if the cost of living in such areas is otherwise more affordable.[35] Student debt relief can assist States in ensuring that trained professionals are distributed throughout urban and rural communities so that all residents can access the services they need.

4. Student debt cancellation reduces healthcare costs for States

Student debt cancellation will improve the health of borrowers and reduce their reliance on public health systems. State and local governments spend at least 10 percent of their budgets on health and hospital expenditures; these expenses are up 231 percent since 1977.[36] In addition to contributing challenges in attracting and retaining a qualified healthcare workforce, as discussed above, student debt drives demand for care. Like other forms of financial insecurity, student debt negatively impacts borrowers'

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to work, and have less travel options compared to urban areas with higher densities).

[34] *Rural America Is Losing Its Affordable Rural Rental Housing*, Hous. Assistance Council (2018), https://perma.cc/QZB6-7PJE.

[35] *Student Loan Affordability: Analysis of Public Input on Impact and Solutions* 11, Consumer Fin. Prot. Bureau (2013), https://perma.cc/8RJL-SKJ5.

[36] This number does not include most Medicaid expenditures. Urban Inst., *State and Local Backgrounders: Health and Hospital Expenditures*, https://perma.cc/HL2E-TCSW (last visited Jan. 11, 2023).

mental and physical health.[37] Student borrowers report increased anxiety, depression, or stress due to their educational debt burden. One 2013 study concluded that increased student debt burdens raised blood pressure, leading to other health risks for borrowers.[38]

Beyond these physical and mental ailments, student debt impedes access to routine medical treatment. Debt loads prevent borrowers from prioritizing healthcare benefits in their job searches,[39] purchasing medication, and seeking non-emergency care.[40] Student debt also has direct effects on the delivery of healthcare, as many health professionals have pointed to the burdens of student debt as a cause of burnout.[41] As a result, many healthcare professionals are exiting the field or significantly

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[37] *See* Thomas Richardson et al., *The Relationship Between Personal Unsecured Debt and Mental and Physical Health: A Systematic Review and Meta-Analysis*, 33 Clinical Psych. Rev. 1148 (2013).

[38] Elizabeth Sweet et al., *The High Price of Debt: Household Financial Debt and Its Impact on Mental and Physical Health*, 91 Soc. Science & Med. 94 (2013).

[39] Mi Luo & Simon Mongey, *Assets and Job Choice: Student Debt, Wages and Amenities* (Nat'l Bureau of Econ. Rsch. Working Paper No. 25801, 2019), https://perma.cc/NU4E-KK5S.

[40] Catey Hill, *Why Student Loans Are Bad for Your Health*, MarketWatch (Oct. 7, 2014), https://perma.cc/7YWZ-747D; *Snapshot of Older Consumers and Student Loan Debt* 13, Consumer Fin. Prot. Bureau (2017), https://perma.cc/C94Y-S7HL.

[41] Colin P. West et al., *Quality of Life, Burnout, Educational Debt, and Medical Knowledge Among Internal Medicine Residents*, 306 J. Am. Med. Ass'n 952 (2011).

reducing their hours, placing an even greater strain on those providers who remain and making it more difficult for patients to secure appointments.[42] In all instances, the costs ultimately fall to state and local governments, who provide care and services of last resort.

* * *

All told the benefits of student debt cancellation are immense. When borrowers' debt burdens are eliminated or significantly reduced, they start businesses, secure housing, pursue careers in public service, and prioritize their health. These effects improve quality of life in our communities, enhance revenues for the public fisc, and reduce reliance on government programs.

C. The Complained-of Harms Are Indirect and Speculative, and None Is Significant Enough to Overcome the Clear Benefits to State Respondents

State Respondents offer several theories for their standing, but none is enough to meet their burden.

First, all three variations on States' claims of financial harm are overly speculative and pale in comparison to the financial benefits described above. Missouri complains of injury as a result of financial uncertainty created by the Secretary's action,

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[42] Elaine K. Howley, *The U.S. Physician Shortage Is Only Going to Get Worse. Here Are Potential Solutions*, Time (July 25, 2022), https://perma.cc/PT6F-TCGJ.

speculating that reduced revenues to the Missouri Higher Education Loan Authority (MOHELA) could cause it to miss future contributions owed to a limited-purpose subfund of the state treasury. But this injury is twice too attenuated to be cognizable. To start, MOHELA's obligation is limited and nearly fulfilled, has been delayed on multiple occasions, and has only particular applications.[43] It is dubious, even in Missouri's telling, that there will be an actual impact on the state's treasury. On top of that, it is highly speculative to suggest that MOHELA will not be able to fulfill its obligations to the fund after student debt is cancelled. MOHELA is a large corporation, with significant revenue streams, including and especially because of its federal loan servicing portfolio. In 2022, MOHELA's assets exceeded its liabilities by over $350 million.[44] In fact, in the past two years, its revenues have significantly improved *because of* contracts with the federal government.

State Respondents also complain that they will lose income tax revenue, since their tax codes are linked to federal law—and federal law will not tax the cancellation of these debts. There is no cognizable injury, since these States chose to follow the federal government's lead and can adjust their tax codes as they see fit. *See Pennsylvania v. New Jersey*, 426 U.S. 660, 664 (1976) (*per curiam*) (finding injury to state tax revenues to be self-inflicted). In any case,

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[43] *See*, *e.g.*, *MOHELA Annual Disclosure* 20, MOHELA (Dec. 23, 2020), https://perma.cc/TLC8-Y5TQ.

[44] *MOHELA Financial Statements* 12, MOHELA (Sept. 19, 2022), https://perma.cc/ZP8N-NVTD.

incidental decreases in state tax revenues are insufficient to grant state standing, even in the absence of the countervailing financial benefits present in this case. *See Florida v. Mellon*, 273 U.S. 12, 17–18 (1927). And State Respondents' theory relies on pure speculation that loans not discharged through the Secretary's action would nonetheless eventually be discharged through some other action—and therefore be taxable as income—at some future point after 2025.[45]

Second, any supposed injury caused to MOHELA cannot be imputed to Missouri for standing purposes. Pet. Br. 28–30. Unlike "political subdivisions of the state," *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1907), MOHELA is not an arm of the State.[46] Rather, it operates as a distinct entity. MOHELA was established by statute in 1981 for purposes of assuring access to postsecondary education within the State. Mo. Rev. Stat. § 173.360. Missouri's Legislature granted MOHELA the authority "to sue and be sued" and "to acquire, hold and dispose of personal

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[45] State Respondents also claim they will suffer financial harm as holders or investors in Federal Family Education Loan Program (FFELP) loans. But none of the alleged harms relating to loan consolidation remain live; Petitioners announced intentions with respect to FFELP, namely that such loans cannot be discharged through consolidation. Pet. Br. 25.

[46] Because MOHELA is not an arm of the state, this case presents no occasion to determine when and under what circumstances an arm of the State can cloak itself in State authority for the purpose of litigating against the federal government.

property."[47] *Id.* § 173.385. MOHELA has evolved over time and now functions as a significant corporate actor in the national student debt landscape, eclipsing its state-based origins. As the district court noted, MOHELA operates with functional independence: the State had to make public records requests to obtain information in anticipation of this litigation. J.A. 145.

MOHELA also operates with complete financial independence, another essential component of the analysis. MOHELA's funds are separate; it is a self-sustaining entity. *See, e.g.*, *Hess v. Port Authority Trans-Hudson Corp.*, 513 U.S. 30, 50–51 (1994) (finding that Port Authority was not an arm of the State because the state treasury faced indirect exposure but no actual liability for its losses). For example, MOHELA has authority to issue bonds, but categorically excludes the State from any obligation. Mo. Rev. Stat. § 173.410. When created by the Missouri Legislature, the financial independence of MOHELA was clear: "no asset of [MOHELA] shall be required to be deposited into the state treasury, and no asset of [MOHELA] shall be subject to appropriation by the general assembly." *Id.* § 173.425. In sum, neither respect for the state treasury nor concerns for the sovereign dignity of Missouri counsel in support of MOHELA's status as an arm of the State. *See, e.g.*, *Oberg v. Pa. Higher Educ. Assistance Agency,*

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[47] In other respects, Missouri imposes controls on MOHELA, including through the Governor's appointment of members to the board, Mo. Rev. Stat. § 173.360, the submission of a financial annual report, *id.* § 173.445, and limitations on the sale of loans, *id.* § 173.385.1(8). Maintaining close ties is not enough to make MOHELA an arm of Missouri.

804 F.3d 646, 676 (4th Cir. 2015) (quoting *Hess*, 513 U.S. at 47).

With Missouri's arguments on behalf of MOHELA easily set aside, the various indirect and speculative financial impacts claimed by State Respondents—to the extent that they result in any losses—are insignificant compared to all of the financial gains described above. Accordingly, State Respondents have no standing to bring this suit.

II. THE SECRETARY'S ACTION WAS A REASONABLE RESPONSE TO ONGOING ECONOMIC IMPACTS OF THE PANDEMIC

Secretary Cardona acted reasonably and in reliance on clear and actual economic data in making the determination to relieve student borrower debt. His determination aligns with *Amici* Local Government's experience serving economically vulnerable and historically underserved groups throughout the pandemic.

A. Many Borrowers Risk Default Following Expiration of the Payment Pause

As made clear in the record, the Secretary understood the profound risks to borrowers with the expiration of the payment pause. Following the onset of the COVID-19 national emergency, then-Secretary of Education Betsy DeVos and Congress took prompt action to provide temporary relief to student borrowers in the form of loan forbearance and other

measures.[48] Secretaries DeVos and Cardona subsequently issued further extensions pursuant to their authority under the HEROES Act of 2003.[49] These actions reflected broad concern that the risk of student loan defaults posed a grave financial threat to borrowers, their families, and the overall economy.[50]

Though the pause provided temporary relief and forestalled the immediate crisis, many borrowers' financial position and ability to repay their student loans has gotten worse, not better, over the course of forbearance.[51] Thus, in anticipation of the eventual end of the COVID-19 national emergency, the Secretary rightly took action to prevent mass delinquency and default and to ensure that borrowers did not exit the pause in a worse position than they

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[48] *See* Press Release, U.S. Dep't of Educ., Delivering on President Trump's Promise, Secretary DeVos Suspends Federal Student Loan Payments, Waives Interest During National Emergency (Mar. 20, 2020), https://perma.cc/TE59-PJPT; Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, 134 Stat. 281 (2020).

[49] Alexandra Hegji, Cong. Rsch. Serv., IF12136, Student Loans: A Timeline of Actions Taken in Light of the COVID-19 Pandemic (2022), https://perma.cc/N7LC-CCKY.

[50] *See, e.g.*, Emily Wavering Corcoran & Nicholas Haltom, *Mortgage and Student Loan Forbearance During the COVID-19 Pandemic*, Fed. Rsrv. Bank of Richmond (Aug. 27, 2020), https://perma.cc/5QNZ-P59H.

[51] *See* Thomas Conkling & Christa Gibbs, *Update on Student Loan Borrowers During Payment Suspension*, Consumer Fin. Prot. Bureau (Nov. 2, 2022), https://perma.cc/V7C4-QTHS (noting an increase in student loan borrowers who struggled to repay other debts over the course of the pandemic as well as a marked increase in monthly payments owed on other debts).

were in at the pandemic's outset. This approach mirrors the federal government's forgiveness of loans offered through the Paycheck Protection Program, which enabled businesses to stay afloat during the pandemic and to rebound from COVID-related closures.[52]

Evidence from past emergencies—even brief payment pauses in response to regional-scale disasters—demonstrates a marked uptick in borrowers struggling to make payments at the end of temporary payment pauses. In 2019, in the wake of Hurricanes Harvey, Irma, and Maria as well as northern California wildfires, the Department noted a national spike in delinquency and default as impacted borrowers exited emergency forbearance. J.A. 234–35.[53] Three years later, facing a pool of impacted student borrowers that was over 100 times larger, exiting a payment pause that stretched ten times

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[52] The Paycheck Protection Program was originally created through the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. 116-136, 134 Stat. 281 (2020). Preliminary findings indicate that the program supported the financial health of small businesses over the short term while also promoting longer term recovery as businesses reopened. R. Glenn Hubbard & Michael R. Strain, *Has the Paycheck Protection Program Succeeded?* 29, (Nat'l Bureau of Econ. Rsch., Working Paper No. 28032, 2020), https://perma.cc/PM9N-L4QL.

[53] According to Department analysis, 6.5% of borrowers in federally declared disaster areas defaulted in the calendar year after exiting mandatory administrative forbearance, compared with a rate of 0.3% prior. *See also* Fed. Student Aid, Federal Student Aid Posts New Reports to FSA Data Center (Aug. 7, 2019), https://perma.cc/C2MT-NR4F.

longer,[54] the Secretary justifiably anticipated truly dire outcomes absent further federal intervention.

Current economic conditions and borrowers' own analysis of their household financial situations also point to the pressing need for permanent federal relief. According to recent survey data, over half of student loan borrowers have reported experiencing employment and income disruptions in the prior year.[55] Families no longer receive the stimulus checks and expanded child tax credit which provided them temporary support, and delinquency rates on other forms of commercial debt now surpass pre-pandemic levels.[56] As many as half of borrowers ages 25 and older with outstanding student loans report that they will be unable to make full payments after forbearance ends.[57] Outcomes for FFELP borrowers who were ineligible for mandatory federal forbearance likewise indicate that borrowers will experience increased delinquency not only in their student loans but in

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[54] The number of borrowers in Mandatory Administrative Forbearance, including but not limited to borrowers impacted by natural disasters, reached a peak in Q1 of 2017 at less than 250,000; in Q4 of 2022, the number in Mandatory Administrative Forbearance was nearly 25.6 million. Fed. Student Aid, Federal Student Loan Portfolio: Direct Loan Portfolio by Forbearance Type (2022), https://perma.cc/2BSQ-DZQP.

[55] Consumer survey conducted in 2022. Tom Akana & Dubravka Ritter, *Expectations of Student Loan Repayment, Forbearance, and Cancellation: Insights from Recent Survey Data* 2, Fed. Rsrv. Bank of Phila. (2022), https://perma.cc/Z2DE-D6FH.

[56] Conkling & Gibbs, *supra* note 51.

[57] Akana & Ritter, *supra* note 55, at 4.

other debts as well.[58] The Secretary's action came in response to a real and imminent threat to student loan borrowers and the economy as a whole.[59]

B. Local Government Programs Have Similarly Focused on Assisting Those Most Vulnerable to the Pandemic's Ongoing Economic Effects

Secretary Cardona's action reinforces efforts that *Amici* Local Governments have made time and time again throughout the pandemic. In various sectors of our economies, *Amici* have intervened to provide business owners, tenants, and residents with cash assistance, debt relief, and other financial benefits to ensure financial stability.

To support economic development and to help employers make payroll, cities and counties have established programs targeted at small businesses and community organizations. More than 850 small, minority, and women-owned businesses have received more than $8.3 million from the Columbus-Franklin County COVID-19 Small Business Response and Recovery Fund. Among other things, the program granted businesses $10,000 to help maintain existing operations and retain jobs through the pandemic and offered access to low-interest, forgivable loans of up to

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[58] Jacob Goss et al., *Student Loan Repayment During the Pandemic Forbearance*, Fed. Rsrv. Bank of N.Y. (March 22, 2022), https://perma.cc/QGJ9-HQ7C.

[59] *See also* Thomas Conkling et al., *Student Loan Borrowers Potentially At-Risk when Payment Suspension Ends*, Consumer Fin. Prot. Bureau (2022), https://perma.cc/MDJ7-8EEM.

$20,000 to assist them in adding capacity to pivot into new business lines.[60] In a similar fashion, the Austin Non-Profit Relief Grant provided up to $20,000 toward reimbursement of eligible expenses including rent, payroll, and other economic needs of non-profit organizations facing hardship due to the economic impacts of the pandemic.[61]

Local governments also have provided extensive housing-related relief. Along with Cuyahoga County, Cleveland funded the Rental Assistance Program to help tenants affected by COVID-19 by mailing rental checks directly to landlords.[62] Many other cities provided similar support to their tenants.[63] In St. Louis, the Mortgage Assistance Program provided $2.5 million to prevent foreclosures for households that have been affected by the COVID-19 pandemic

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[60] Press Release, City of Columbus, Hundreds of Small and Minority Businesses Receive Funding from the City and Franklin County (Sept. 30, 2020), https://perma.cc/UY4X-XSYR.

[61] Julia Sufrin, *Austin Non-Profit Relief Grants (up to $20,000)*, Hogg Found. for Mental Health (Sept. 17, 2020), https://perma.cc/9L7H-N235.

[62] *City of Cleveland Provides General Updates on Coronavirus & Safety - Update #153*, City of Cleveland (Aug. 5, 2020), https://perma.cc/V3ST-4RU5.

[63] *See, e.g.*, *Coronavirus COVID-19 Information July 2020*, City of Omaha (2020), https://perma.cc/F2FW-E95S (announcing availability of Douglas County CARES Rental Assistance Program funds); Press Release, City of Des Moines, 'Help Is on the Way' as City Delivers $6.5M in COVID Rent Relief (Feb. 22, 2021), https://perma.cc/F2DM-WK9G (highlighting how Des Moines and Polk County provided $14 million in rental assistance).

and resulting economic crisis.[64] Economically vulnerable residents also have been provided targeted relief from *Amici* that deliver utility services. Houston sent out $400 checks for utility assistance.[65]

Other economic support ranges from direct cash assistance to coverage of necessities or a combination of different relief types. In order to support residents who have endured hardships caused by the pandemic, Gary, Indiana granted $400,000 of its American Rescue Plan funding to its G.I.V.E. (Guaranteed Income Validation Effort) program, which offers to residents unconditional $500 monthly cash payments for a year.[66] Similarly, Los Angeles County allocated coronavirus relief funds to purchase devices and internet hotspots for students in need.[67] The Boston Resiliency Fund distributed over $20 million to 247 organizations providing food, basic necessities, and additional support for individuals most impacted by the pandemic.[68]

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[64] *Mortgage Assistance Program 2022*, City of St. Louis (2022), https://perma.cc/ND46-5DKW (last visited Jan. 9, 2023).

[65] Press Release, City of Houston, Mayor Turner's Statement on the Stimulus Relief Bill (Dec. 23, 2020), https://perma.cc/MB2Z-AKEU.

[66] Nick Dmitrovich, *Tools to Escape Poverty - What Happens when We Invest in People?* Building Ind. Bus. (Oct. 4, 2021), https://perma.cc/GXC6-W6NP.

[67] Debra Duardo, *COVID-19 Update 09.17.20*, L.A. Cty. Off. of Educ. (2020), https://perma.cc/7T6F-C6B7.

[68] Mayor's Office, *Boston Resiliency Fund Awards More than $20 Million to Local Organizations*, City of Boston (2020), https://perma.cc/AFK8-JP6N (June 15, 2020).

As evidenced by these examples (of which there are many more), the Secretary's concern for student borrowers is not arbitrary and capricious but rather objectively reasonable. Given *Amici's* experience with programs offering economic and other support, we have recognized throughout the pandemic that our residents need relief. The Secretary's action should be viewed in that broader context.

CONCLUSION

For the foregoing reasons, and for the reasons provided by Petitioners, the judgment of the district court in *Nebraska* should be affirmed and the judgment of the district court in *Brown* should be reversed.

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APPENDIX A

List of *Amici Curiae* Local Governments

City of Albany, New York

City of Ann Arbor, Michigan

City of Atlanta, Georgia

City of Birmingham, Alabama

City of Boston, Massachusetts

County of Bucks, Pennsylvania

City of Buffalo, New York

City of Burlington, Vermont

City of Chicago, Illinois

City of Cincinnati, Ohio

City of Cleveland, Ohio

City and County of Denver, Colorado

City of Gary, Indiana

Harris County, Texas

City of Houston, Texas

City of Jackson, Mississippi

City of Kansas City, Missouri

City of Lansing, Michigan

City of Little Rock, Arkansas

City of Los Angeles, California

County of Los Angeles, California

Milwaukee County, Wisconsin

County of Monterey, California

City of Montgomery, Alabama

County of Montgomery, Maryland

City of Newark, New Jersey

City of Northampton, Massachusetts

City of Oakland, California

City of Philadelphia, Pennsylvania

City of Pittsburgh, Pennsylvania

City of Portland, Oregon

City of Raleigh, North Carolina

City of St. Louis, Missouri

City of Saint Paul, Minnesota

City and County of San Francisco, California

City of Santa Monica, California

City of Tucson, Arizona

Washtenaw County Prosecutor's Office, Michigan

City of Waterloo, Iowa

City of Wrightsville, Arkansas