

Nos. 22-506 & 22-535

IN THE
Supreme Court of the United States

JOSEPH R. BIDEN, ET AL., *Petitioners*,

v.

STATE OF NEBRASKA, ET AL., *Respondents*.

DEPARTMENT OF EDUCATION, ET AL., *Petitioners*,

v.

MYRA BROWN, ET AL., *Respondents*.

On Writ of Certiorari to the United States Courts of
Appeals for the Eighth and Fifth Circuits

**BRIEF OF 128 U.S. REPRESENTATIVES,
INCLUDING 25 MEMBERS OF THE HOUSE
COMMITTEE ON EDUCATION & THE
WORKFORCE, AS *AMICI CURIAE*
IN SUPPORT OF RESPONDENTS**

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INTEREST OF *AMICI CURIAE*¹

Amici curiae are 128 members of the United States House of Representatives and therefore have a strong interest in preserving the legislative and spending powers that Article I of the federal Constitution vests in the United States Congress.

Moreover, 25 *amici* are members of the House Committee on Education and the Workforce, which has principal oversight of the U.S. Department of Education and is the House Committee to which the Secretary of Education must make certain reports pursuant to the HEROES Act. 20 U.S.C. § 1098bb(c). These *amici* have an especially strong interest in the Secretary's correct use of federal statutes pertaining to federal education loans, as well as the judiciary's correct interpretation of those statutes.

The following is the full list of *amici*, beginning with the sponsors of this brief, House Leadership, and members of the Education and Workforce Committee:

Chairwoman Virginia Foxx
Jeff Duncan
Majority Leader Steve Scalise
Majority Whip Tom Emmer
Chief Deputy Whip Guy Reschenthaler
Conference Chair Elise M. Stefanik
Policy Committee Chair Gary Palmer
Conference Vice Chair Mike Johnson

¹ No counsel for any party has authored this brief in whole or in part, and no entity or person, aside from *amici curiae* and their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

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Additional U.S. Representatives signing as *amici*:

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SUMMARY OF THE ARGUMENT

Petitioners' assertion of power to forgive every federal student loan in the country, potentially even a decade after the COVID-19 pandemic ends, raises significant separation of powers concerns. The power of the purse is one of Congress's most potent checks against the executive branch, yet Petitioners' overly broad reading of the HEROES Act risks encroaching on that power, as well as Congress's Article I legislative authority, by arrogating to the Secretary of Education the authority to forgive a trillion dollars in federal debt that otherwise would be owed to the Treasury. The Court should require clear statutory authority before adopting an interpretation that risks significant conflict between the legislative and executive branches.

But Petitioners' mass loan forgiveness program ("the Debt Forgiveness") is not justified by clear statutory authority. The HEROES Act, which is the sole authority Petitioners invoke, says the Secretary can "waive or modify" statutory debt provisions, but that power is expressly cabined by the next subsection, which provides the specific "[a]ctions authorized." Nowhere is debt forgiveness mentioned, but Congress *did* address and impose tightly constricted bounds even on forgiving *minor* procedural and paperwork requirements. It defies reason that Congress would expressly impose such restrictions on minor forms of relief to minimize the effects on the federal fisc, while remaining entirely silent on the far more consequential act of debt forgiveness. The HEROES Act's focus on restricting minor forms of relief is even more glaring given the

existence of other statutes expressly authorizing forgiveness of federal student loans in narrow circumstances.

Petitioners would have the Court believe that even though Congress knew how to grant tailored debt forgiveness and routinely imposed narrow restrictions on it, the HEROES Act not only silently authorized blanket forgiveness but did so without imposing, or even acknowledging, the analogous restrictions placed on minor paperwork forgiveness and reporting requirements. Rather than adopt that strange and inconsistent reading, the Court should conclude that the Act simply did not authorize debt forgiveness in the first place.

But even if some form of forgiveness were authorized, there still is no clear authority for the view that “any person who resided or worked in the United States or its territories during the pandemic” could receive full loan forgiveness, as Petitioners contend. Office of Legal Counsel, U.S. Dep’t of Justice, *Use of the HEROES Act of 2003 to Cancel the Principal Amounts of Student Loans*, 2022 WL 3975075, at *13 (Aug. 23, 2022) (“OLC Op.”). The HEROES Act focuses almost exclusively on members of the military from its title, to its statutory findings, to its triggering events. Congress was not hiding the “elephant” of indiscriminate, *en masse* debt forgiveness in the few “ancillary” provisions of the HEROES Act that do not involve a military connection. *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001). If Congress had wished to grant such expansive authority, it would never have written the HEROES Act the way it did.

ARGUMENT

I. The Debt Forgiveness Implicates Constitutional Separation of Powers.

Petitioners ask the Court to sanction an interpretation of the HEROES Act that would risk serious implications for the Constitution’s repeated reservation to Congress of matters directly affecting the federal fisc, as well as the legislative power more generally.

“The legislature not only commands the purse but prescribes the rules by which the duties and rights of every citizen are to be regulated.” THE FEDERALIST NO. 78 (A. Hamilton); *see also King v. Burwell*, 576 U.S. 473, 517 (2015) (Scalia, J., dissenting). This “power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people.” THE FEDERALIST NO. 58 (J. Madison); *see also* 1 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 139–40 (M. Farrand ed. 1937) (George Mason stating that “[t]he purse & the sword ought never to get into the same hands”).

The Constitution accordingly imposed strict requirements to ensure that Congress retained accountability and control over actions that would affect the federal fisc. *See, e.g.*, U.S. Const. art. I, § 7, cl. 1 (Origination Clause); *id.* § 8, cl. 1 (Taxing and Spending Clauses); *id.* § 8, cl. 2 (Borrowing Clause); *id.* § 8, cl. 5 (Coinage Clause); *id.* § 9, cl. 4 (Direct Taxation Clause); *id.* § 9, cl. 7 (Appropriations and Statement-and-Account Clause). These limitations “assure that public funds will be spent according to

the letter of the difficult judgments reached by Congress as to the common good and not according to the individual favor of Government agents.” *OPM v. Richmond*, 496 U.S. 414, 428 (1990).

Petitioners assert an exceedingly broad interpretation of the HEROES Act that would provide an executive branch official with broad discretionary authority to forgive over a trillion dollars in federal debt obligations that would otherwise have to be repaid to the Treasury. That view makes significant national financial decisions dependent on “the individual favor of Government agents” at the Department of Education, which would risk a serious executive encroachment on Congress’s Article I power of the purse. *OPM*, 496 U.S. at 428.

The HEROES Act itself recognizes Congress’s primal role in matters related to the spending powers, even for relatively minor acts of relief for student loan debtors. For example, “after first exercising *any* authority to issue a waiver or modification” of a federal student loan program, the Secretary of Education must send a report to the House Committee on Education and the Workforce—on which numerous *amici* sit—and explain “the impact of any waivers or modifications issued” and the “basis for such determination.” 20 U.S.C. § 1098bb(c) (emphasis added).

Petitioners’ interpretation of the HEROES Act provides such capacious discretion to the Secretary of Education that it also implicates the Constitution’s prohibition against delegation of Congress’s Article I legislative powers. “The nondelegation doctrine is

rooted in the principle of separation of powers that underlies our tripartite system of Government.” *Mistretta v. United States*, 488 U.S. 361, 371 (1989). Petitioners claim, for example, that the terms of the HEROES Act are so open to executive interpretation and discretion that, “in ten years, they could still use the HEROES Act to forgive student-loan debt because of the COVID-19 pandemic if the Secretary deems it ‘necessary.’” *Brown v. U.S. Dep’t of Educ.*, No. 4:22-CV-0908-P, 2022 WL 16858525, at *13 (N.D. Tex. Nov. 10, 2022). If such a tangential connection to a long-distant emergency could justify forgiving a trillion dollars in debt, it is difficult to see what true limits would exist on the Secretary’s power. *See A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 537–38 (1935) (Congress cannot give the executive branch “unfettered discretion” to act as “needed or advisable for the rehabilitation and expansion of trade or industry”).

As explained next, however, the Court can avoid these separation of powers concerns by requiring clear statutory text authorizing the Debt Forgiveness, *see* Part II, *infra*—a clarity that the HEROES Act fails to provide, *see* Part III, *infra*.

II. The Court’s Precedents Call for Requiring Clear Statutory Authority for the Debt Forgiveness.

The Debt Forgiveness undoubtedly has “vast ‘economic and political significance,’” *Utility Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014), and thus triggers the major questions doctrine, especially given the nearly uniform historical view that the HEROES

Act did *not* authorize mass debt forgiveness² and also given “that Congress ha[s] conspicuously and repeatedly declined to enact [such relief] itself,” *West Virginia v. EPA*, 142 S. Ct. 2587, 2610 (2022); *see* Resp.Br.42–44, No. 22-535. Moreover, as *amici* explain below, *see* Part III, *infra*, Petitioners ground their asserted power in the “ancillary” and “rarely used” portions of the HEROES Act, *West Virginia*, 142 S. Ct. at 2610.

Even setting aside the major questions doctrine, however, the separation of powers concerns outlined above in Part I would independently justify requiring clear statutory authority before upholding the Debt Forgiveness. Such clear-text requirements, regardless of the precise label the Court uses, often rest on “separation of powers principles.” *Id.* at 2609; *see also U.S. Telecom Ass’n v. FCC*, 855 F.3d 381, 417 (D.C. Cir. 2017) (Kavanaugh, J., dissenting from the denial of rehearing en banc) (clear-statement doctrines “help[] preserve the separation of powers and operate[] as a vital check on expansive and aggressive assertions of executive authority”).

² *E.g.*, Hayes Brown, *Biden Thinks Student Loan Debt Relief Is Up to Congress*, MSNBC (Feb. 22, 2021), <https://tinyurl.com/bdrffne4>; Adam S. Minsky, *Pelosi: President Biden Does Not Have Power to Cancel Student Loan Debt*, FORBES (July 28, 2021), <https://tinyurl.com/cyfp7m2y>; Memorandum for Betsy DeVos, Secretary of Education, from Reed D. Rubinstein, Principal Deputy General Counsel, Department of Education, *Re: Student Loan Principal Balance Cancellation, Compromise, Discharge, and Forgiveness Authority* (Jan. 12, 2021).

This Court has previously recognized that it is better to resolve a dispute for lack of clear statutory text supporting the executive's view, than countenance the risk of a serious interbranch conflict over the power of the purse. For example, in *Train v. City of New York*, 420 U.S. 35 (1975), which addressed President Nixon's impoundments, the Court held that "[w]ithout something in addition to what is now before us," a typical spending statute should not be construed as "providing the Executive with the seemingly limitless power to withhold funds from allotment and obligation," which would have raised serious concerns about the executive branch's power over spending. *Id.* at 45, 46.

The government argues here that no clear statement of authority is required because the Debt Forgiveness pertains to the disposition of the government's own "benefits." DOJ.Br.48. But categorically excluding spending and forgiveness statutes from clear-statement requirements would effectively allow the executive to encroach upon Congress's critical Article I spending authority whenever the relevant statute could be portrayed as the least bit ambiguous. Requiring clear statutory authority for aggressive executive claims over the power of the purse helps avoid that potential conflict, as in *Train*.³

³ Moreover, the circuit courts have repeatedly held that the major questions doctrine can apply even when the executive action pertains to the disbursement of federal benefits, such as in the context of government contracting. See *Louisiana v. Biden*,

The nondelegation concerns raised by Petitioners’ interpretation of the HEROES Act provide another basis for requiring clear textual authority. Such a requirement operates “in service of” the nondelegation doctrine by disfavoring statutory interpretations that might amount to a transfer of legislative power from Congress to an executive agency. *See Gundy v. United States*, 139 S. Ct. 2116, 2142 (2019) (Gorsuch, J., dissenting). Indeed, this Court has long recognized that “[a] construction of the statute that avoids this kind of open-ended grant should certainly be favored.” *Indus. Union Dep’t, AFL-CIO v. Am. Petroleum Inst.*, 448 U.S. 607, 646 (1980) (plurality). And the Court should “certainly” favor such an interpretation here, as otherwise the limits imposed by Congress could prove to be mere “parchment barriers” against the Secretary of Education’s broad assertion of power to forgive federal student loans.

Finally, requiring clear statutory authority reflects judicial restraint, which has its own salutary effects on separation of powers. *See Turner v. Safley*, 482 U.S. 78, 85 (1987) (“[S]eparation of powers concerns counsel a policy of judicial restraint.”). It may be preferable for a court to hold that a specific executive action lacks clear congressional authorization, rather than risk declaring the

55 F.4th 1017, 1029 (5th Cir. 2022); *Georgia v. President of the United States*, 46 F.4th 1283, 1295–96 (11th Cir. 2022) (op. of Grant, J.); *Kentucky v. Biden*, 23 F.4th 585, 606–07 (6th Cir. 2022). And, contrary to Petitioners’ position, *see* DOJ.Br.48, the Debt Forgiveness *is* an assertion of “regulatory authority” in the sense that it causes harm, for example, to “the affairs of entities” like MOHELA. *See, e.g.*, Resp.Br.15–23, No. 22-506.

executive action or the relevant statute itself *unconstitutional*.

As demonstrated next, the HEROES Act does not provide the clear authority for the Debt Forgiveness required under this Court’s longstanding precedent.

III. The HEROES Act Does Not Clearly Authorize the Debt Forgiveness.

The HEROES Act is the sole legal authority Petitioners assert for the Debt Forgiveness, but that statute does not provide clear authority for forgiveness of student loans, *see* Part III.A, *infra*, let alone for mass forgiveness, *see* Part III.B, *infra*.

A. There Is No Clear Authority for Forgiveness.

The government relies on § 1098bb(a)(1) of the HEROES Act, which says that “[i]n general” the Secretary of Education can “waive or modify any statutory or regulatory provision applicable to the [relevant] financial assistance programs” when certain other requirements are satisfied. 20 U.S.C. § 1098bb(a)(1). But that “general” language is expressly cabined by the very next subsection, which uses the same “waive or modify” terminology and then provides the *specific* “[a]ctions authorized” that may be taken only as “may be necessary to ensure” one of a specified list of goals. *Id.* § 1098bb(a)(2).

In § 1098bb(a)(2), Congress placed narrow guardrails on the Secretary’s ability to waive even *minor* procedural requirements, yet the subsection nowhere mentions debt forgiveness, let alone imposes

the kinds of restrictions already imposed on minor forms of relief.

For example, the Secretary’s relaxation of mere “administrative requirements” must be done “to the extent possible without impairing the integrity of the student financial assistance programs.” *Id.* § 1098bb(a)(2)(B). Congress thought to expressly state the requirements for this minor issue and demand that the Secretary not impair the solvency and reliability of the lending programs. Forgiving hundreds of billions of dollars’ worth of loans obviously has a far more negative impact on the “integrity” of the loan programs, yet under Petitioners’ view, Congress imposed no such similar restriction on forgiveness—and in fact did not bother to mention forgiveness at all.

Similarly, “institutions of higher education, eligible lenders, guaranty agencies, and other entities participating in the student assistance programs” “may be granted temporary relief” but only “from requirements that are rendered infeasible or unreasonable by a national emergency,” such as “due diligence requirements and reporting deadlines.” *Id.* § 1098bb(a)(2)(E). Again, Congress expressly covered reporting deadlines and paperwork requirements—and made clear such relief must be “temporary.”

As *amici*—all of whom are Members of the U.S. Congress, and many of whom are on the House Committee that oversees the Department of Education—can attest, it begs belief that Congress would authorize debt forgiveness in the HEROES Act without imposing at least the same types of

limitations it imposed on minor forms of relief to minimize their collateral consequences on the federal fisc. The better reading is that the HEROES Act did not authorize the significant act of debt forgiveness in the first place, and thus it was unnecessary to impose separate limitations to minimize the consequences of forgiveness. *See* Stephen G. Breyer, *Judicial Review of Questions of Law and Policy*, 38 ADMIN. L. REV. 363, 370 (1986) (“Congress is more likely to have focused upon, and answered, major questions, while leaving interstitial matters to answer themselves in the course of the statute’s daily administration.”).⁴

This conclusion is reinforced by numerous separate statutes expressly authorizing debt forgiveness using clear language and imposing specific requirements to minimize the effects on the integrity of those loan programs. *See, e.g.*, 20 U.S.C. §1087ee(a)(2); *id.* § 1087j(a)–(b); *id.* § 1078-10; *id.* § 1078-11(a)(1). And given the HEROES Act’s military focus, *see* Part III.B, *infra*, it is especially notable that Congress already separately authorizes loan forgiveness when the Department of Veterans

⁴ Moreover, the Secretary can take action to ensure that student loan recipients are “not placed in a worse position financially in relation to [the student loan] because of their status as affected individuals” under the HEROES Act, 20 U.S.C. § 1098bb(a)(2), which envisions keeping borrowers in the *status quo ante*, before the triggering “war or other military option or national emergency” occurred, and then lifting the modification or waiver once the emergency has passed. Permanently forgiving debt goes far beyond maintaining the *status quo*—it provides a windfall to the recipient, putting him in a distinctly and materially superior position than before the “national emergency.”

Affairs determines that a veteran is unemployable due to a service-connected disability. *See* 20 U.S.C. §§ 1087(a)(2), 1087e(a)(1), 1087dd(c)(1)(F)(iv).

This is more than an argument that “Congress knew how to [authorize loan forgiveness] when it wanted to.” *Sosa v. Alvarez-Machain*, 542 U.S. 692, 711 n.9 (2004). Rather, the HEROES Act not only *omits* any reference to debt forgiveness but simultaneously *includes* limitations on how “administrative” and “reporting” requirements can be relaxed or waived. 20 U.S.C. § 1098bb(a)(2). It defies reason that Congress would have been so concerned about minimizing the effects of administrative relief but have no such concerns about the dramatic act of debt forgiveness, despite clearly expressing such qualms in other statutes, even those dealing with the military. This is another significant tell that the HEROES Act simply does not authorize forgiveness in the first place, and certainly does not do so with the requisite clear language. *See* Part II, *supra*.

Petitioners argue the Court should ignore these other debt-forgiveness statutes because § 1098bb(a)(1) applies “[n]otwithstanding any other provision of law.” *See* DOJ.Br.40; OLC Op., 2022 WL 3975075, at *8–10. But that argument is a red herring because a “notwithstanding” clause serves only to resolve conflicting provisions,⁵ and Respondents do not contend the HEROES Act conflicts with those other debt forgiveness statutes (ironically, it is

⁵ *See NLRB v. SW Gen., Inc.*, 137 S. Ct. 929, 939 (2017); *Cisneros v. Alpine Ridge Grp.*, 508 U.S. 10, 18 (1993).

Petitioners' interpretation that could cause such a conflict). The point in citing the other debt forgiveness statutes is to show that Congress uses certain language when it wants to authorize forgiveness, but Congress did not use such language in the HEROES Act *despite* expressly addressing other, more minor, forms of relief.

The “notwithstanding” clause in § 1098bb(a)(1) does not preclude judicial resort to commonsense considerations of how Congress historically has drafted loan forgiveness statutes. *See Atl. Richfield Co. v. Christian*, 140 S. Ct. 1335, 1351 (2020) (“Such clauses [like ‘nonetheless’] explain what happens in the case of a clash, but they do not otherwise expand or contract the scope of either provision by implication.”).⁶

For these reasons, both standing alone and in light of congressional drafting practices, the HEROES Act does not clearly authorize forgiveness of debt.

B. At the Very Least, There Is No Clear Authority for Blanket Forgiveness.

Even if some kind of targeted debt forgiveness were clearly authorized by the HEROES Act, there is still no clear authority for the categorical forgiveness that *Petitioners* assert. To be sure, the Act does not require “case-by-case” determinations for relief, 20 U.S.C. § 1098bb(b)(3), but that does not mean it

⁶ The OLC opinion suggests there may be no conflict between the HEROES Act and the other debt forgiveness statutes, *see* OLC Op., 2022 WL 3975075, at *10 & n.3, but that only confirms the “notwithstanding” clause is doing no work here.

countenances debt forgiveness for nearly every borrower in the country in one fell swoop. *See* Resp.Br.9, No. 22-506 (the Debt Forgiveness would apply to 40 million of the 43 million borrowers who still owe money, with nearly 20 million having their debts eliminated entirely).

The HEROES Act’s scope of coverage is narrow and riven with references to the military and its members. Start with the title. Nobody would say that students are all “HEROES” merely by virtue of taking on student loans. Then there are the six paragraphs of statutory findings, each of which references the military and national security. 20 U.S.C. § 1098aa(b). Another provision urges schools to refund tuition and fees for students called away to “active duty or active service.” *Id.* § 1098cc(a).

The definition of “affected individual” includes four categories, two of which are exclusively military. *Id.* § 1098ee(2). Even within the context of military operations, the HEROES Act is further narrowed. Not all National Guard duty qualifies—it must be “in connection with a war, another military operation, or a national emergency declared by the President and supported by Federal funds.” *Id.* § 1098ee(6).

The extraordinary scope of relief asserted by Petitioners stands in stark contrast to the lone example that the Office of Legal Counsel could muster for when debt forgiveness might be necessary under the HEROES Act: “a soldier permanently disabled in a military operation and unable to work.” OLC Op., 2022 WL 3975075, at *9. But Petitioners have *never* previously invoked the HEROES Act to cancel student

debt for any borrower, not even a “soldier permanently disabled in a military operation and unable to work.” And for good reason. As noted above, a *different* statute already authorizes loan forgiveness when a veteran is determined by the VA to be unemployable due to a service-connected disability. See 20 U.S.C. §§ 1087(a)(2), 1087e(a)(1), 1087dd(c)(1)(F)(iv). Again, Petitioners’ interpretation of the HEROES Act risks conflicting with and rendering superfluous those other provisions.

To be sure, the HEROES Act does not apply *exclusively* to members of the military, see 20 U.S.C. § 1098ee(2)(C)–(D), but those narrow non-military portions—on which Petitioners rely as the sole authority for hundreds of billions of dollars in debt forgiveness—are the prototypical “ancillary provisions” in which Congress “does not alter the fundamental details of a regulatory scheme.” *Whitman v. Am Truck Ass’ns*, 531 U.S. 457, 468 (2001).

Finally, Petitioners assert that any invocation of the HEROES Act is exempted from notice and comment, see DOJ.Br.62–63, but it begs belief that Congress would have authorized the Secretary to permanently eliminate hundreds of billions of dollars of the public’s debt obligations without *any* public input. Outside the context of interpretive and other minor rules, Congress typically reserves exceptions to notice and comment for things like “emergency temporary” agency actions, *NFIB v. OSHA*, 142 S. Ct. 661, 663 (2022) (quoting 20 U.S.C. § 655(c)(1)) (emphasis added), not those causing *permanent* and extensive effects, see *AFGE v. Block*, 655 F.2d 1153,

1157 (D.C. Cir. 1981); *see also* *Batterton v. Marshall*, 648 F.2d 694, 703 n.47 (D.C. Cir. 1980) (“[D]ue to the unrepresentative nature of an administrative agency, ‘public participation in the rulemaking process is essential in order to permit administrative agencies to inform themselves, and to afford safeguards to private interests.’”) (alteration omitted); *Biden v. Missouri*, 142 S. Ct. 647, 659 (2022) (Alito, J., dissenting) (“[E]xceptions to notice-and-comment must be ‘narrowly construed and only reluctantly countenanced.’”). This only confirms the Act does not authorize mass debt forgiveness in the first place.

* * *

The HEROES Act’s near-singular focus on the military, along with only ancillary provisions for targeted relief for other individuals, demonstrates a modest but dispositive point here: if the goal were to authorize *en masse* debt forgiveness for the entire universe of federal borrowers, it is inconceivable Congress would have written the HEROES Act the way it did.

IV. The Executive Branch Has Effectively Abandoned the Proffered Basis for the Debt Forgiveness.

Finally, even if the HEROES Act had authorized mass debt forgiveness as a general matter, Respondents should still prevail because the Executive Branch itself has effectively abandoned the *specific* proffered basis for the Debt Forgiveness.

Most significantly, the Secretary recently failed to assert COVID-19 as the basis for continued loan

forbearance, instead stating that litigation over forgiveness is the basis for continued forbearance. See U.S. Dep’t of Education, *Biden-Harris Administration Continues Fight for Student Debt Relief for Millions of Borrowers, Extends Student Loan Repayment Pause*, Nov. 22, 2022, <https://tinyurl.com/5chkvbbn>.⁷ Given that Petitioners have apparently abandoned COVID-19 as a basis even for continuing the pre-existing temporary loan *forbearance*, it is difficult to see how COVID-19 could nonetheless suddenly provide the basis for announcing the far more dramatic action of massive loan *forgiveness*.

Petitioners’ ambivalence about the proffered justification for the Debt Forgiveness also belies their claim that the asserted power is somehow meaningfully limited. See, e.g., DOJ.Br.57 (labeling the Debt Forgiveness as a “one-time” event). If the Court adopts Petitioners’ view that mass debt forgiveness is authorized even a decade after the pandemic, it is only a matter of when, not if, Petitioners will use that power again.

⁷ Similarly, less than a month after the Debt Forgiveness was announced, the President himself repeatedly announced, “The pandemic is over.” Kate Sullivan et al., *Biden: ‘The Pandemic Is Over’*, CNN (Sept. 18, 2022), <https://tinyurl.com/3p7c5j9w>.

CONCLUSION

For the foregoing reasons, *amici* urge the Court to affirm.

Respectfully submitted,

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