

IN THE SUPREME COURT OF THE UNITED STATES

No. 24-413

DEPARTMENT OF EDUCATION, ET AL., PETITIONERS

v.

CAREER COLLEGES AND SCHOOLS OF TEXAS

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MOTION OF THE PETITIONERS
TO HOLD THE BRIEFING SCHEDULE IN ABEYANCE

Pursuant to Rule 21.1 of the Rules of this Court, the Acting Solicitor General, on behalf of petitioners the United States Department of Education and Denise Carter in her official capacity as the Acting Secretary of Education, respectfully moves to hold the briefing schedule in abeyance.* The Court granted the petition for a writ of certiorari on January 10, 2025. Petitioners' opening brief is currently due on February 24, 2025, and the case has not

* Acting Secretary Carter is substituted as a party for her predecessor in office. See Sup. Ct. R. 35.3.

yet been scheduled for argument. We are authorized to represent that, in light of the current circumstances, respondent consents to petitioners' request to hold the briefing schedule in abeyance, without prejudice to either side requesting to have the briefing schedule reinstated should the matter not be resolved.

1. The Higher Education Act of 1965, 20 U.S.C. 1070 et seq., permits borrowers of federal student loans to assert defenses to their federal repayment obligations based on, among other things, misconduct of the borrower's school. See 20 U.S.C. 1087e(h). At issue in this case is whether the Higher Education Act permits the assessment of borrower defenses to repayment before default, in administrative proceedings, or on a group basis. See, e.g., 87 Fed. Reg. 65,904 (Nov. 1, 2022) (2022 Rule). Respondent challenged various provisions of the Department's 2022 Rule and moved for a preliminary injunction. The district court denied the motion, Pet. App. 65a-89a, and the court of appeals reversed, id. at 1a-64a. The court of appeals held, among other things, that respondent is likely to succeed on its contention that the Department lacks statutory authority to consider borrower defenses to repayment administratively and prior to default, and that the Department cannot do so on a group basis. Id. at 30a-36a, 45a-46a, 50a-54a. The court of appeals remanded the case to the district court with instructions to postpone the effective date of the challenged provisions of the 2022 Rule pending final judgment. Id. at 64a.

On October 10, 2024, petitioners filed a petition for a writ of certiorari presenting the question whether the court of appeals erred in holding that the Higher Education Act does not permit the assessment of borrower defenses to repayment before default, in administrative proceedings, or on a group basis. The certiorari petition also presented a question concerning the scope of the preliminary relief the court of appeals ordered. On January 10, 2025, this Court granted the petition limited to the first question presented.

2. After the change in Administration, the Acting Secretary of Education has determined that the Department should reassess the basis for and soundness of the Department's borrower-defense regulations. Accordingly, petitioners respectfully request that this Court hold the briefing schedule in abeyance. Petitioners' opening brief is currently due on February 24, 2025, and the case has not yet been scheduled for argument. Given the Acting Secretary of Education's determination, it would be appropriate for the Court to hold further proceedings in this case in abeyance to allow for the Department to reassess the basis for and soundness of the borrower-defense regulations. The Court has previously held the briefing schedule in abeyance in light of developments arising after the grant of certiorari in other cases. See, e.g., Biden v. Sierra Club, No. 20-138 (Feb. 3, 2021); Mayorkas v. Innovation Law Lab, No. 19-1212 (Feb. 3, 2021).

3. We have consulted with counsel for respondent, who has informed us that in light of the current circumstances, respondent consents to petitioners' request to hold the briefing schedule in abeyance, without prejudice to either side requesting to have the briefing schedule reinstated should the matter not be resolved. If this motion is granted, we will advise the Court of material developments that would support further action by the Court.

Respectfully submitted.

SARAH M. HARRIS
Acting Solicitor General
Counsel of Record

JANUARY 2025