

No. 24-992

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**In the Supreme Court of the United States**

THE HIGHER EDUCATION LOAN AUTHORITY OF THE  
STATE OF MISSOURI,

*Petitioner,*

v.

JEFFREY GOOD, AND THE UNITED STATES DEPARTMENT  
OF EDUCATION

*Respondents.*

*On Petition for Writ of Certiorari to the  
U.S. Court of Appeals for the Tenth Circuit*

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**BRIEF OF AMICUS CURIAE STATE OF  
MISSOURI IN SUPPORT OF PETITIONER**

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**INTEREST OF AMICUS  
AND SUMMARY OF ARGUMENT<sup>1</sup>**

The State of Missouri, on behalf of its instrumentality the Higher Education Loan Authority of the State of Missouri (“MOHELA”), successfully blocked \$1.1 *trillion* in brazenly unlawful student loan bailouts attempted by the previous federal administration. *Biden v. Nebraska*, 600 U.S. 477, 483 (2023) (\$430 billion); *Missouri v. Biden*, 112 F.4th 531, 534 (8th Cir. 2024) (\$475 billion); *Missouri v. U.S. Dept. of Educ.*, No. 4:24-CV-01316, 2024 WL 4426370 (E.D. Mo. Oct. 3, 2024) (\$150 billion).

That drew the ire of litigants who have sought to retaliate against MOHELA for its role in upholding the rule of law. Even though MOHELA had no choice over the decision to bring those three suits—the Attorney General was in charge of calling the shots—litigants have repeatedly sued MOHELA over the past 18 months. During the same period, the U.S. Department of Education unlawfully threatened to cancel MOHELA’s contract and imposed unprecedented, unlawful penalties on MOHELA. *See* Letter to Acting Secretary of Education, Retaliatory Conduct by the Previous Department of Education against the Missouri Higher Education Loan Authority (MOHELA) (Feb. 25, 2025) (recounting these episodes).<sup>2</sup>

Regrettably, some courts have permitted these suits to continue, incorrectly rejecting arguments that

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<sup>1</sup> *Amicus* complied with Supreme Court Rule 37 by providing timely notice to counsel for all parties of *amicus*’ intention to file this brief.

<sup>2</sup> <https://ago.mo.gov/wp-content/uploads/2025-02-25-Dept-of-Education-Letter-re-Retaliation.pdf>

MOHELA—as an undisputed instrumentality of the State of Missouri—is entitled to sovereign immunity. Taken together, the various lawsuits filed against MOHELA seek damages totaling up to hundreds of millions of dollars.

The State of Missouri thus submits this brief as *amicus curiae* in support of the petitioner, MOHELA. Because MOHELA is an instrumentality of Missouri, any damage award against MOHELA threatens to inflict significant financial harm on the State. *Biden v. Nebraska*, 600 U.S., at 490. This harm is especially acute in light of MOHELA’s ongoing financial obligations to the Missouri Treasury. Missouri’s strong interest extends to the preservation of sovereign immunity for the State and its instrumentalities under the Eleventh Amendment.

MOHELA’s petition adequately explains why the Court should hear this case. This *amicus* brief provides greater context, explaining that (1) federal courts regularly consider the State’s official position about whether an instrumentality is entitled to sovereign immunity, (2) MOHELA has faced unprecedented retaliation, (3) the legislature gave MOHELA its current structure because of separation-of-powers concerns mandated by the Missouri Constitution, and (4) MOHELA is represented by outside counsel because Missouri law permits, but does not compel, the Attorney General to take on exclusive representation, and the Attorney General here permitted representation by outside counsel.

As long as the decision below stands, MOHELA is certain to face a continued onslaught of retaliatory actions. Indeed, just last week, a court in the Northern

District of California relied on the Tenth Circuit’s decision in allowing an activist group’s lawsuit to proceed. *See Maldonado v. MOHELA*, No. 24-cv-07850, 2025 WL 1085105, at \*1 (N.D. Cal. Apr. 9, 2025). The Court should grant the petition for a writ of certiorari.

## ARGUMENT

### I. **MOHELA is Entitled to Sovereign Immunity Under the Eleventh Amendment.**

This Court has relied on the positions presented in States’ *amicus* filings as indicia of whether an instrumentality is afforded sovereign immunity. *See Lake Country Ests., Inc. v. Tahoe Reg’l Plan. Agency*, 440 U.S. 391, 401 (1979)). Courts of Appeals have followed suit. *See, e.g., Crowe v. Oregon State Bar*, 112 F.4th 1218, 1231 (CA9 2024); *P.R. Ports Auth. v. Fed. Mar. Comm’n*, 531 F.3d 868, 876 (CAD9 2008) (“we also must respect Puerto Rico’s representations to this Court”).

Missouri thus informs the Court of its official position that MOHELA is an instrumentality of the State and should be afforded sovereign immunity. Indeed, over the last five months, Missouri has filed *amicus* briefs in many cases, informing those courts of this position. *Joy v. MOHELA*, No. 4:23-cv-01590, ECF 28-1 (E.D. Mo. Dec. 17, 2024); *Morgan v. MOHELA*, No. 4:24-cv-147, ECF 38-1 (E.D. Mo. Dec. 17, 2024); *AFT v. MOHELA*, No. 1:24-cv-2460, ECF 31 (D.D.C. Sept. 26, 2024); *Maldonado v. MOHELA*, No. 3:24-cv-7850, ECF 22-1 (N.D. Cal. Dec. 30, 2024).

Missouri’s position should be especially salient because it is submitted by the statewide official who has the duty under state law of advancing “the rights and

interests of the state ... in any proceeding or tribunal in which the state's interests are involved.” Mo. Rev. Stat. § 27.060.

As it previously has for other States, this Court should rely on the position presented by Missouri—through its Attorney General—as indicia that MOHELA is understood to be an instrumentality of the State shielded from suit by sovereign immunity.

## **II. MOHELA Has Faced a Campaign of Retaliatory Action Because of Missouri's Litigation against the Federal Government.**

Three times, the State of Missouri blocked the Biden administration from unlawfully mass canceling student loans. Missouri's actions, in addition to advancing the rule of law, have saved taxpayers \$1.1 trillion. In each case, Missouri established standing by proving that the unlawful cancellations would harm Missouri's instrumentality MOHELA. And as a result, student loan activists have sought to punish Missouri by ginning up lawsuits seeking millions of damages against MOHELA.

The flood of litigation against MOHELA began after Missouri's first victory in a student loan case. In June 2023, this Court held that “[b]y law and function, MOHELA is an instrumentality of Missouri,” and that any “harm to MOHELA is also a harm to Missouri.” *Biden v. Nebraska*, 600 U.S., at 490. From that basis, the Court determined that Missouri had standing to challenge the Department of Education's effort to mass cancel \$430 billion of student loan debt through the HEROES Act, and concluded that “the HEROES Act provides no authorization for the Secretary's plan



... let alone ‘clear congressional authorization’ for such a program.” *Id.*, at 506.

Not long after, MOHELA began facing a multi-pronged assault by litigants.

*First*, in December 2023 two individuals filed a class action against MOHELA in the Eastern District of Missouri, claiming “thousands or tens of thousands” of statutory and common law violations, and seeking “actual, general, specific, incidental, statutory, punitive, and consequential damages.” *Joy v. MOHELA*, No. 4:23-cv-01590, ECF 1, at 52, 66 (E.D. Mo. Dec. 11, 2023).

*Second*, in January 2024, three individuals filed a separate, second class action against MOHELA in the Eastern District of Missouri, again claiming “thousands or tens of thousands” of statutory and common law violations, and again seeking “actual, general, special, incidental, statutory, punitive, and consequential damages.” *Morgan v. MOHELA*, No. 4:24-cv-147, ECF 1, at 60–61, 80 (E.D. Mo. Jan. 26, 2024).

*Third*, in July 2024, less than a month after Missouri obtained a preliminary injunction against the Department’s second attempt to mass cancel student loans, *Missouri v. Biden*, 738 F. Supp. 3d 1113 (E.D. Mo. 2024), the American Federation of Teachers sued MOHELA “on behalf of itself, its members, and the general public” in the Superior Court of the District of Columbia. *AFT v. MOHELA*, No. 2024-CAB-4576 (D.C. Sup. Ct. July 22, 2024).<sup>3</sup> That suit, like that in the Eastern District of Missouri, claimed “thousands”

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<sup>3</sup> The case was later removed to Federal Court. *See AFT v. MOHELA*, No. 1:24-cv-2460, ECF 1 (D.D.C. Aug. 26, 2024)

of statutory violations and also sought “treble damages, or \$1,500 per violation,” as well as punitive damages.” *Id.*, at 3, 49.

*Fourth*, in September 2024, right after Missouri obtained a TRO against the Department’s *third* attempt to mass cancel student loans, an activist organization filed a class action in California Superior Court. *Maldonado v. MOHELA*, No. 24cv90146 (Cal. Sup. Ct. Sept. 4, 2024).<sup>4</sup> That lawsuit alleged “thousands or even tens of thousands” of statutory violations and sought “actual, incidental, and consequential damages and all other available forms of recovery in an amount to be proven at trial, including compensatory damages, punitive damages, statutory damages, restitution, treble damages, and any additional penalties and interest that may apply.”

\* \* \*

These actions pose significant risk to the economic interests of MOHELA and Missouri. While any alone would cause considerable harm, taken together they could cause catastrophic injury. This Court’s review is necessary to protect Missouri’s sovereignty and make clear that MOHELA is immune from these lawsuits.

### III. Separation-of-Powers Requirements Explain MOHELA’s Structure.

In *Biden v. Nebraska*, this Court concluded that financial injuries to MOHELA are injuries to Missouri itself. 600 U.S., at 490. The many lawsuits

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<sup>4</sup> The case was later removed to Federal Court. *See Maldonado v. MOHELA*, No. 3:24-cv-7850, ECF 1 (N.D. Cal. Nov. 8, 2024).

launched against MOHELA in the immediate aftermath of the Missouri Attorney General blocking hundreds of billions of dollars in illegal mass cancellations pose a threat of direct economic injury to MOHELA, and thus Missouri.

Yet litigants have argued that MOHELA is not entitled to sovereign immunity because of the way Missouri law structures MOHELA. Those attacks fundamentally misunderstand Missouri law, specifically the separation of powers under the Missouri Constitution. To deprive MOHELA of sovereign immunity would be to chill the commitment to laboratories of democracy, which “allow[ ] for more innovation and experimentation in government.” *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991).

MOHELA’s structure facilitates state separation of powers. Under the Missouri Constitution, the legislature is expressly forbidden to lend credit “in aid or to any person” or to “issue bonds.” Mo. Const. art. III § 39 (credit); *id.*, § 37 (bonds). How, then, can the State conduct the financing necessary to support issuing loans for higher education? By placing that function in an entity created and controlled by the State, but that is separate from the treasury and the legislature. The legislature created MOHELA and gave it authority to “finance student loans, including by issuing bonds.” *Biden v. Nebraska*, 600 U.S., at 490. Similarly, rather than provide student loans directly (which the legislature cannot do because it would be an extension of credit to individual students), the legislature created MOHELA to provide “loans for Missouri students to use for higher education.” *AFT v. MOHELA*, No. 1:24-cv-2460, ECF 26-1 ¶ 9 (D.D.C.

Sept. 25, 2024) (“Lenk Decl.”). And by putting MOHELA under the “supervision and control” of the executive branch, *Biden v. Nebraska*, 600 U.S., at 490, the legislature ensured that the State could still direct MOHELA’s actions.

That explains why Missouri uses funds *from* MOHELA, rather than the general revenue, to pay for higher education financing, bonds, and student loans. To comply with the separation of powers, the legislature gave MOHELA operational authority (subject to supervision by the Governor) to contribute money to specific accounts within the state treasury, and the legislature determines how those accounts should be spent.

It works like this. The legislature passes an appropriations bill, stating that funds shall be withdrawn from a special-purpose account within the treasury and shall be used for educational purposes. But that special-purpose account is not tied to general revenue. Rather, the special-purpose account is funded *by* MOHELA, which endeavors to provide the amount requested by the legislature, but sometimes transfers less. Lenk Decl., ¶¶ 4, 7.

To be more concrete, in almost every year since 2009, the Missouri General Assembly has appropriated funds from special-purpose accounts as line items in the State’s budget for education. And in each year, it has been MOHELA, not the general revenue, that funds those special-purpose accounts so that there is even anything to appropriate. For example, a 2011 bill appropriated \$30 million to be drawn from the “Lewis and Clark Discovery” account, Lenk Decl., ¶ 4, which was created “[t]o support funding of capital projects at public colleges and universities,” Mo. Rev.

Stat. § 173.392.2(1). That special-purpose account received the \$30 million not from general revenue, but from MOHELA. In direct response to the appropriation, “MOHELA authorized the transfer of \$30 million to the treasury to provide the monies for that line item.” Lenk Decl., ¶ 4. What the *legislature* could not do through direct appropriation of general revenue, the *State* as a *whole* can do by funding special-purpose accounts using MOHELA’s revenue streams.

Similarly, for each of the last three fiscal years—FY 2022–2024—the Missouri General Assembly appropriated \$6 million to be withdrawn from the “State Institutions Gift Trust” special-purpose account. *Id.*, at 3–7. In each year, MOHELA responded by authorizing the transfer of the same amount of funds to that account and “anticipates doing the same for fiscal year 2025.” *Id.*, ¶ 7.

The legislature is prohibited from issuing bonds or lending credit directly, but the Missouri Constitution permits the legislature to create instrumentalities like MOHELA, which “is subject to the State’s supervision and control,” *Biden v. Nebraska*, 600 U.S., at 490, that can carry out those purposes. MOHELA’s structure enables the State to create a state-controlled entity that can issue and finance student loans while complying with the separation-of-powers provisions in the Missouri Constitution that forbid the legislature to conduct those activities directly.

In other words, the litigants challenging MOHELA’s sovereign immunity seek to punish Missouri for enhancing separation of powers. If Missouri’s Constitution permitted the legislature to issue student loans directly, there is no doubt a suit against the

legislature or State would be barred by sovereign immunity. That Missouri has elected, as a matter of separation of powers, to remove some functions from the legislature and place them in an entity within the executive branch should weigh in *favor* of sovereign immunity, not against it.

This is especially true because MOHELA possesses sovereign immunity as a matter of state law. Under Missouri law, an entity is entitled to sovereign immunity if it is a “public entity,” which means it has been “formed by government itself,” is “controlled by and directly answerable to one or more public officials, public entities, or the public itself,” and has been “created and controlled for a public purpose.” *Cas. Reciprocal Exch. v. Missouri Employers Mut. Ins. Co.*, 956 S.W.2d 249, 254 (Mo. 1997); *see also* Mo. Rev. Stat. § 537.600. MOHELA satisfies all these factors. *Biden v. Nebraska*, 600 U.S., at 493. Indeed, the enabling statute expressly declares MOHELA to be a “public” instrumentality performing “an essential public function,” reflecting the legislature’s intent to ensure MOHELA retains sovereign immunity. Mo. Rev. Stat. § 173.360.

Similarly, lawsuits against MOHELA imperil the State’s bottom line because MOHELA has financial obligations to the State. As noted, the legislature makes appropriations that are funded with money that MOHELA deposits into special-purpose accounts. In addition, the legislature has obligated MOHELA to use the revenue it raises from its investment and contracting activities for the benefit of the State. MOHELA has a \$350 million statutory obligation to one of the funds within the Missouri Treasury and still

owes more than \$100 million of that obligation. Lenk Decl., ¶ 8.

Absent these expenditures and obligations, the State would run the risk of losing these public services—or even having to amend its Constitution to enable the legislature to cover the shortfall created if MOHELA has to pay damages. The multitude of cases filed against MOHELA in the last eighteen months—threatening tens to hundreds of millions of dollars in damage awards—endangers the financial stability of MOHELA and its ability to meet its financial obligations to Missouri.

#### **IV. Under State Law, MOHELA Can be Represented Either by Outside Counsel or the Attorney General.**

In a footnote, the Tenth Circuit suggested that MOHELA’s use of private counsel in this case “would weigh” against sovereign immunity. *See* Pet. App. 40a, at n.17. This conclusion was both inappropriate and incorrect.

For starters, the Tenth Circuit should not have considered this issue sua sponte. “[I]n both civil and criminal cases, in the first instance . . . [courts] rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present.” *Greenlaw v. United States*, 554 U.S. 237, 243 (2008). “Our adversary system is designed around the premise that the parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief.” *Castro v. United States*, 540 U.S. 375, 386 (2003) (Scalia, J., concurring in part and concurring in judgment).

The Tenth Circuit explicitly recognized that the parties had not raised this issue, but elected to pass judgment anyway. Pet. App. 40a, at n.17. The risk in evaluating an issue not presented or briefed by the parties is that the Court may miss relevant and necessary legal and historical backdrop. That happened here.

Under Missouri law, the Attorney General typically *can* represent any instrumentality, but the Attorney General is not required to. He may—and often does—permit the instrumentality or agency to rely on its own in-house or outside counsel.<sup>5</sup> Indeed, this flexibility is necessary because Missouri agencies are sometimes involved in lawsuits against each other. For example, although the Attorney General routinely represents the Treasurer and the Secretary of State, *Fitzpatrick v. Ashcroft* involved a dispute between both those officials, and the Attorney General represented neither side. 640 S.W.3d 110, 113 (Mo. App. W.D. 2022). Nobody thinks those statewide officials waived their sovereign immunity from damages actions by hiring outside counsel.

The Attorney General always has authority to take on exclusive representation and represent the State’s interest, regardless of an agency’s or instrumentality’s own desires. That is because the Attorney General is vested “with all of the powers of the attorney general

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<sup>5</sup> There are some exceptions. In certain circumstances, the legislature has directed that an agency or instrumentality cannot rely on in-house or outside counsel but must rely on the Attorney General for exclusive representation. *E.g.*, Mo. Rev. Stat. § 105.716 (“Any investigation, defense, negotiation, or compromise of any claim covered by sections 105.711 to 105.726 shall be conducted by the attorney general.”).



at common law.” *State ex rel. Nixon v. Am. Tobacco Co.*, 34 S.W.3d 122, 135–36 (Mo. 2000). Those powers can be limited only “by a statute enacted specifically for the purpose of limiting his power.” *Id.* Far from limiting the Attorney General, Missouri law expressly empowers the Attorney General to “appear and interplead, answer, or defend, in any proceeding or tribunal in which the state’s interests are involved.” Mo. Rev. Stat. § 27.060. “The plain language of this statute only limits the attorney general’s power to appear, defend, and interplead so long as the state’s interests are involved.” *Dunivan v. State*, 466 S.W.3d 514, 518 (Mo. 2015).

The Tenth Circuit was thus wrong to suggest that MOHELA’s use of outside counsel somehow weighs against sovereign immunity. Missouri law permits agencies like MOHELA to be represented in-house or by outside counsel—unless the Attorney General exercises his authority to take over exclusive representation under § 27.060. The Attorney General simply chose not to exercise that authority here because, as with other officials, he must use his discretion to determine where the resources of his office are best allocated. Here, he concluded that MOHELA could rely on outside counsel and that the Attorney General would provide *amicus* support.

Thus, the Attorney General’s election to not exercise his authority to take over exclusive representation of MOHELA under § 27.060 is of no significance.

**CONCLUSION**

The petition for writ of certiorari should be granted.

Respectfully submitted,

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