

U.S. Supreme Court to Decide Challenges to Student Debt Relief

December 19, 2022

Those with educational loans have likely been keeping up with the Biden Administration's proposed student debt relief program, as well as the many legal challenges to that program. After the Administration announced the program on the basis of the Higher Education Relief Opportunities for Students Act of 2003 ("HEROES Act"), six states (Arkansas, Iowa, Kansas, Missouri, Nebraska and South Carolina) filed a complaint against the Administration and the Department of Education seeking immediate injunctive relief. *Nebraska v. Biden*, No. 22-cv-1040 (Oct. 21, 2022 E.D. Mo.). The State's complaint raised three claims: 1) violation of constitutional separation of powers; 2) violation of the Administrative Procedure Act ("APA") exceeding statutory authority; and 3) violation of the APA due to arbitrary and capricious agency action. The Administration responded that procedurally, the States lacked standing, and on the merits, the proposed relief is authorized under the HEROES Act "to ameliorate the economic effects of [] national emergency." The U.S. District Court for the Eastern District of Missouri agreed that the States lacked standing and accordingly dismissed the complaint for lack of jurisdiction. On November 14, 2022, the States proceeded to appeal the dismissal to the U.S. Court of Appeals for the Eighth Circuit and seek an emergency motion for an injunction pending appeal, which the appellate court granted. *Nebraska v. Biden*, No. 22-3179 (Nov. 14, 2022 8th Cir.). In granting the emergency motion, the court found that Missouri (through the Missouri Higher Education Loan Authority ("MOHELA")) had legal standing for the claims because "Missouri has shown a likely injury in fact that is concrete and particularized, and which is actual or imminent, traceable to the challenged action of the Secretary, and redressable by a favorable decision." As to the merits and equity, the court held that "substantial questions of law [] remain to be resolved, [and] the equities strongly favor an injunction considering the irreversible impact the Secretary's debt forgiveness action would have as compared to the lack of harm an injunction would presently impose [given the pause on repayment]." The Administration requested that any injunction be limited to the plaintiff States, but the appellate court determined such a limitation "would be impractical and would fail to provide complete relief to the plaintiffs." The Administration applied to the Supreme Court of the United States to vacate or narrow the injunction entered by the Eighth

Circuit pending further appellate proceedings. Alternatively, the Administration asked the Supreme Court to construe the application to vacate the injunction as a petition for a writ of certiorari, which operates as a request to hear the case on its merits. The Supreme Court decided to treat the application as a petition for a writ of certiorari before judgment and granted the same, but deferred vacating the Eighth Circuit's injunction. The Court scheduled oral argument on the merits in February 2023 on the following questions: "(1) whether respondents have Article III standing, and (2) whether the plan exceeds the Secretary's statutory authority or is arbitrary and capricious." So what does this all mean for those who have applied for student debt relief? The Eighth Circuit's injunction remains in place pending the February 2023 oral arguments before the Supreme Court, but the Education Department has extended the repayment freeze until 60 days after the suit is resolved and no later than August 29, 2023. Check back in for updates following oral arguments before the Supreme Court.

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