Student Loan Relief Denied in 6-3 Decision by the Supreme Court

Biden v. Nebraska, 143 S. Ct. 2355 (June 30, 2023)

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In *Biden v. Nebraska*, the Supreme Court held that the Secretary of Education had exceeded his authority to implement a program that cancelled approximately $430 billion in student loan debt. This ruling represents another example of the Supreme Court limiting the exercise of administrative power under the "major questions doctrine."

In the wake of COVID-19, the federal government took a series of steps to combat financial difficulties for borrowers caused by the pandemic. In 2022, the Secretary announced a program effectively cancelling $430 billion in debt and impacting nearly all student loan borrowers. The Secretary asserted that this program was authorized by the Higher Education Relief Opportunities for Students (HEROES) Act of 2003, under which the Secretary "may waive or modify any statutory or regulatory provision applicable to the [federal] student financial assistance programs . . . as the Secretary deems necessary in connection with . . . [a] national emergency."

Six states and two individual borrowers sued to enjoin the program, arguing that it exceeded the Secretary's authority and violated the Administrative Procedure Act. The district court dismissed their complaint for lack of standing. The U.S. Court of Appeals for the Eighth Circuit disagreed as to standing and "issued a nationwide preliminary injunction" against the program.

In a 6-3 opinion written by Chief Justice Roberts, the U.S. Supreme Court held that the plaintiffs had standing and that the loan-cancellation program exceeded the Secretary's authority under the HEROES Act. The Court held that Missouri (one of the plaintiff states) had standing because the forgiveness program "threaten[ed] the direct loss of income"—approximately $44 million per year—in fees for servicing certain student loans under a contract between a Missouri "nonprofit government organization" and the Department of Education.

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On the merits, the Court held that the Secretary exceeded his authority under the HEROES Act. The Court explained that the HEROES Act "allows the Secretary to 'waive or modify' existing statutory or regulatory provisions applicable to" student loans, "not to rewrite the statute from the ground up." According to the Court, the ordinary use of the word "modify" connotes "increment or limitation and must be read to mean 'to change moderately or in minor fashion.'" Previous "modifications" under the HEROES Act included minor, procedural changes, such as reducing the number of tax forms borrowers must file, extending periods of time in which borrowers must take certain actions, and allowing oral rather than written authorizations.

The Secretary's 2022 loan-forgiveness program, in contrast, was "not moderate or minor [and] [i]nstead created a novel and fundamentally different loan forgiveness program." Under the program, "every borrower within the specified income cap automatically qualifies for debt cancellation, no matter their circumstances"—a stark change from existing circumstances under which student loan debts may be cancelled.

The Court likewise held that the program was not authorized by the Secretary's "waiver" power under the HEROES Act. Previous "waivers" were tied to specific legal requirements; the new program's "addition of . . . new and substantially different provisions" was a "modification," not a "'waiver' of the old [provisions] in any meaningful sense."

In response to the Secretary's assertion that the program was consistent with the purpose of the HEROES Act, the majority rejected this argument under the major questions doctrine, discussed last term in *West Virginia v. EPA*. Given the "staggering" "'economic and political significance' of the Secretary's action," the Court stressed caution "before concluding that Congress[] meant to confer [the] power" to take those actions on the Secretary.

As with *West Virginia v. EPA*, the Court concluded that a "decision of such magnitude and consequence on a matter of earnest and profound debate across the country must res[t] with Congress itself, or an agency acting pursuant to a clear delegation from that representative body." Absent such "clear congressional

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authorization," the Secretary's actions could not stand.

Justice Kagan authored a dissenting opinion, joined by Justices Sotomayor and Jackson. Justice Kagan disputed Missouri's standing because the state's nonprofit, loan-servicing organization, and not the state itself, would lose the loan-servicing fees. The dissent also argued that the text of the HEROES Act—that the Secretary could "'waive or modify any statutory or regulatory provision' applying to federal student-loan programs" in times of "national emergency"—was sufficient statutory authorization for the loan-cancellation program. The majority's reliance on the major questions doctrine, Justice Kagan wrote, "prevents Congress from doing its policy-making job in the way it thinks best."

Key Takeaways

- The Supreme Court has again used the major questions doctrine to constrain actions by an administrative agency.
- While the Supreme Court did not reference the "*Chevron* doctrine" in its decision, this ruling, like *West Virginia v. EPA*, signals less deference to administrative action—and perhaps the eventual demise of *Chevron* itself.

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