Biden v. Nebraska

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Introduction

On February 28th, 2023, the Supreme Court heard arguments for the case of *Joseph R. Biden, President of the United States, et al. v. Nebraska et al.* That summer, the Court found in favor of the states, preventing the forgiveness of approximately $430 billion in federal student loans. While on the campaign trail, then-presidential candidate Joseph Biden promised student loan forgiveness to borrowers who met certain criteria. Upon taking office and attempting to implement this plan via executive action, the Biden administration was met with opposition from six states, arguing that the plan was a drastic overreach of the Department Secretary's authority. On June 30th, 2023, the Court made its decision. Despite the despair felt by millions of borrowers who would have felt benefitted by the Secretary's plan, America's economy and politics were saved from severe unintended consequences. Had the plan been implemented, the scope of the Secretary's authority would extend far beyond any precedented level, leaving the economy worse than before and violating congressional language by the severe breadth of the plan.

I. Facts of the Case

Biden v. Nebraska is the product of a promise made in 2020 by Joseph Biden. As a presidential candidate, Biden made a promise to cancel upwards of $10,000 of federal student loan debt per borrower. A promise such as this would mean departure from existing provisions under the Higher Education Act of 1965.[1] Title IV of the Education Act[2] oversees student loans among other financial aid mechanisms used by the federal government.[3] Under this Act, the Secretary of Education has the authority to cancel or reduce student loans for those who meet specific criteria. The circumstances in which the Secretary has the power to cancel debt are: 1) if the debtor is a public servant,[4] or 2) if the borrower is deceased, "permanently or totally disabled,"[5] or bankrupt.[6] A borrower whose institution has failed to pay him, has falsely certified him, or has closed down also qualifies for forgiveness under the Act.[7]

1 Hereinafter, Education Act.
2 20 U.S.C. §1070.
3 Biden v. Nebraska, 600 U.S. 477, 477 (2023).
4 20 U.S.C., §1070(a).
5 *Id*., at §1087(a)(1).
6 *Id*., at §1087(b).
7 *Id*., at §1087(c).

The provisions under the Higher Education Relief Opportunities for Students Act[8] are equally important to the case.[9] Under this act, the Secretary has the authority to "waive or modify any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the [Education Act] as the Secretary deems necessary in connection with a war or other military operation or national emergency."[10] Upon the conclusion of the COVID-19 pandemic in 2022, the HEROES Act was invoked by the Secretary to issue "waivers and modifications" that would decrease or eradicate the federal student debt for most borrowers. Those who qualified for forgiveness of up to $10,000 had received federal student loans and had an income no greater than $125,000 in either 2020 or 2021. Additionally, the recipients of a specific federal loan for students with certain financial needs, known as Pell Grants, could be forgiven for upwards of $20,000 in debt.

The federal student loan forgiveness plan was promptly challenged by six states: Arkansas, Iowa, Kansas,

8 Hereinafter, the HEROES Act, 20 U.S.C. §1098bb(a)(1).
9 20 U.S.C. §§1098(a)(2)(A), 1098ee(2)(C)-(D).
10 *Id.,* at §1098bb(a)(1).

Missouri, Nebraska, and South Carolina.[11] These states moved for a preliminary injunction, making their claim on the basis that the Secretary's statutory authority did not allow for the passing of the loan forgiveness plan. However, the decision from the Eastern District of Missouri held that no state had the standing necessary for challenging the plan,[12] thus, dismissing the suit.[13] The states appealed. The U.S. Court of Appeals for the Eighth Circuit issued a nationwide preliminary injunction to temporarily prohibit the loan forgiveness program until the resolution of the appeal. The Court of Appeals' conclusion was that Missouri, through the Missouri Higher Education Loan Authority,[14] likely had standing. The Supreme Court granted certiorari before judgment.[15]

II. Issues

This case examines two questions of law: First, whether any of the states have the necessary judicial standing enabling them to challenge the student loan forgiveness plan.

11 *Biden,* 600 U.S., at 524 (per Kagan, J., dissenting).
12 Nebraska v. Biden, 636 F. Supp. 3d 991 (ED Mo. 2022).
13 *Biden*, 600 U.S., at 488.
14 Hereinafter, MOHELA or Authority.
15 *Biden,* 600 U.S., at 478.

Second, whether the Secretary's plan exceeds his statutory authority.

III. Decision

In a 6-3 decision, the Court found in favor of Nebraska[16] concluding that the HEROES Act does not authorize the Secretary of Education to implement the student loan forgiveness program. The decision of the Court concluded that Missouri did indeed possess the proper standing to sue, that the language of "waive or modify" does not enable the Secretary to unreservedly rewrite the provisions, and that relevant precedent both old and new enacts the requirement that Congress speak clearly prior to any unilateral alterations made to sizeable sections of the American economy by the Department Secretary.[17]

In doing this, the Court reversed the judgment of the District Court for the Eastern District of Missouri and remanded the case for further proceedings. Additionally, the Court denied the Government's application to vacate the injunction of the Eighth Circuit as moot.

16 Hereinafter, respondents.
17 *Biden,* 600 U.S., at 501.

IV. Reasoning

Chief Justice Roberts began with an analysis of the original language of both the Education Act of 1965 and the HEROES Act of 2003.[18] Following this, the Court addressed the issue of whether states have the standing to challenge the legality of the Secretary's program. Article III of the Constitution makes it so that at least one plaintiff must have a "personal stake" in the case at hand.[19] If so, the case is allowed to proceed.[20] In this case, the Court held that, through the harm suffered by MOHELA, the state of Missouri was indeed injured by the plan and, therefore, had the right to sue.[21]

The harm done to MOHELA is a result of the cost incurred by the Authority if all federal borrowers had their loans discharged. MOHELA is a "public corporation that holds and services student loans."[22] The Authority, as a non-profit government corporation participating in the student

18 *Id.,* at 478-482.

19 TransUnion LLC v. Ramirez, 594 U.S. ___, ___ (2021) (slip op., at 7).

20 Rumsfeld v. Forum for Academic and Institutional Rights, Inc., 547 U.S. 47, 52, n. 2 (2006).

21 *Biden*, 600 U.S., at 490.

22 *Id*., at 488-489.

loan market, owns and services billions of dollars in federal loans. Seeing as MOHELA receives a fee for administrating each federal account serviced by it, if those loans were to be completely discharged, those closed accounts would no longer be serviceable by MOHELA. Consequently, since the Authority is to be a collection of payments and provider of services to borrowers—per the contract between MOHELA and the Department of Education—if the plan was to be implemented, MOHELA would not be able to collect approximately $44 million in fees.[23] This harm done to MOHELA would be transferred to Missouri, given that it is a "public instrumentality" of the State.[24]

Chief Justice Roberts reminds that a similar conclusion was made 70 years prior in *Arkansas v. Texas*.[25] Here, the Court upheld the claim that Arkansas had the authority to treat any injury to the University of Arkansas—an instrumentality of the state—as an injury incurred to itself.[26] On behalf of petitioners, the argument was made that MOHELA must be the entity to bring the suit, not Missouri, given

23 *Id*., at 490.
24 Mo. Rev. Stat. 173.360.
25 346 U.S. 368 (1953).
26 *Id.*, at 368-371.

that it has the autonomy to do so. This claim is a reference to the case of *First National City Bank v. Banco Para el Comercio Exterior de Cuba*.[27] Although a government corporation possesses the power to sue (and be sued), it does not, however, cease to be a part of the greater government.[28] That being said, even when the state has been harmed via injury to a public corporation of its creation, the fact remains that the state incurred harm when carrying out its responsibilities. Therefore, the use of a public corporation does not prohibit the state itself from suing.[29]

With the standing of the states satisfied, the Court turned its attention to the question of merits.[30] The Court maintained that the Secretary, contrary to his assertions under the HEROES Act, does not have the authority to absolve students from debt amassing $430 billion in loan principal. Rather, the Secretary under the Act has the authority to "waive or modify" statutory and regulatory provisions that already exist. Additionally, the provisions

27 462 U.S. 611, 624 (1983).

28 Lebron v. National Railroad Passenger Corporation, 513 U.S. 374, 397 (1995).

29 *Biden*, 600 U.S., at 491.

30 *Id.*

must be applied to financial assistance programs covered by the Education Act. Based on precedent, the Court concludes that "modify," as a statutory permission, does not give the Secretary the authority to make "basic and fundamental changes in the scheme" that was designed by Congress.[31] Rather, the term "modify" is intended to imply moderate changes.[32]The additions engendered by the Secretary in this case are no more minor than they are complete transformations of the existing provisions.

The Biden administration[33] argue that the use of the term "waive" allows the Secretary to make such provisions, however, the Court did not find favor with this argument.[34] Chief Justice Roberts concludes that the Secretary failed to specify any provision to be waived, and even a more expansive use of the term would not suffice as justification seeing as it would exceed the legal limits.[35] Further argument is made, this time claiming that the coupling of the two terms, modify *and* waive, is what gives rise to the

31 MCI Telecommunications Corp. v. American Telephone & Telegraph Co., 512 U.S. 218, 225 (1994).

32 *Id.*

33 Hereinafter, petitioners.

34 *Biden*, 600 U.S., at 494.

35 *Id.,* at 495.

Secretary's authority to implement his plan. Unsurprisingly, this too fell short of satisfactory for the Court—in no way has the Secretary truly waived or modified any provision of the Education Act that would allow for the specific and limited forgiveness of student loans.[36]

In a last-ditch effort to save face, the Secretary made an appeal to congressional purpose. In support of their claim, petitioners reminded that "the whole point of" the HEROES Act, according to the Government, "[was] to ensure that in the face of a national emergency that is causing financial harm to borrowers, the Secretary can do something."[37] That being said, given the nonpareil breadth of the COVID-19 pandemic, in the eyes of the Court, the Secretary's student loan forgiveness plan was only a reflection of the event that led to its conception. What is misunderstood by the dissent is the question one ought to be asking: This is not a matter of whether or not something needs to be done.[38] Rather, the question is who has the authority to act.[39]

36 *Id.*

37 Tr. Of Oral Arg. 55.

38 *Biden*, 600 U.S., at 496-498.

39 The *Chevron* doctrine is important to mention here. In 1984, the Court held that an agency, in its interpretation and application of the law, is bound to any clear legislative statements. However, when

As the Court considered the significance—both economic and political—of the effect of the Secretary's action, it became clear that the plan, if enacted, would have vast effects altering sizable sections of the American economy. Allowing such authority to be granted to the Secretary would be inconsistent with a recent decision of the Court in *West Virginia v. EPA*.[40] In June of 2022, the Court found it reasonable—given the "history and breadth" of agency's power—to delay before concluding that such authority was conferred to the agency by Congress.[41]

V. Rule of Law

Article III of the Constitution requires the plaintiff to have suffered an injury *de facto*. Injury is to be understood as any imminent harm to a legally protected interest (e.g., money or property), and it is, to an extent, capable of being traced to the opposing conduct and rectified by the

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the situation is ambiguous, the agency may be granted deference from the courts so long as its interpretation is within a reasonable scope. Chevron U.S.A., Inc. v. NRDC, 467 U.S. 837 (1984). To understand the extent of "scope", the reader is directed to Alabama Assn. of Realtors v. Department of Health and Human Servs., 594 U.S. ___ (2021) (per curiam).

40 597 U.S. 697 (2022).

41 *Id.*, at 721 (quoting FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 159-160 (2000)).

lawsuit.[42]

The language of "modify" does not allow for the "basic and fundamental changes in the scheme" arranged by Congress. Rather, the term bears "a connotation of increment or limitation," altogether being understood as "to change moderately or in minor fashion."[43] In addition to this, the term "waive" has historically meant the dismissal of certain legal requirements.[44] The use of the two terms together does not alter the original meanings. In regard to congressional purpose—given the scope of the effects of the action in question—the question to be asked is not whether something ought to be done; rather, the question is who possesses the authority to act.

VI. Disposition

The Supreme Court ruled to reverse the judgment of the District Court for the Eastern District of Missouri and to remand the case for additional proceedings in line with the Court's opinion. In addition to this, the application submitted by the Government to vacate the Eighth Circuit's

42 Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-561.
43 *MCI* 512 U.S., at 225.
44 77 Fed. Reg. 59314; 68 Fed. Reg. 69316.

nationwide injunction was denied by the Court as moot.[45]

45 *Biden*, 600 U.S., at 507.