No. 25-492

IN THE
Supreme Court of the United States

EVERGLADES COLLEGE, INC.,
Petitioner,

v.

LINDA MCMAHON, SECRETARY OF EDUCATION, ET AL.

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF *AMICI CURIAE* DEFENSE OF FREEDOM INSTITUTE AND CAREER EDUCATION COLLEGES AND UNIVERSITIES IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

The Defense of Freedom Institute for Policy Studies, Inc. (DFI) is a national nonprofit organization dedicated to defending and advancing freedom and opportunity for every American family, student, entrepreneur, and worker and to protecting the civil and constitutional rights of Americans at school and in the workplace. Former senior leaders of the U.S. Department of Education who are experts in education law and policy founded DFI in 2021. DFI contributes its expertise to policy and legal debates concerning the proper scope and interpretation of Title IV of the Higher Education Act, §§20 U.S.C. 1071 et seq. (1965), *as amended*, and the operations of the Department, and has a significant interest in and experience with the issues presented here.

Career Education Colleges and Universities (CECU) is the national association representing the proprietary sector of higher education. CECU counts among its membership more than 1,300 campuses across North America. Most CECU member institutions participate in federal student financial assistance programs under Title IV of the Higher Education Act.

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[1] In accordance with this Court's Rule 37.6, counsel for *amicus curiae* certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *amicus curiae* or its counsel has made a monetary contribution to the preparation or submission of this brief. Parties received timely notice of the intent to file this brief.

Amici have a substantial interest in the proper interpretation and application of federal education law. Postsecondary education is critical to the long-term success of our nation, and *amici* have an interest in ensuring that agency overreach does not undermine the ability of higher education institutions to educate students or impose undue costs on American taxpayers.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case involves yet another attempt by the Department of Education to unilaterally cancel student loan debt *en masse*. Thwarted by Congress's decision not to act on student loan forgiveness and this Court's decision in *Biden v. Nebraska*, 600 U.S. 477 (2023), the Department entered a settlement granting billions of dollars in student loan forgiveness to hundreds of thousands of borrowers.

This lawsuit started as a narrow procedural challenge. Borrowers alleged the Department had unlawfully delayed adjudication of their applications under a borrower defense program that allows federal student loan borrowers to seek discharge if they prove their school engaged in loan-related misconduct. The plaintiffs sought to compel the Department to resume processing borrower-defense claims in accordance with its regulatory duties.

But the Department transformed this procedural lawsuit into a massive class-action settlement that cancels $7.5 billion in debt for approximately 296,000 borrowers. In doing so, it rewrote student-loan regulations without congressional authorization. The Department simply "determined," through "secret and collusive negotiations" with plaintiffs, that every borrower with a borrower-defense application associated with a list of 151 schools (known as Exhibit C) had justified their claims. Pet. 14; ER-197-200, 201-03. The Department also labeled those institutions as having engaged in "substantial misconduct," without notice or an opportunity for the schools to respond.

Although this Court is asked only to resolve a question involving prudential standing, the context in which this case arises matters. *Amici* write separately to highlight why this settlement exceeds the Department's authority, violates basic notice and due process protections, and lacks the clear congressional authorization needed for an action of this magnitude.

The Court should grant the petition.

ARGUMENT

I. The Department lacks authority to do what the settlement requires.

A. The settlement is illegal and unfair.

Because agencies are "creatures of statute," they "possess only the authority that Congress has provided." *NFIB v. Dep't of Lab., Occupational Safety & Health Admin.*, 595 U.S. 109, 117 (2022). Here, the Department of Education has asserted broad authority to unilaterally discharge $7.5 billion of federal student-loan debt without individualized borrower-defense determinations. But Congress has not allowed it to do so. And agencies cannot enter settlements that require them "to take substantive action that exceeds [their] statutory power." Pet. App. 40a (Collins, J., dissenting) (citing *Authority of the U.S. to Enter Settlements Limiting the Future Exercise of Executive Branch Discretion*, 23 Op. O.L.C. 126, 136-38 (1999)).

The settlement exceeds the Department's authority under the Higher Education Act of 1965 (HEA). The HEA authorizes the Department of Education to administer student-loan programs. 20 U.S.C. §1070 et

seq. For loans that fall under the Direct Loan Program, the Secretary must "specify in regulations which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment." *Id.* at §1087e(h). From 1995 to 2022, the Secretary did so several times. *See* 60 Fed. Reg. 37,768 (July 21, 1995); 81 Fed. Reg. 75,926 (Nov. 1, 2016); 84 Fed. Reg. 49,788 (Sept. 23, 2019); 87 Fed. Reg. 65,904 (Nov. 1, 2022). Together, these regulations "establish a borrower defense program, which allows borrowers to obtain affirmative debt cancellation (rather than a defense to collection)" if they can prove that their school "engaged in specified misconduct." Pet. 6.

The HEA requires the Department to proceed on a case-by-case basis that affords due process to both borrowers and institutions. *See* 20 U.S.C. §1087e(h). Under the borrower defense program, borrowers must first submit applications alleging misconduct. The Department then conducts fact-finding, and the affected institution receives notice and is afforded an opportunity to respond. The Department grants relief only if it confirms the alleged misrepresentation or other qualifying misconduct. *See* 34 C.F.R. §685.222. In each iteration of the borrower-defense regulations, this adjudicatory framework has remained the baseline for evaluating claims. Yet the settlement displaced this structure, granting blanket relief without the required individualized adjudications.

Neither the HEA's text nor its structure authorizes this kind of categorical relief. The Department relies on the provision requiring it to "specify" borrower defenses "in regulations." *See* 20 U.S.C. §1087e(h). But

as Petitioner has explained, specifying "in regulations" is the "exact opposite of cancelling borrower debt in a settlement." Pet. 34. The Secretary also maintains that the settlement is consistent with a provision that permits her to "enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired." 20 U.S.C. §1082(a)(6). But that provision applies only to the Federal Family Education Loan Program (Part B). The Federal Direct Loan Program (Part D), which governs most loans discharged through the settlement, contains no analogous grant of authority. *See* 20 U.S.C. §1087a. The exclusion of a similar provision in Part D reflects Congress's decision to confine that power to Part B loans. Thus, congressional authorization of the settlement is simply "not plausible." *West Virginia v. EPA*, 597 U.S. 697, 735 (2022).

The settlement also violates notice and due process requirements. The Department's own regulations require it to notify institutions of a borrower's claim against them and allow the school to respond. *See* 34 C.F.R. §685.222(e)(3)(i) (for loans issued before July 1, 2020, the Department must "notif[y] the school of the borrower defense application and conside[r] any evidence or argument presented by the borrower"); 34 C.F.R. §685.206(e)(10)(i) (for loans issued between July 1, 2020, and July 1, 2023, the Department "will notify the school of the pending application and provide a copy of the borrower's request and any supporting documents" and provide for the school's submission of evidence); 34 C.F.R. §685.405(a) (for loans issued after July 1, 2023, the Department official will

"notif[y] the institution of the group claim … or individual claim … and reques[t] a response from the school"). *See also* Pet. App. 67a n.3.

Yet the settlement failed to comply with these notice requirements. Instead, the settlement simply "determined," through "secret and collusive negotiations," that every borrower with a borrower-defense application associated with Exhibit C's list of 151 schools had justified their claim. Pet. 14; ER-197-200, 201-03. It excluded schools from step one of the borrower-defense process, which ordinarily provides an opportunity for institutions to defend their actions and reputation. *See* 34 C.F.R. 685.222(e)(3)(i), 685.405-.406. And it did so "without any explanation, notice, or an opportunity to be heard." Pet. 14. Without any notice or opportunity to defend themselves against misconduct allegations at this step, schools automatically face serious reputational harm. Pet. 6-8. The failure to follow these procedures deprived Petitioner and the other 150 schools of the basic requirements of due process.

B. The settlement—an end-run around *Biden v. Nebraska*—lacks the clear congressional authorization needed for an action of this magnitude.

Throughout his presidential campaign, President Biden promised millions of Americans that he would forgive their student debts. In August 2022, the Department of Education circumvented Congress and announced a massive student loan forgiveness scheme that sought to cancel $430 billion in debt principal for nearly all borrowers. *See Nebraska*, 600 U.S. at 496;

Message to the House of Representatives—President's Veto of H.J. Res. 45 (June 7, 2023), perma.cc/X7LZ-TT7T. In 2023, this Court roundly rejected the Department's program as unlawful. *Nebraska*, 600 U.S. at 494. The Court held that the student debt forgiveness program exceeded the Secretary's statutory authority under the HEROES Act—a bill designed to defer loan payments for soldiers fighting abroad. *Id.* That law provided only for "waiving" or "modifying" certain statutory provisions, not for making "'fundamental changes'" to Congress's design. *Id.* (citing *MCI Telecommunications Corp. v. Am. Tel. & Tel. Co.*, 512 U.S. 218, 225 (1994)).

Despite this Court's ruling, President Biden pledged that he "wouldn't give up" in his fight to cancel student debt. *Remarks by President Biden on the Administration's Efforts to Cancel Student Debt and Support Students and Borrowers*, The White House (Oct. 4, 2023), perma.cc/47KP-A9NM. And the Department immediately pursued alternative debt-forgiveness pathways. *See, e.g.*, *Missouri v. Trump*, 128 F.4th 979 (8th Cir. 2025) (addressing one such effort and concluding that the Department exceeded its statutory authority). Those efforts failed too, and the Secretary entered this settlement. In doing so, the Secretary transformed a procedural lawsuit into a class-action settlement that cancels $7.5 billion in debt and rewrites student-loan regulations without Congress's authorization. But this settlement is another bite at the same rotten apple. And it raises serious constitutional problems.

The settlement is of such economic and political significance that it must be authorized by clear statutory language. *See* Pet. App. 40a (Collins, J., dissenting); 23 Op. O.L.C. at 136-38. This Court has invoked the major questions doctrine to rebuke agency actions that circumvent the demands of bicameralism and presentment our Constitution requires. *Nebraska*, 600 U.S. at 505; *West Virginia*, 597 U.S. at 724. *Accord NFIB*, 595 U.S. at 120 (rejecting OSHA's vaccine mandate as outside the scope of Congress's delegation to the agency). When an agency asserts broad authority with great economic and political significance, it must point to clear authorization from Congress to wield such authority. *Nebraska*, 600 U.S. at 505; *West Virginia*, 597 U.S. at 723. The Department cannot do so here.

To start, student loan forgiveness is the subject of an "earnest and profound debate." *West Virginia*, 597 U.S. at 743 (quoting *Gonzales v. Oregon*, 546 U.S. 243, 267 (2006)) (Gorsuch, J., concurring). Indeed, Congress has already considered "more than 80 student loan forgiveness bills" that "failed to reach a vote." *Nebraska*, 600 U.S. at 503 n. 8. Yet the settlement would stifle the continued consideration of appropriate policy options. It would require the Secretary to cancel all debt, and refund all past payments, to certain class borrowers who attended any one of the approximately 150 schools. *See* 3-ER-580, 582-83. It also creates a new, expedited process that binds the agency and directs the Secretary to create another process for adjudicating borrower-defense applications submitted by non-class members who apply for relief after the settlement's execution but before final approval. *See* 3-

ER-559, 583-85; 3-ER-587-85. And it extends the Secretary's student-loan forgiveness efforts by targeting proprietary institutions, colloquially known as "for-profit colleges." *See* BDR Rule, 87 Fed. Reg. 65,904 (Nov. 1, 2022). The settlement would thus "end" the important debate over these issues. *West Virginia*, 597 U.S. at 743.

Congress has long debated how and whether to expand federal regulation of proprietary institutions. Some lawmakers have urged greater oversight. Others have cautioned that such institutions serve lower-income students and should not face unique burdens. *See* Examining For-Profit College Oversight and Student Debt, H. Comm. on Educ. & Labor, 116th Cong. (May 22, 2019). Petitioners, for example, are two proprietary institutions that received high ranks for social mobility. Pet. 8 (citing 3-ER-189, 460).

Despite repeated proposals, Congress has declined to enact sweeping regulations or expand borrower defense rights. *See*, *e.g.*, PROTECT Students Act, S.994, 119th Cong. §102. (2025). Apart from modest adjustments such as revising the "90/10 rule" regarding for-profit institutions' access to federal funding, Congress has resisted broader regulation of the sector. *See* American Rescue Plan Act of 2021, Pub. L. No. 117-2, §2013, 135 Stat. 4, 28.

In fact, Congress recently moved in the opposite direction. In 2025, it enacted legislation delaying the 2022 BDR Rule for ten years and reinstating the stricter 2019 version. Pub. L. No. 119-21, §8500, 139 Stat. 355 (2025). The fact that Congress previously chose not to pursue what the Departments seeks to

achieve through regulation undermines its claimed authority. *See, e.g.*, *Nebraska*, 600 U.S. at 503 (noting that Congress had considered and rejected legislation that would authorize agency action); *West Virginia*, 597 U.S. at 724 (explaining that Congress has "frequently debated the matter," but "conspicuously and repeatedly declined" to adopt similar legislation).

The settlement would also affect a "significant portion of the American economy." *Utility Air Reg. Grp. v. EPA*, 573 U.S. 302, 324 (2014); *King v. Burwell*, 576 U.S. 473, 485 (2015). Student loans amount to "nearly one-third of the Government's $1.7 trillion in annual discretionary spending." *Nebraska*, 600 U.S. at 503. And this settlement would cost $7.5 billion and affect 296,000 class members. Pet. App. 9a (citing 3-ER-558). *See also NFIB*, 595 U.S. at 120 (OSHA's vaccine mandate would have cost "billions of dollars.").

Because the settlement affects hundreds of thousands of borrowers with great economic consequences, and because Congress has not provided "clear … authorization'" for the agency's action, *West Virginia*, 597 U.S. at 723, the settlement cannot survive under the major questions doctrine. In this case, the Department's settlement would authorize billions of dollars in loan forgiveness and regulate for-profit colleges without authority from Congress. Only Congress can effectuate this kind of sweeping change to the educational loans landscape.

CONCLUSION

For these reasons, the Court should grant the petition and reverse the decision below.

Respectfully submitted,

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