Nos. 22-506 and 22-535

IN THE

Supreme Court of the United States

JOSEPH R. BIDEN, PRESIDENT OF THE UNITED STATES, ET AL., PETITIONERS

v.

STATE OF NEBRASKA, ET AL.

DEPARTMENT OF EDUCATION, ET AL., PETITIONERS

v.

MYRA BROWN, ET AL.

ON WRITS OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURTS OF APPEALS FOR THE EIGHTH AND FIFTH CIRCUITS

BRIEF OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW AND 21 OTHER ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTERESTS OF *AMICI CURIAE*[1]

Amici are organizations committed to ensuring the communities they serve, including historically underserved groups, have meaningful access to higher education and economic security, and to advancing policies that challenge racial, gender, and wealth disparities. *Amici* respectfully submit this brief to provide critical, relevant information on the particular financial hardships that student loan borrowers of color continue to face during the COVID-19 national health crisis and those borrowers' corresponding need for the student debt relief plan currently under review by this Court.

Formed in 1963, the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") is a nonpartisan, nonprofit organization that uses legal advocacy to achieve racial justice, fighting inside and outside the courts to ensure that Black people and other people of color have the voice, opportunity, and power to make the promises of our democracy real. To that end, the Lawyers' Committee has frequently participated before this Court representing parties or as *amici*. *See, e.g., Students for Fair Admissions, Inc. v. Univ. of N. Carolina*, 142 S. Ct. 896 (2022); *303 Creative LLC v. Elenis*, No. 21-476 (2022); *Shelby Cnty., Ala. v. Holder*, 570 U.S. 529 (2013); *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1 (2013). The Lawyers' Committee has also represented parties or served as *amici* in various federal court cases involving policies designed to lawfully relieve students

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[1] No counsel for a party authored any part of this brief and no counsel or party made a monetary contribution intended to fund the preparation or submission of the brief. Only the *amici* and their attorneys have paid for the filing and submission of this brief.

of crippling debt and ensure economic security, including: *Commonwealth of Massachusetts v. Department of Education*, No. 1:17-cv-01331-RDM, Dkt. 37-1 (D.D.C. Oct. 3, 2017); *Martin Calvillo Manriquez v. DeVos*, No. 18-16375, Dkt. 25-2 (9th Cir. Oct. 10, 2018); *New York Legal Assistance Group v. Devos, et al.*, No. 20-CV-01414 (S.D.N.Y. July 10, 2020); *Hemphill v. Cardona, et. al.,* No. 1:22-cv-01391 (D.D.C. May 19, 2022).

Additional *amici* are organizations similarly committed to defending policies that lawfully expand educational and economic opportunities for people of color and women, among other historically underserved groups, including:

- American Association of University Women
- American Civil Liberties Foundation
- American Humanist Association
- Asian Americans Advancing Justice | AAJC
- Asian Americans Advancing Justice Southern California (AJSOCIAL)
- Center for Responsible Lending
- Chicago Lawyers' Committee for Civil Rights
- Clearinghouse on Women's Issues
- Economic Policy Institute
- Equal Rights Advocates
- Feminist Majority Foundation
- The Leadership Conference on Civil and Human Rights
- The NAACP Legal Defense & Educational Fund, Inc.
- National Council of Jewish Women

- National Urban League
- New Jersey Institute for Social Justice
- Partnership for College Completion
- Southern Education Foundation
- Texas Appleseed
- UnidosUS
- Washington Lawyers' Committee for Civil Rights and Urban Affairs

SUMMARY OF ARGUMENT

This Court should uphold the lawfulness of Secretary of Education Miguel Cardona's plan to provide critical relief to student-loan borrowers impacted by an unprecedented pandemic. The Department's debt relief plan is consistent with the aims and terms of the Higher Education Relief Opportunities for Students ("HEROES") Act (the "Act"), Pub. L. No. 110- 93, 121 Stat. 999, by ensuring "affected borrowers" are not left in a worse financial position due to COVID-19's lasting harms. The plan will significantly impact borrowers thrown into financial distress by COVID-19. For example, the plan will eliminate or markedly reduce the student debt payments of millions of lower-income borrowers, including eliminating the debt of nearly 50 percent of Latinx borrowers and 25 percent of Black borrowers, many of whom have experienced extreme economic hardship due to the pandemic's disparate and persistent harms.[2]

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[2] *Amici* use the terms "Black" and "African American" interchangeably and the term "white" means white/Non-Hispanic. *Amici* use the term "Hispanic" interchangeably with the gender-neutral term "Latinx." *Amici* generally focus on the debt relief

While the debt relief plan reasonably and rightly mitigates severe economic fallout for all lower-income borrowers, the stakes are especially high for people of color, and especially women of color, because COVID-19 has compounded racial disparities and inflicted particularized harm on Black and Latinx borrowers. First, Black and Latinx borrowers disproportionately suffered drastic and enduring economic setbacks from the COVID-19 pandemic. Unemployment rates spiked for all lower-income workers, but women of color shouldered the greatest losses with approximately one out of five Latina and Black women abruptly finding themselves without work during the pandemic.[3] COVID-19 also took a disproportionate toll on the health of Black and Latinx communities with substantially higher contraction and death rates. Such effects further exacerbated the financial distress faced by lower-income Black and Latinx families.

Second, the financial obstacles arising from COVID-19 are amplified for Black and Latinx borrowers

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plan's impact on Black and Latinx borrowers because of the significant data limitations with regard to disaggregating trends across different Asian American and Pacific Islander (AAPI) subgroups. Although the data is limited, there is evidence that Native individuals also experience higher debt loads and disproportionately shouldered the harms of COVID-19. *See, e.g.,* Darren Thompson, *President Biden's Student Loan Forgiveness Plan and Indigenous Students,* NATIVE NEWS ONLINE (Aug. 27, 2022), https://tinyurl.com/4mj22fhh; Gloria Oladipo, *Native American Communities Lashed by Covid, Worsening Chronic Inequities*, GUARDIAN (Dec. 13, 2021), https://tinyurl.com/3uj aetmj.

[3] U.S. DEP'T OF LABOR, BEARING THE COST: HOW OVERREPRESENTATION IN UNDERVALUED JOBS DISADVANTAGED WOMEN DURING THE PANDEMIC (Mar. 15, 2022), https://tinyurl.com /48z8c484.

because of pre-existing racial wealth disparities. The volatile economic conditions created by COVID-19 forced many families to rely on existing wealth to serve as a safety net, but Black and Latinx borrowers have far fewer financial means to fall back on. Today, the average Black or Latinx family has significantly less wealth than the average white family due to discrimination in the labor market and generations of government-sanctioned policies that prevented people of color from accumulating wealth and accessing high-quality educational opportunities. The typical white family today enjoys about $184,000 in family wealth, while a typical Black family has only $23,000 and a typical Latinx family has $38,000. Consequently, Black and Latinx students are forced to carry higher levels of student debt and simultaneously face even greater difficulty in paying off such debt due to the pandemic's aggravating effect on their economic conditions and health.

Against this dire economic backdrop, it is unsurprising that over a third of Black and Latinx households recently reported that they are experiencing serious problems paying loans and credit card debts, among other financial problems.[4] Such data and surveys reinforce the Department's well-supported determination that targeted debt-relief is critical to ensure that millions of lower-income borrowers—including millions of borrowers of color[5]—are not placed in a

[4] Press Release, Harvard T.H. Chan Sch. of Pub. Health, Poll: High U.S. Inflation Rates Are Having a More Serious Impact on Black Americans than White Americans (Aug. 8, 2022), https://tinyurl.com/53x8kv4a.

[5] *See* Charlie Eaton, *Analysis of President Biden's Announced Executive Order to Cancel Student Debt*, STUDENT BORROWER PROTECTION CTR. (Aug. 24, 2022), https://tinyurl.com/2p983hyb.

worse financial position due to the pandemic. Absent any relief, Black and Latinx borrowers are at a heightened risk of delinquency and default because of the aforementioned racial inequities in wealth, education, healthcare, and employment exacerbated by COVID-19. The foreseeable wave of delinquency and default would devastate individual lives and communities, with particularized harms for historically underserved groups: irrevocably damaging credit, garnishing wages that families badly need for basic necessities, and foreclosing additional educational opportunities and economic mobility.

The Court should affirm the district court's judgment in *Nebraska* and reverse the district court's judgment in *Brown,* and permit the Secretary to implement the debt relief plan as proposed. That plan will meaningfully ensure that millions of affected borrowers are not economically debilitated by the protracted and pernicious harms of COVID-19 that have thrown them into unprecedented levels of financial distress, including borrowers of color who bear a disproportionate share of the financial burdens arising from the pandemic.

ARGUMENT

I. THE DEBT-RELIEF PROGRAM ADVANCES THE LEGISLATIVE AIMS OF THE HEROES ACT BY PROVIDING CRITICAL ASSISTANCE TO AFFECTED BORROWERS, INCLUDING BLACK AND LATINX BORROWERS WHO FACE ONGOING HARMS DUE TO COVID-19.

The HEROES Act authorizes the waiver or modification of provisions governing certain student aid programs under Title IV of the Higher Education Act "as the Secretary deems necessary in connection" with a national emergency such as the COVID-19 pandemic. 20 U.S.C. 1098bb(a)(1). The Act empowers the Secretary to take measures to ensure "affected" student-loan borrowers who have received federal funds "are not placed in a worse position financially" in relation to their student loans due to the emergency. 20 U.S.C. 1098bb(a)(2)(A). "Affected" individuals include those who "reside[]" or are "employed" in an area impacted by a national emergency or those who have suffered "direct economic hardship" due to that emergency. 20 U.S.C. 1098ee(2)(C)(D).

At the outset of the COVID-19 pandemic, then-Secretary Betsy DeVos invoked the HEROES Act to pause repayment obligations and suspend interest accrual on all federal student loans. 85 Fed. Reg. 79,856, 79,857 (Dec. 11, 2020). Congress, as well as both the Trump and Biden Administrations, subsequently extended that payment pause through the present. *See* 85 Fed. Reg. 79,856, 79,857 (Dec. 11, 2020); COVID-19 Pandemic Education Relief Act of 2020, Pub. L. No. 116-136, Div. A, Tit. III, Subtit. B, § 3513, 134 Stat. 404; 85 Fed. Reg. at 79,857. In considering how to resume repayment obligations, current Secretary Cardona determined the best way to meet the HEROES Act's statutory objective was to pair the resumption of repayments with one-time, partial relief of Department-held loans for lower-income borrowers by: (1) issuing up to $10,000 in student loan relief to borrowers with annual individual incomes under $125,000 ($250,000 for borrowers filing jointly); and (2) issuing up to $20,000 in loan relief to Pell Grant recipients, who tend to have fewer resources and are at greater risk of default.[6]

As evidenced by the record of the Department's decision-making process, the Department "examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 30 (1983) (quoting *Burlington Truck Lines v. United States,* 371 U.S. 156, 168 (1962)); *see FERC v. Electric Power Supply Ass'n*, 577 U.S. 260, 292 (2016). In so doing, the Department fulfilled its obligations pursuant to the Administrative Procedure Act, 5 U.S.C. 701 *et seq*., and its well-reasoned determination should not be upset by the judiciary. *See Fed. Commc'ns Comm'n v. Prometheus Radio Project*, 141 S. Ct. 1150, 1158 (2021) ("A court simply ensures that the agency has acted within a zone of reasonableness and, in particular, has reasonably considered the relevant issues and reasonably explained the decision.").

Among other findings, the Secretary relied upon data demonstrating the higher risks of both delinquency and default following long periods of forbearance, particularly for lower-income borrowers.[7] In addition, the Secretary reasoned that borrowers' status as former Pell Grant recipients provides a meaningful metric of their risk for delinquency and default, specifically in the wake of forbearances

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[6] *See* J.A. 257-59.

[7] *See* J.A. 234 (citing Ben Kaufman, *New Data Show Student Loan Defaults Spiked in 2019-A Warning to Industry and DeVos Amid Economic Fallout*, STUDENT BORROWER PROTECTION CTR. (Mar. 13, 2020), https://tinyurl.com/2p88xnys).

related to natural disasters.[8] The Secretary's assessment is consistent with ample research that underscores how the debt relief plan mitigates harms for all lower-income borrowers. This carries particularized significance for communities of color in light of the stark racial and gender disparities deepened by COVID-19.

A. Tailoring relief to lower-income borrowers and Pell grant recipients reasonably helps communities most impacted by the pandemic, including millions of lower-income borrowers of color, to ensure they are not financially devastated by the pandemic.

The debt relief plan will provide substantial and much-needed relief to lower-income populations, including lower-income communities of color, whose lives have been profoundly disrupted by the pandemic. The United States Census Bureau estimates that the debt relief plan will eliminate student debt balances for 29 percent of those with student debt.[9] The Department has estimated that approximately 23 million additional borrowers will see their balances reduced, saving the average borrower approximately $233 a month.[10] Researchers expect these cumulative reductions to improve borrowers' ability to pay down remaining debts unrelated to education and, thus,

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[8] *See* J.A. 235.

[9] Neil M. Bennett, Michael D. King & Mark A. Klee, *Proposed Debt Forgiveness Would Make Large Dent in Student Loan and Total Unsecured Debts*, U.S. CENSUS BUREAU (Sept. 22, 2022), https://tinyurl.com/mr26up6d.

[10] *See* J.A. 243.

decrease rates of bankruptcy, foreclosure, and default.[11]

The debt relief plan will not only benefit borrowers themselves but will also ensure their *families* are not placed in a worse position because of the pandemic. Over the past few decades, student borrowers have increasingly relied on their parents to help meet the rising cost of education.[12] Qualifying parents—many of whom obtained federal Direct PLUS loans (often referred to as Parent PLUS loans)—are also eligible for relief under the debt relief plan.[13]

Disaggregated by race and ethnicity, almost half of Latinx borrowers will have their student debt forgiven under the Department's plan.[14] Even before applying the additional $10,000 for Pell Grant recipients, it

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[11] *See* Marco Di Maggio, Ankit Kalda & Vincent Yao, w, (Nat'l Bureau of Econ. Rsch., Working Paper No. 25810, 2019), https://tinyurl.com/dcyj6x8s. *See also* Bennett, King & Klee, *supra* note 9.

[12] *See* SALLIE MAE, HOW AMERICA PAYS FOR COLLEGE (2022), https://tinyurl.com/288s6b2m; Adam Looney & Vivien Lee, *Parents Are Borrowing More and More to Send Their Kids to College—and Many Are Struggling to Repay*, BROOKINGS (Nov. 27, 2018), https://tinyurl.com/462ef5rs.

[13] While not a primary aim of the relief plan, the benefits of the plan will likely further extend to entire *communities,* even beyond borrowers and their parents. Higher levels of student debt in a community have been associated with lower levels of community well-being according to several measures, including lower rates of home ownership, higher rental market stress, lower rates of entrepreneurship, and poorer health behaviors. *See* Steven Deller & Jackson Parr, *Does Student Loan Debt Hinder Community Well-Being?*, 4 INT'L J. OF COMMUNITY WELL-BEING 263 (2021).

[14] *See Almost Half of Latino Student Loan Debt Is Expected to Be Forgiven under Biden*, EXCELENCIA IN EDUC. (Aug. 24, 2022), https://tinyurl.com/mr3y5tar.

is expected that the balance of the typical Black borrower will be nearly halved and more than one in four Black borrowers will see their entire debt balance eliminated.[15] The material consequences for affected borrowers of color are far-reaching and substantial: it is anticipated that the first $10,000 of debt relief will move over half a million Black borrowers from a negative to a positive net worth,[16] thus helping to counter the negative effects of COVID-19.

Furthermore, the funds allocated to alleviate the financial hardship of students receiving Pell Grants—already a means-tested program—will provide additional, targeted relief as Black and Latinx borrowers are much more likely than their white counterparts to receive Pell Grants.[17] In addition, families of color disproportionately need to assume Parent PLUS loans to finance their education because of restricted family wealth and, therefore, stand to benefit from relief on such loans.[18]

Altogether, the debt relief plan is designed to provide critical student loan relief to both the individuals and communities most financially harmed by the pandemic, in keeping with the Secretary's statutory

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[15] Press Release, White House, Background Press Call by Senior Administration Officials on Student Loan Relief (Aug. 24, 2022), https://tinyurl.com/twsh8wxd.

[16] Press Release, Nat'l Action Network, National Action Network Responds to Biden Student Debt Cancellation (Aug. 24, 2022), https://tinyurl.com/4v7s4485.

[17] *See* NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC., TRENDS IN PELL GRANT RECEIPT AND THE CHARACTERISTICS OF PELL GRANT RECIPIENTS: SELECTED YEARS, 2003–04 TO 2015–16 (Sept. 2019), https://tinyurl.com/5n96fpf4.

[18] *See* Rachel Fishman, *The Wealth Gap PLUS Debt*, NEW AM. (May 15, 2018), https://tinyurl.com/y8p3966j.

authority to mitigate the adverse economic effects of the national emergency on those impacted.

B. The COVID-19 pandemic has adversely affected the most economically underserved communities, inflicting particularized harm on Black and Latinx communities, especially women of color.

The negative economic and health effects of COVID-19 have disproportionately burdened historically underserved communities with the least financial means to bear them. These conditions substantiate the need for the Secretary's plan to help mitigate these devastating effects.

While all lower-income borrowers have been harmed, lower-income Black and Latinx borrowers—and particularly women of color—have been among those hardest hit by the pandemic. COVID-19 caused unemployment to spike dramatically among all low-wage workers,[19] but Black and Latinx workers—the racial groups disproportionately represented in low-wage jobs—experienced the highest unemployment rates. In

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[19] For example, between February and April 2020, employment declined by *more than one-third* for low-wage workers, compared to an 18 percent decline for lower-middle-wage-workers, nine percent for upper-middle-wage-workers, and essentially no change for high-wage workers. *See* Jaison R. Abel & Richard Deitz, *Some Workers Have Been Hit Much Harder than Others by the Pandemic*, FED. RES. BANK OF N.Y. (Feb. 9, 2021), https://tinyurl.com/2xds64p7 (classifying workers in jobs that typically paid less than $30,000 annually as low-wage, $30,000 to $50,000 as lower-middle, $50,000 to $85,00 as upper-middle, and above $85,000 as high). These data points reflect a more general trend—well documented by researchers—that those who enter a recession with high average earnings tend to suffer substantially less than those who enter with low average earnings. *See* Fatih Guvenen, Serdar Ozkan & Jae Song, *The Nature of Countercyclical Income Risk*, 122 J. POL. ECON. 621 (2014).

April 2020, the unemployment rates for Black and Latinx individuals were 16.7 percent and 18.9 percent respectively, compared to 14.2 percent for white individuals.[20]

Women of color were impacted most significantly: while women as a whole lost more jobs than men did during the depths of the recession, the experiences of Black and Latina women drove those trends.[21] Latina women, for example, had the highest measured unemployment rate in April 2020 of any major group by gender, race, and ethnicity during the pandemic with more than one in five out of work.[22] While the overrepresentation of women of color in industries most impacted by the COVID-19 pandemic likely played a significant role in those trends, even *within* some of those industries, women of color experienced disproportionate job losses compared to other groups, a finding that the United States Department of Labor has attributed to discrimination, among other factors.[23] For example, Black women represented slightly more than one in ten workers in the education and health services industry in 2019 but, when comparing annual data from 2019 to 2021, they lost their jobs at almost double the rate of their representation.[24]

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[20] Press Release, U.S. Bureau of Labor Statistics, Employment Situation News Release (May 8, 2020), https://tinyurl.com/2s3sy9e3.

[21] *See* BEARING THE COST, *supra* note 3.

[22] *Id*.

[23] *Id*.

[24] Sarah Jane Glynn & Mark DeWolf, *Black Women's Economic Recovery Continues to Lag*, U.S. DEP'T OF LAB. BLOG (Feb. 9, 2022), https://tinyurl.com/tcuakh88.

Beyond job loss, COVID-19 has devastated the health and well-being of communities of color and, in turn, has profoundly harmed Black and Latinx families' economic conditions. It is well-documented that Black and Latinx families experienced substantially higher infection rates and deaths from the pandemic.[25] For example, as of July 2020, Black and Latinx people experienced an infection rate three times higher than their white counterparts.[26] The COVID-19 related death tolls among Black communities were 1.6 times that of white communities, while Latinx communities experienced COVID-19 related deaths at a rate of 1.7 times that of white communities.[27] Because contracting COVID-19 impacts an individual's capacity to work,[28] the health impacts of the pandemic have further destabilized the capacity of Black and Latinx individuals to meet basic needs, much less repay student loans.

Disparate employment and health figures only tell one piece of the story—survey data further confirms the dire economic circumstances of many borrowers,

[25] *See, e.g.*, U.S. SENATE COMM. ON HEALTH, EDUC., LAB., AND PENSIONS, COVID-19 & ACHIEVING HEALTH EQUITY (Sept. 2020), https://tinyurl.com/bdh7mwv6.

[26] *Id. See also Demographic Trends of COVID-19 Cases and Deaths in the US Reported to CDC*, CTRS. FOR DISEASE CONTROL AND PREVENTION, U.S. DEP'T OF HEALTH AND HUMAN SERVS., https://tinyurl.com/w4fym4m5 (last visited Jan. 7, 2023).

[27] *Risk of COVID-19 Infection, Hospitalization, and Death by Race/Ethnicity*, CTRS. FOR DISEASE CONTROL AND PREVENTION, U.S. DEP'T OF HEALTH AND HUMAN SERVS., https://tinyurl.com/2mnb4zxj (last visited Jan. 7, 2023).

[28] *See* Andres Vinelli, Christian E. Weller & Divya Vijay, *The Economic Impact of Coronavirus in the U.S. and Possible Economic Policy Responses*, CTR. FOR AM. PROGRESS (March 6, 2020), https://tinyurl.com/3k7yfrwx.

with borrowers of color experiencing particularly acute challenges following the pandemic. In January 2021, even while the federal government was in the midst of distributing Economic Income Payments, about one-half of non-retired adults said the pandemic would make it harder for them to achieve their long-term financial goals and approximately half of workers who lost wages during the pandemic reported earning less money than before the pandemic began.[29] Of significance, people of color reported being able to save less than their white peers due to financial hardship and were more likely to be concerned about meeting their basic needs, such as food and shelter.[30]

Communities of color have also experienced pronounced harm from the volatile economic conditions triggered by COVID-19, namely the dramatic drop in real incomes as inflation has surged to the highest levels in decades.[31] It is well understood that inflation takes a greater toll on those with lower incomes compared to those with more means and the data bears this out: over 75 percent of lower-income individuals say they have experienced hardship because of

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[29] Juliana Menasce Horowitz, Anna Brown & Rachel Minkin, *A Year Into the Pandemic, Long-Term Financial Impact Weighs Heavily on Many Americans*, PEW RES. CTR. (Mar. 5, 2021), https://tinyurl.com/ydejzb6k.

[30] *Id.*

[31] *See* Jeff Larrimore, Jacob Mortenson & David Splinter, *Income Declines During COVID-19*, FEDS NOTES (July 7, 2022), https://tinyurl.com/2f9ybj29 (finding progressive taxes and transfers, especially from expanded unemployment insurance benefits and stimulus checks, dramatically offset regressive annual market income changes caused by the COVID-19 recession); Laurence Ball, Daniel Leigh & Prachi Mishra, *Understanding US Inflation during the COVID Era*, BROOKINGS (Sept. 7, 2022), https://tinyurl.com/4epdhxpk.

the recent rise in prices, compared to 60 percent of middle-income individuals and 40 percent of upper-income individuals.[32] Research also shows that Black and Latinx households disproportionately feel the adverse impacts of inflation.[33] In comparing the experiences of different racial groups, a recent survey found that Black and Latinx households are substantially more likely than white households to report that they are currently experiencing a serious financial problem and are having serious problems affording food, rent, and/or mortgage payments.[34] Black and Latinx households are also more likely to report not having enough emergency savings to cover at least one month of their expenses.[35]

The research and data reveal the magnitude of the ongoing economic toll that the COVID-19 pandemic has exacted upon lower-income borrowers, with particularized harms for lower-income Black, Latinx, and female borrowers. These borrowers need the

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[32] David Argente & Munseob Lee, *Cost of Living Inequality beyond the Great Recession*, FED. RES. BANK OF MINNEAPOLIS (Apr. 2022), https://tinyurl.com/5948w9k7; *see* Jeffrey M. Jones, *Inflation's Impact on U.S. Consumers Leveling Off*, GALLUP (Dec. 6, 2022), https://tinyurl.com/3zyyzpzh.

[33] *See* Ruchi Avtar, Rajashri Chakrabarti & Maxim Pinkovskiy, *Was the 2021-22 Rise in Inflation Equitable?*, FED. RES. BANK OF N.Y. (June 30, 2022), https://tinyurl.com/3m3renh2; Jonathan Fischer, *The Impact of Different Inflationary Pressures Due to Income Inequality and Racial Disparities in the United States Today*, WASHINGTON CTR. FOR EQUITABLE GROWTH (May 26, 2022), https://tinyurl.com/4ed37vme.

[34] Press Release, Harvard T.H. Chan Sch. of Pub. Health, *supra* note 4.

[35] *Id*.

Secretary's assistance to ensure the pandemic does not worsen the crippling burden of federal student loans.

C. The economic harms inflicted by COVID-19 exacerbate pre-existing racial wealth disparities.

The economic damage that the pandemic has wreaked on the most economically vulnerable borrowers, including borrowers of color, has deepened preexisting racial wealth disparities and placed borrowers of color at heightened risk of financial distress. Wealth is particularly pertinent during crises like COVID-19 because individuals and families can often rely on accumulated wealth to act as a safety net to meet unexpected need. But Black and Latinx households tend to have far less family wealth, on average, compared to their white counterparts—trends that persist across regions and at all levels of educational attainment. The racial wealth disparities are the result of centuries of racial discrimination in public policy, development and urban planning, private banking and lending, education, and hiring and employment practices that have prevented people of color from accessing the same social, political, and economic benefits as white households.[36]

Today, the average Black and Latinx households in the United States earn about half as much as the

[36] *See, e.g.,* Amy Trau, Laura Sullivan, Tatjana Meschede & Tom Shapiro, *The Asset Value of Whiteness: Understanding the Racial Wealth Gap*, DEMOS (Feb. 6, 2017), https://tinyurl.com/s2ba5hww; Katie Nodjimbadem, *The Racial Segregation of American Cities Was Anything But Accidental*, SMITHSONIAN MAG. (May 30, 2017), https://tinyurl.com/tvs3uajk; Thomas Shapiro, Tatjana Meschede & Sam Osoro, *The Roots of the Widening Racial Wealth Gap: Explaining the Black-White Economic Divide*, INSTIT. ON ASSETS AND SOC. POL'Y (Feb. 2013), https://tinyurl.com/yesxtxtm.

average white household and own only about 15 to 20 percent as much net wealth.[37] As has been well documented, this racial wealth gap has widened over the past few decades as overall wealth inequality has grown.[38] Whereas a typical white family today owns about $184,000 in family wealth, a typical Black family owns $23,000 and a typical Latinx family owns $38,000.[39] In other words, the median wealth gap is 12 cents of Black wealth per $1 of white wealth.[40] The gap between Latinx and white families is similarly stark: Latinx families have 21 cents per $1 of white wealth.[41]

Educational attainment does not eliminate the racial wealth divide. Black and Latinx workers earn less than white workers at almost every level of educational attainment.[42] To be sure, within a particular racial community, there are financial benefits to the pursuit of higher education.[43] However, Black and Latinx families have much less wealth than white families with the same level of educational attainment. For example, white families headed by a college-degree holder have nearly five times the access to

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[37] Aditya Aladangady & Akila Forde, *Wealth Inequality and the Racial Wealth Gap*, FEDS NOTES (Oct. 22, 2021), https://tinyurl.com/2s3b48m8.

[38] *Id*.

[39] Ana Hernández Kent & Lowell R. Ricketts, *Wealth Gaps between White, Black and Hispanic Families in 2019*, FED. RES. BANK OF ST. LOUIS (Jan. 5, 2021), https://tinyurl.com/mwc5v7mu.

[40] *Id*.

[41] *Id*.

[42] Erin Duffin, *U.S. Mean Earnings by Educational Attainment and Ethnicity/Race 2021*, STATISTA (Sept. 22, 2022), https://tinyurl.com/3a8px4a3.

[43] Kent & Ricketts, *supra* note 39.

money in cash reserves as similarly degreed Black families, $96,930 compared to $20,893.[44] Equally striking, the typical Black or Latinx family headed by a person holding a bachelor's degree has *less* median wealth than the typical white family whose highest level of education is a high school degree.[45] Moreover, while higher education leads to higher incomes generally, the absolute gap in liquid assets—assets that can quickly and easily be converted into cash—between Black and Latinx households on the one hand, and white households on the other, is actually larger among those with a college or graduate degree compared to those with less than a college degree.[46]

At least a portion of that discrepancy is no doubt due to the particular burden of student loan debt on people of color, particularly Black borrowers. Black women and Black men have higher student debt on average than white women and white men, respectively.[47] Black women are the most likely of any major group by gender, race, and ethnicity to have student debt and the group with the largest average loan balance at $11,000.[48] Research has demonstrated that, over time,

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[44] Valerie Wilson, *Inequities exposed: How COVID-19 widened racial inequities in education, health, and the workforce*, ECON. POL'Y INST. (June 22, 2020), https://tinyurl.com/2p9y26xx.

[45] *See* Kent & Ricketts, *supra* note 39.

[46] *See* Elise Gould & Valerie Wilson, *Black Workers Face Two of the Most Lethal Preexisting Conditions for Coronavirus—Racism and Economic Inequality*, ECON. POL'Y INST. (June 1, 2020), https://tinyurl.com/4apemjcf.

[47] *See* Ana Hernández Kent & Fenaba R. Addo, *Gender and Racial Disparities in Student Loan Debt*, FED. RES. BANK OF ST. LOUIS (Nov. 10, 2022), https://tinyurl.com/5t4w4x3k.

[48] *Id*.

those disparities generally grow.[49] Black college graduates, for instance, owe $7,400 more on average than their white peers, but four years after graduation, that gap has ballooned to approximately $25,000 driven by differences in interest accrual and graduate school borrowing between Black and white borrowers.[50] Those disparities are evident even after controlling for family income and wealth, indicating that differences in postsecondary and labor market experiences contribute to racial gaps.[51]

As millions of borrowers faced sudden unemployment and unexpected health emergencies due to the pandemic, these existing racial inequities have amplified the severe harms suffered by borrowers of color due to the pandemic. Black people were, for instance, less able to use savings to pay for emergency expenses during the pandemic than white people and, as a result, they either borrowed money or reported doing without necessities.[52] These findings are consistent with data indicating that Black and Latinx households are much more vulnerable to income

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[49] *See* Judith Scott-Clayton & Jing Li, *Black-White Disparity in Student Loan Debt More Than Triples after Graduation*, BROOKINGS (Oct. 20, 2016), https://tinyurl.com/23jwmnhy.

[50] *Id*.

[51] *See* Fenaba R. Addo, Jason N. Houle & Daniel Simon, *Young, Black, and (Still) in the Red: Parental Wealth, Race, and Student Loan Debt*, 8 RACE AND SOC. PROBS. 64 (2016); Michal Grinstein-Weiss, Dana C. Perantie, Samuel H. Taylor, Shenyang Guo & Ramesh Raghavan, *Racial Disparities in Education Debt Burden among Low- And Moderate-Income Households*, 65 CHILDREN AND YOUTH SERVS. REV. 166 (2016).

[52] Christian E. Weller & Richard Figueroa, *Wealth Matters: The Black-White Wealth Gap Before and During the Pandemic*, CTR. FOR AM. PROGRESS (July 28, 2021), https://tinyurl.com/mcn66wvd.

volatility than white households when faced with a similarly sized income shock and that differences in liquid wealth explain nearly all of that disparity.[53] Wealth, in essence, acts as an emergency buffer that becomes critically important during periods of economic instability; Black and Latinx households have less wealth and less stability, rendering them far more vulnerable in emergency circumstances such as the COVID-19 pandemic.[54]

Thus, the known economic consequences of the COVID-19 pandemic have aggravated pre-existing racial disparities and those disparities will likely continue to multiply as the lingering effects of the ongoing national emergency unfold. The need for government intervention to stem these inequities, including those related to the ability to repay student loan debt, has only grown in recent years.

II. THE DEBT-RELIEF PROGRAM IS NECESSARY TO ENSURE THAT BORROWERS, INCLUDING BORROWERS OF COLOR, ARE NOT THROWN INTO DEBILITATING FINANCIAL DISTRESS THAT EXCEEDS PRE-PANDEMIC LEVELS.

A. Absent any relief, Black and Latinx borrowers are at a heightened risk of delinquency and default because they face greater challenges in paying off such loans due to racial inequities in wealth, education, and employment.

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[53] *See* Peter Ganong, Damon Jones, Pascal Noel, Diana Farrell, Fiona Greig & Chris Wheat, Wealth, Race, and Consumption Smoothing of Typical Income Shock (Nat'l Bureau of Econ. Rsch., Working Paper 27552, 2020), https://tinyurl.com/2p82nwzt.

[54] *See* Weller & Figueroa, *supra* note 52.

Historical data from the Department of Education has shown that borrowers regularly struggle with repayment after a payment pause.[55] For example, research from the Student Borrower Protection Center shows that, in 2019, after the conclusion of the natural disaster-related payment suspension put in place following Hurricanes Harvey, Irma, and Maria and the California wildfires, student loan defaults increased significantly.[56] Corresponding research regarding privately held loans (not granted the same relief during the pandemic as loans held by the Department of Education), indicates that federal student loans borrowers are likely to experience a meaningful rise in delinquencies after the pandemic-related pause expires.[57] Experts have warned that borrowers could default at an even higher rate after the current payment pause expires, since prior suspensions based upon, for example, natural disasters, were much shorter in duration and affected a significantly smaller number of borrowers than the COVID-19 pandemic suspension.[58] The California Policy Lab estimates that 7.8 million borrowers—nearly three in ten nationwide—are at high risk of missing payments

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[55] *See* Kaufman, *supra* note 7.

[56] *See id.*; J.A. 234-35.

[57] *See* Jacob Goss, Daniel Mangrum & Joelle Scally, *Student Loan Repayment during the Pandemic Forbearance*, FED. RES. BANK OF N.Y. (Mar. 22, 2022), https://tinyurl.com/mr2d6ews; Thomas Conkling, Christa Gibbs & Vanessa Jimenez-Read, *Student Loan Borrowers Potentially At-Risk when Payment Suspension Ends*, CONSUMER FIN. PROTECTION BUREAU (Apr. 2022), https://tinyurl.com/bdet5zvb.

[58] *See* Persis SiChing Yu, *Testimony Before the U.S. Senate Committee on Banking, Housing, and Urban Affairs Subcommittee on Economic Policy*, NAT'L CONSUMER L. CTR. (July 27, 2021), https://tinyurl.com/bancr4vv.

once the pause expires.[59] While the credit data upon which that calculation is based does not include information on race or ethnicity, the residential data available suggests that borrowers at high risk of missing payments are more likely to live in neighborhoods with a high proportion of Black residents than other borrowers.[60]

Even before the pandemic, Black and Latinx borrowers were more likely than white borrowers to fall into delinquency and, ultimately, default.[61] Federal data show that 18 percent of all students who entered college in the 2011-2012 academic year defaulted by 2016 but that figure masks significant racial discrepancies; 32 percent of Black borrowers defaulted, as did 20 percent of Latinx borrowers, but only 13 percent of white borrowers.[62] According to data from the Federal Reserve, Black and Latinx student loan borrowers were also substantially more likely than white borrowers to lapse in repaying those loans before the COVID-19 repayment pause.[63] While only

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[59] Niru Ghoshal-Datta, Vikram Jambulapati & Evan White, *Who Benefits from the Student Loan Payment Pause and What Will Happen When It Ends?*, CAL. POLICY LAB (Mar. 23, 2022), https://tinyurl.com/559cpeh4.

[60] *Id*.

[61] *See* Ruchi Avtar, Rajashri Chakrabarti, & Kasey Chatterji-Len, *Unequal Distribution of Delinquencies by Gender, Race, and Education*, FED. RES. BANK OF N.Y. (Nov. 17, 2021), https://tinyurl.com/53xxzzwd; Ben Miller, *The Continued Student Loan Crisis for Black Borrowers*, CTR. FOR AM. PROGRESS (Dec. 2, 2019), https://tinyurl.com/23c9hs89.

[62] *Id*.

[63] *Report on the Economic Well-Being of U.S. Households in 2018 - May 2019*, BD. OF GOVERNORS FED. RESERVE SYS., https://tinyurl.com/us772b5d (last visited Jan. 9, 2023).

six percent of white borrowers who took out loans to fund their own education were behind, 21 percent of Black borrowers and 16 percent of Latinx borrowers were behind in their payments.[64] These disparities stem from the distinct barriers that Black and Latinx borrowers face in repaying their loans. For example, as discussed *supra* Section I.C*,* Black and Latinx families have less wealth due to a variety of factors including: generations of government-sanctioned red-lining,[65] ongoing discrimination and wage disparities in the labor market,[66] and inequitable educational opportunities.[67] Additional barriers include Black and Latinx students' higher enrollment at predatory for-profit colleges that have long targeted communities of color with deceptive advertising and false promises.[68]

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[64] *Id*.

[65] *See, e.g.,* Amy Traub, et al., *supra* note 36; Nodjimbadem, *supra* note 36.

[66] *See, e.g.,* Lincoln Quillian, et al., *Meta-Analysis of Field Experiments Shows No Change in Racial Discrimination in Hiring Over Time*, 114 PROCEEDINGS OF THE NAT'L ACAD. OF SCIS. 10870 (Sept. 12, 2017), https://tinyurl.com/mt73m2ef.

[67] *See, e.g.,* Linda Darling-Hammond, *Unequal Opportunity: Race and Education*, BROOKINGS (Mar. 1, 1998), https://tinyurl.com/mpr7ep77.

[68] *See* Genevieve Bonadies, Joshua Rovenger, Eileen Connor, Brenda Shum & Toby Merrill, *For-Profit Schools' Predatory Practices and Students of Color: A Mission to Enroll Rather than Educate*, HARVARD L. REV. BLOG (July 30, 2018), https://tinyurl.com/28ekvm7h; *see also* Judith Scott-Clayton, *What Accounts for Gaps in Student Loan Default, and What Happens After*, BROOKINGS (June 21, 2018), https://tinyurl.com/mpr2wdd5; Mark Huelsman, *The Debt Divide: The Racial and Class Bias Behind the "New Normal" of Student Borrowing*, DEMOS (May 19, 2015), https://tinyurl.com/4ykbfkw3.

Without student debt relief, these pre-existing racial disparities and their accompanying harms will almost certainly grow in light of the financial challenges stemming from the pandemic that have disproportionately affected individuals and communities of color. A recent poll found that, among both Latinx and Black respondents with student debt, a majority expected to make "major changes to saving or spending" if student loan payments resumed, but only one out of five Latinx respondents, and fewer than one-in-eight Black respondents, were "very confident" in their ability to make payments when necessary.[69] Reinforcing the financial realities facing millions of student loan borrowers, 85 percent of respondents reported that, as of February 2022, the federal student loan payment pause was the financial relief upon which they depended, with low-income and working-class borrowers more likely to use monthly savings from that pause to pay for food and healthcare or medicine.[70] It is doubtful that the economic condition of these borrowers, as a group, has substantially improved over the past few months, and indeed, conditions have likely deteriorated in light of macroeconomic conditions, including the rapid rate of inflation.

[69] Press Release, Student Borrower Protection Ctr., New Poll: As Restart of Student Loan Payments Approaches, Vast Majority of Latino Voters Expect Major Shift in Families' Financial Security, (Mar. 24, 2022), https://tinyurl.com/4p2s2u2z.

[70] Press Release, Student Debt Crisis Ctr., Inflation Forcing Americans with Student Debt to Skimp on Everyday Necessities Ahead of Payments Resuming, Survey Finds, (Feb. 23, 2022), https://tinyurl.com/2722a5n5.

According to research, borrowers of color are further at heightened risk of default and delinquency due, in part, to the quality of loan servicing they receive.[71] Experts have highlighted the extent to which the resumption of repayment obligations could give rise to a massive influx of communications both to and from borrowers that could overwhelm servicers.[72] Given the history of these servicers and their conduct, there is substantial reason for concern that borrowers of color might receive disproportionately unhelpful, confusing, or incorrect loan servicing assistance when payments resume, leading to even worse outcomes for those borrowers than expected given their economic circumstances.

Thus, the available data concerning the pandemic-induced financial hardships facing communities of color and the stubbornly high rates of delinquency and default within those communities reinforce the critical importance of targeted debt relief to mitigate the lasting harms of COVID-19. The Secretary adopted the debt relief plan to reduce just those risks and—consistent with the HEROES Act's terms and objectives—reasonably ensure that rates of delinquency and default do not rise above pre-pandemic levels when repayments resume.

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[71] *See* Judith Scott-Clayton, *Shrinking Racial Gaps in Student Debt and Default: Recommendations to Congress*, COMMUNITY COLLEGE RES. CTR. (Mar 6, 2019), https://tinyurl.com/ywxdsmw6.

[72] *See* Sarah Sattelmeyer & Lexi West, *Outreach from Borrowers Could Overwhelm Student Loan System When Pandemic Pauses End*, PEW RES. CTR. (Nov. 3, 2020), https://tinyurl.com/4uetpbwy.

B. Default and delinquency carry severe consequences that will place Black and Latinx borrowers in an acutely worse financial position due to the pandemic.

In adopting the debt relief plan, the Secretary sought to avoid a spike in delinquency and default rates for affected borrowers once repayments resume.[73] The Department's analysis reasonably recognized that default and delinquency trigger serious negative penalties that would leave affected borrowers in a substantially worse position due to the impacts of COVID-19.[74]

Indeed, default and delinquency cause devastating consequences for borrowers who are already financially distressed, as well as their families. For example, default has been correlated with a 50-to-90-point drop in borrowers' credit scores.[75] Borrowers with lower credit scores face less affordable insurance and other necessary financial products, as well as diminished access to secure stable employment and housing.[76] Default notations remain on a borrowers' credit report for up to seven years, leaving a legacy of damage.[77] Borrowers who default also lose access to

[73] *See* J.A. 234-39; J.A. 257-59.

[74] *See*. J.A. 239.

[75] Kristin Blagg, *Underwater on Student Debt: Understanding Consumer Credit and Student Loan Default*, URBAN INST. (Aug. 13, 2018), https://tinyurl.com/ycy4rxkd.

[76] *See* Sandra F. Braunstein, Div. of Consumer and Cmty. Affairs, Bd. of Governors of the Fed. Reserve Sys., *Testimony Before the U.S. House of Representatives Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit* (Mar. 24, 2010), https://tinyurl.com/2pkuerjt.

[77] *See* Blagg, *supra* note 75; Diana Elliott & Ricki Granetz Lowitz, What Is the Cost of Poor Credit?, URBAN INST. (Sept. 18, 2018), https://tinyurl.com/63pkbtxm.

affordable repayment and financing options, such as income-driven repayment on their student loans.[78] Moreover, their bank accounts are subject to collection, wage garnishment, seizure of Social Security benefits, the withholding of tax refunds—including portions attributable to the Earned Income Tax Credit and Child Tax Credit—and litigation.[79] In addition, defaulted student loan borrowers, and specifically Black borrowers, have reported that default causes significant psychological distress.[80]

The Department's debt-relief plan squarely advances the HEROES Act's aims by preventing affected borrowers from experiencing the severe hardships of default. Such preventative measures are particularly crucial for Black and Latinx student loan borrowers due to the disproportionate and distinct harms inflicted by COVID-19 that place communities of color at heightened risk of default and delinquency, as described *supra* Section I.B. In addition, the all but certain increase in default rates would further deepen racial disparities in wealth and economic opportunity because of racial inequities plaguing the collection of all types of debt—including, but not limited to, the rate

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[78] *See Student Loan Delinquency and Default*, FED. STUDENT AID, U.S. DEP'T OF EDUC., https://tinyurl.com/fbaubkft (last visited Jan. 7, 2023).

[79] *See* Persis Yu, *Voices of Despair: How Seizing the EITC is Leaving Student Loan Borrowers Homeless and Hopeless During a Pandemic*, NAT'L CONSUMER L. CTR. (Nov. 10, 2020), https://tinyurl.com/4jzzjpjr.

[80] *See* Victoria Jackson & Jalil Mustaffa, *Student Debt is Harming the Mental Health of Black Borrowers*, EDUC. TR. (July 28, 2022), https://tinyurl.com/4u6964fh.

of adverse judgments in debt collection lawsuits[81] and the frequency of communication from debt collectors.[82] Debt collection lawsuits against defaulted student loan borrowers have also been found to be disproportionately concentrated in areas that are home to communities of color.[83] These lawsuits, which are overwhelmingly won by the government and are brought by private law firms on behalf of the federal government, may give rise to judgments against borrowers that eliminate the option to consolidate or rehabilitate loans. In other words, borrowers subject to such judgments cannot get out of default without full payment and will be subject to the consequences of default indefinitely, until they are able to pay in full. The concentration of these suits in communities heavily populated by people of color strongly suggests that defaulted student loan borrowers of color face these negative consequences at significantly higher rates than their white counterparts.

Altogether, the Secretary's debt relief plan reasonably mitigates the extent to which affected borrowers will be placed in a "worse position" by the lasting impacts of COVID-19 that threaten to push lower-income borrowers into default and delinquency, with

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[81] *See* Paul Kiel & Annie Waldman, *The Color of Debt: How Collection Suits Squeeze Black Neighborhoods*, PROPUBLICA (Oct. 8, 2015), https://tinyurl.com/2jyucde9.

[82] *See* Catherine Ruetschlin & Dedrick Asante-Muhammad, *The Challenge of Credit Card Debt for the African American Middle Class*, DEMOS & NAACP (Dec. 2013), https://tinyurl.com/2p8mndw2.

[83] *See* Persis Yu & Margaret Mattes, *Inequitable Judgments Examining Race and Federal Student Loan Collection Lawsuits*, NAT'L CONSUMER L. CTR. (Apr. 16, 2019), https://tinyurl.com/32yunbut.

particularized risks for Black and Latinx borrowers. Blocking such relief will irrevocably harm affected borrowers and exacerbate racial and gender disparities in economic and educational opportunity. Far from exceeding the Secretary's authority, the debt relief plan faithfully adheres to the HEROES Act's terms and advances its central purpose by ensuring impacted borrowers and our country can recover from the devastating and lingering effects of COVID-19.

CONCLUSION

For the foregoing reasons, this Court should rule in favor of the Petitioners and uphold the debt relief plan by affirming the judgment of the United States District Court for the Eastern District of Missouri in *Nebraska* and reversing the judgment of the United States District Court for the Northern District of Texas in *Brown*.

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