IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

FRANK GARRISON, ET AL.,	:	
	:	No.
Plaintiffs-Appellants,	:	
	:	
v.	:	
	:	
U.S. DEPARTMENT OF EDUCATION, ET AL.,	:	
	:	
Defendants-Appellees	:	

EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL

APPEAL FROM THE JUDGMENT OF
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

No. 1:22-CV-1895
THE HONORABLE RICHARD L. YOUNG, DISTRICT JUDGE

October 24, 2022

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Pursuant to Rule 8 of the Federal Rules of Appellate Procedure, Appellants Frank Garrison and Noel Johnson, on behalf of all others similarly situated, move for an injunction pending appeal prohibiting Appellees Secretary of Education Miguel Cardona and the Department of Education (ED) from implementing a policy of cancelling federal student loan debt pending final judgment in this matter. Appellees oppose this motion.

I. FACTS AND PROCEDURAL HISTORY

A. Federal student loans, repayment, and forgiveness

The Higher Education Act allows eligible students at participating schools to borrow money directly from the Department. 20 U.S.C. §§ 1077, 1091.

Separately, the Act establishes two programs to help borrowers repay their loans. First, under income-driven repayment (IDR) programs, borrowers contribute a portion of their income toward their loans. 20 U.S.C. §§ 1087e(d), 1098e. At the end of a set period, the remaining balance is forgiven. 34 C.F.R. § 685.209.

Second, under the public service loan forgiveness (PSLF) program, borrowers who make 120 payments while working in qualifying positions are eligible to have their balances forgiven. *Id.* § 1087e(m).

B. Imminent and automatic loan cancellation

On August 24, 2022, Appellees announced a plan to cancel $10,000 of student loan debt for every borrower who, in either 2020 or 2021, earned less than $125,000 (or $250,000 for those married filing jointly or heads of households). ECF No. 4-4. The amount canceled would increase to $20,000 for eligible borrowers who had received Pell Grants. *Id.* Originally, the cancellation was to have been implemented in "early October." ECF No. 4-7 at 2. After lawsuits arose, Appellees delayed the program to October 17, then to October 23. ECF No. 27. Appellees will not undertake notice and comment or any other ordinary procedure before implementing the program. *See Use of the Heroes Act of 2003 to Cancel the Principal Loan Amounts of Student Loans*, 46 Op. O.L.C. __, 2022 WL 3975075, at *3 (Aug. 23, 2022).

Appellees estimate that approximately 40 million borrowers will be eligible for cancellation, including approximately 856,400 in the state of Indiana. *FACT SHEET: The Biden-Harris Administration's Plan for*

Student Debt Relief, White House (Sept. 20, 2022) ("[A]nalysis from the Department of Education").[1]

For borrowers who are eligible and who have submitted income data under IDR programs, loan forgiveness will be automatic unless they opt out.

C. Harm to Plaintiffs

It is undisputed that Appellant Garrison faced automatic and mandatory loan cancellation of $20,000 of his debt at the time this suit was initially filed. *See* ECF No. 4, at 6–8. Since then, Appellees have removed him from automatic cancellation. ECF No. 13.

Appellant Noel Johnson was in a similar position when he joined this suit. He faced automatic cancellation of $10,000 of his debt. *See* ECF No. 25-8 (Johnson Decl. ¶¶ 2–8).

Both named plaintiffs are pursuing PSLF and reside in Indiana, so that Appellees' cancellation (but not PSLF) will increase their state-tax

[1] https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/20/fact-sheet-the-biden-harris-administrations-plan-for-student-debt-relief-could-benefit-tens-of-millions-of-borrowers-in-all-fifty-states/.

liability, by more than $1,000 or $500 respectively. *See* Ind. Code § 6-3-1-3.5(a)(30).

Like Mr. Garrison, once he filed suit, ED exempted Mr. Johnson from cancellation. *See* ECF No. 31. However, it did so after Mr. Johnson sought to act as the representative of a proposed class that still faced automatic cancellation and had inadequate notice of any opt-out provision. Without notice, class members will suffer increased state-tax liability.

D. Procedural History

Appellant Garrison filed a Complaint on September 27, 2022, on his own behalf. ECF No. 1. Mr. Garrison also filed for a temporary restraining order to stop Appellees from implementing "automatic" cancellation. ECF No. 4. The next day, Appellees attempted to moot the case by exempting Mr. Garrison from the program. ECF No. 13. In response the district court denied preliminary relief and granted Mr. Garrison leave to amend his complaint. ECF No. 16.

Mr. Garrison, joined by Appellant Johnson, filed an Amended Complaint on behalf of a putative class of similarly-situated borrowers

on October 10, 2022. ECF No. 23. The same day they moved for preliminary relief and class certification. *See* ECF Nos. 24, 25, 26.

Appellees responded by agreeing that "the Department will not discharge any student loan debt pursuant to the policy challenged in this case prior to October 23, 2022," and briefing its response in opposition to preliminary relief. *See* ECF Nos. 27, 31.

On October 21, 2022, the Court dismissed Appellants' Amended Complaint. ECF No. 36 (Attachment A). It also entered final judgment against Appellants. ECF No. 37 (Attachment B). Appellants filed a notice of appeal that same day. ECF No. 38 (Attachment C).

II. THIS COURT SHOULD ENJOIN THE POLICY PENDING APPEAL

Rule 8 of the Federal Rules of Appellate Procedure allows this Court to issue an injunction pending appeal "to mitigate the damage that can be done during the interim period before a legal issue is finally resolved on its merits. The goal is to minimize the costs of error." *In re A & F Enterprises, Inc. II*, 742 F.3d 763, 766 (7th Cir. 2014).

This Court considers "the moving party's likelihood of success on the merits, the irreparable harm that will result to each side if the [relief] is either granted or denied in error, and whether the public interest

favors one side or the other." *Id.* "As with a motion for a preliminary injunction, a 'sliding scale' approach applies; the greater the moving party's likelihood of success on the merits, the less heavily the balance of harms must weigh in its favor, and vice versa." *Id.*[2]

A. Appellants Have Demonstrated a Strong Likelihood of Success on the Merits

Appellants have an unusually strong likelihood of prevailing on the merits, and thus this Court's "sliding scale" approach warrants immediate intervention even without a great showing of harm. The

[2] Rule 8(a)(1) provides that "ordinarily" a party seeking an injunction pending appeal must first seek relief with the district court. This is excused if "moving first in the district court would be impracticable." F.R.A.P. 8(a)(2)(A)(i). When a case presents a "tight timeframe" this can render "prior recourse to the district court sufficiently impracticable." *Boston Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. of City of Boston*, 996 F.3d 37, 44 (1st Cir. 2021) (collecting cases). Similarly, when further arguments would be futile, moving first in the district court is impracticable. *See McClendon v. City of Albuquerque*, 79 F.3d 1014, 1020 (10th Cir. 1996) (dispensing requirement because "it would serve little purpose to require another application to the district court"). Both reasons apply here. First, there is insufficient time to also seek review with the district court as it dismissed this case on Friday, October 21, 2022, but ED has promised only to delay implementing its policy until Sunday, October 23, 2022. There's simply no time for the district court to reconsider, while also ensuring appellate review. Further, the district court denied an injunction based entirely on its decision concerning standing. A motion for injunction that raises the same issues and arguments would meet the same fate.

district court's decision to dismiss this case for lack of standing was undoubtedly wrong and is almost certain to be vacated. Furthermore, not only must this Court presume the merits of Appellants' underlying challenge to ED's policy, but that underlying challenge also has a strong likelihood of success.

1. Appellants Clearly Have Standing To Challenge a Federal Policy that Will Necessarily Result in the Imposition of a Tax Liability Under Existing State Law

"A plaintiff has standing only if he can allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *California v. Texas*, 141 S. Ct. 2104, 2113 (2021) (cleaned up).

When "a causal relation between injury and challenged action depends upon the decision of an independent third party," a plaintiff "must show at the least that third parties will likely react in predictable ways." *Id.* at 2117 (cleaned up). But predictability is not a huge hurdle. The Court found standing, for instance, when it was "likely" that a third party would "react in predictable ways to [a] citizenship question [on the census], even if they do so unlawfully[.]" *Commerce v. New York*, 139 S. Ct. 2551, 2566 (2019).

This Court has likewise recognized that "the present impact of a future though uncertain harm may establish injury in fact for standing purposes." *Lac Du Flambeau Band v. Norton*, 422 F.3d 490, 498–99 (7th Cir. 2005). Thus, a tribe could challenge a compact that made the state's rejection of the tribe's casino application more likely, even though the injury depended first on federal approval. *See id.* at 498.

Appellants, and the members of the putative class, would all suffer a concrete injury from ED's imminent automatic cancellation through the state tax consequences that necessarily would arise under state law. Any loan forgiveness that Mr. Garrison or Mr. Johnson receive pursuant to the pre-existing PSLF program, as it was enacted prior to January 1, 2020, will not be taxed in Indiana as income. *See* Ind. Code § 6-3-1-3.5(a)(30). But if Mr. Garrison received $20,000 in automatic cancellation, he would face a state income tax liability (including county income tax) of more than $1,000 for 2022. *See id*. Mr. Johnson would face more than $500 in tax liability for his $10,000 cancellation. *See id.* That is hardly conjecture—it is "predictable" that Indiana will apply its laws as written. *See Commerce*, 139 S. Ct. at 2566. And the remaining states that will tax cancellation as income will likewise predictably apply their

own laws. *See e.g.,* Ark. Code § 26-51-404(b)(1); Minn. Stat. § 290.01(19)(f); Miss. Code § 27-7-15(4)(mm); N.C. Stat. § 105-153.5(c2)(22); Wis. Stat. § 70.01. An injunction, however, would redress that harm, by stopping the automatic cancellation and avoiding these harms. Appellants and the class members therefore have standing to sue to stop ED's policy. *See Commerce*, 139 S. Ct. at 2566.

Despite this straightforward analysis, the district court dismissed this case after it erroneously concluded that the certain tax consequences of cancellation were not "traceable" to the federal program. ECF No. 36 at 6. In the district court's view, the tax liability, which does not exist today because the cancellation has not occurred, but which will arise the moment ED's policy is enacted, was simply a matter for state courts to resolve. *Id.*

The district court was wrong in its assertion that "[a]n injury is not traceable to the decision of a defendant where the injury flows from a different, independent decision made by a third party." *Id.* at 6. On the contrary, "Article III requires no more than *de facto* causality." *Commerce*, 139 S. Ct. at 2566. Cases therefore abound where parties had standing to challenge agency action that resulted in an indirect harm,

even when it came from an independent third party. *See id.* For instance, the Supreme Court has long held that a party has standing to challenge agency action when it will simply *allow* conduct that results in an injury. *See, e.g., Japan Whaling Ass'n v. Am. Cetacean Soc.*, 478 U.S. 221, 230 (1986) (whale watchers suffered injury-in-fact from agency's refusal to punish unlawful Japanese whaling activities).

The Supreme Court has likewise found standing where a defendant's actions were reasonably likely to result in a third party injuring the plaintiff, even where the defendant does not coerce or even *encourage* that injury. In *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1979), the Court held that realtors' racial steering practices injured the village through third parties. A higher minority population could "precipitate an exodus of white residents," injuring the municipality's "racial balance and stability," even though the white residents had no interactions with the realtors themselves. *Id.* at 110–11; *see also Bank of Am. Corp. v. City of Miami*, 137 S. Ct. 1296, 1304–05 (2017) (discriminatory loans injured city, because, inter alia, the expected foreclosures can result in individuals committing more crimes in the area and thus requiring more police services). These cases reinforce the

conclusion in *Commerce* that the relevant inquiry is *de facto* causation, not whether the defendant determined, coerced, or cajoled a third party into injuring the plaintiff.

The district court's reliance on *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332 (2006), is particularly puzzling. The district court cited that case for the proposition that an "injury traceable to municipality's decision to levy tax did not create standing to challenge state decision to levy different taxes." ECF No. 36 at 6. But that case simply held, unremarkably, that a "taxpayer plaintiff has no right to insist that the government dispose of any increased revenue it might experience as a result of his suit by decreasing his tax liability or bolstering programs that benefit him." *DaimlerChrysler*, 547 U.S. at 344–45. In other words, a plaintiff cannot challenge all of a state's actions simply "by virtue of their status as [] taxpayers." *Id.* at 342.

While paying taxes does not automatically furnish standing to challenge every government action, a person has standing to challenge a government action *resulting* in tax liability. Consider *Clinton v. City of New York*, 524 U.S. 417, 421, 431 (1998). There both the city and individual hospitals challenged the President's reinstatement of a

decision by Health and Human Services that resulted in tax liability. *Id.* The Court found standing to challenge the President's actions because the city and hospitals had a "multibillion dollar contingent liability that had been eliminated" without the President's action. *Id.* at 430. Even to the extent that the contingent liability may or may not ever need to be paid by the challengers, they suffered an "immediate injury" merely by the effect of the "contingent liability." *Id.* at 431.

Appellants suffer the same type of contingent tax liability, which will only arise once cancellation occurs. Thus, Appellants have standing to challenge the cancellation policy that gives rise to that liability. *See Clinton*, 524 U.S. at 430–31.

The district court's heavy reliance on *Segovia v. United States*, 880 F.3d 384, 389 (7th Cir. 2018), was also misplaced. *See* ECF No. 36 at 7. There the plaintiffs challenged a federal statute that required states to send absentee ballots to states' former residents who moved to certain U.S. territories. Those territories did not include those where the plaintiffs lived, so the statute did not require the states to send the plaintiffs absentee ballots. Illinois (the relevant state) was free to provide absentee ballots; it simply chose not to do so. These former residents

could not challenge the federal law because the state law inflicted the harm, and a state could comply with federal statute whether it sent the ballots or not. "Federal law . . . does not *prohibit* Illinois from providing such ballots to [the] former residents . . . . State law could provide the plaintiffs the ballots they seek; it simply doesn't." *Id*. The federal action therefore was not in the chain of causation resulting in the plaintiffs' lack of absentee ballots. Here, however, the loan cancellation is a *de facto* cause of the state tax liability; but for that federal action, Appellants will owe less in state taxes.

The district court also attempted to distinguish the decision in *Commerce* as establishing only that the "question is [] whether the federal policy influenced the decision making of a third-party in a predictable way[.]" ECF No. 36 at 10. And since the state tax laws at issue here were already on the books, they had to be independent. *Id*. But that flies in the face of the Supreme Court's decision itself. The Court spoke only in terms of the challenged action having a "predictable effect" resulting in the harm to the plaintiff. *Commerce*, 139 S. Ct. at 2566. A preexisting law that is triggered by federal action is one such effect. There's no requirement, however, that the law be *enacted* as a result of

the challenged action. If that were so, then the plaintiffs in *Commerce* could never have challenged the "*reinstate[ment]*" of a citizenship question on the census based on evidence that "noncitizen households have historically responded to the census at lower rates" over "reluctance to answer a citizenship question." *See id.* There are other examples—the plaintiffs in *Clinton*, 524 U.S. at 431, could never have challenged the President's decision to *reinstate* their contingent tax liability if the district court's view was correct. *See also*, *e.g.*, *Cent. Ariz. Water Conservation Dist. v. EPA*, 990 F.2d 1531, 1537–38 (9th Cir. 1993) (traceability satisfied where the cost of satisfying pre-existing obligations increased due to EPA regulation.) The district court's decision on standing was wholly inconsistent with controlling precedent.

2. The Underlying Challenge to the Policy Is Likely To Succeed

"[S]tanding in no way depends on the merits of the plaintiff's contention that particular conduct is illegal[.]" *Warth v. Seldin*, 422 U.S. 490, 500 (1975). When reviewing a decision on standing, a court must assume that the challenged conduct is unlawful. *Id.* at 502. Thus, this Court may enter an injunction without deciding whether Appellants' underlying challenge to the cancellation policy will succeed.

But if this Court were to look further, the cancellation policy is clearly unlawful. "[A]n agency literally has no power to act . . . unless and until Congress confers power upon it." *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986). Particularly when the Executive claims "sweeping and consequential authority," a "colorable textual basis" in statute is insufficient; rather, the Executive must point to "clear congressional authorization." *West Virginia v. EPA*, 142 S. Ct. 2587, 2608–09 (2022) (simplified). There is no such authorization for the cancellation policy and the district court should have set it aside. *See* 5 U.S.C. § 706(2).

a. Appellees' debt cancellation is not supported by statute

According to ED, *General Counsel Opinion*, 87 Fed. Reg. 52,943, the cancellation program is authorized by the HEROES Act, Pub. L. No. 108-76, 117 Stat. 904 (2003). Under the HEROES Act, "[t]he Secretary of Education . . . may waive or modify any statutory or regulatory provision applicable to [] student financial assistance programs . . . as the Secretary deems necessary in connection with a war or other military operation or national emergency to provide . . . waivers or modifications" that are "necessary to ensure that . . . recipients of student financial

assistance . . . who are affected individuals are not placed in a worse place financially in relation to that financial assistance because of their status as affected individuals[.]" 20 U.S.C. § 1098bb(a)(1)–(2)(A).

An "affected individual" is "an individual who . . . resides or is employed in an area that is declared a disaster area by any Federal, State, or local official in connection with a national emergency" and an individual who "suffered direct economic hardship as a direct result of a war or other military operation or national emergency, as determined by the Secretary." *Id.* § 1098ee(2).

i. Cancellation is not targeted to eligible individuals

The Secretary may provide waivers only to individuals who would otherwise be (1) "in a worse position financially" (2) "in relation to their financial assistance" (3) "because of their status as affected individuals." *Id.* § 1098bb(a)(2)(A). ED's debt cancellation far exceeds these limits.

First, cancellation will be available to those who are in a better financial position, such as those whose wealth or income have increased since 2020 when the COVID-19 pandemic started.

Second, no borrower will be worse off "in relation to their financial assistance." 20 U.S.C. § 1098bb(a)(2)(A). That's because repayments and

interest accrual have been paused "since March 2020." 87 Fed. Reg. 41,878, 41,884 (July 13, 2022). Additionally, participants in PSLF and IDR continue to earn credit toward the payments necessary to obtain forgiveness under those programs, despite making no payments. *See id.*

Third, even assuming there are those who would be worse off with respect to their federal student loans in the absence of debt cancellation, no part of ED's plan limits cancellation to those who would be worse off "because of their status as affected individuals." 20 U.S.C. § 1098bb(a)(2)(A). No one suggests any borrower is worse off because he lives or works in the United States (all of which has been declared a disaster area), and the cancellation program's eligibility criteria far exceed those who have "suffered direct economic hardship as a direct result of" the COVID-19 pandemic. *Id.* § 1098ee(2). To the extent individuals have been "determined by the Secretary," *id.*, to be suffering from such hardship despite not *actually* so suffering, they cannot be worse off "because of" that designation, *id.* § 1098bb(a)(2)(A).

To be sure, "[t]he Secretary is not required to exercise the waiver or modification authority . . . on a case-by-case basis." *Id.* § 1098bb(b)(3). And that allows him to grant relief to categories of individuals all of

whom are eligible for relief, such as the residents of a city destroyed by a war. But the Secretary's power to exercise waiver authority on a categorical basis does not give the Secretary the power to enormously expand who may receive a waiver under § 1098bb(a)(2)(A).

ii. Debt cancellation is not "necessary"

Under § 1098bb(a)(2)(A), waivers are permitted only if "necessary" to ensure affected individuals are not placed in a worse position with respect to their federal loans because of their status as affected individuals. As discussed, by suspending repayment and interest accrual, Appellees have put borrowers in the *same* position now as before the pandemic with respect to their federal loans. Debt cancellation is clearly unnecessary to achieve the statutory goal under § 1098bb(a)(2)(A). This "necessary" requirement is meant to place real limits on the Secretary's discretion, as demonstrated by contrast with the broader "as the Secretary deems necessary" language just one paragrapher earlier, *see id.* § 1098bb(a)(1). *See Russello v. United States*, 464 U.S. 16, 23 (1983) ("[I]t is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion" of statutory language (simplified)).

ED's disregard for necessity is most obvious in their plan to *refund* loan payments to borrowers who have *finished* paying off their loans and reimpose debt in the refunded amount—just so they can cancel that debt and give those once-borrowers a windfall. *See* ECF No. 35 at 4. Nothing could suggest this is necessary to protect these individuals from being worse off with respect to their student loans. They do not even currently have such loans.

b. The debt cancellation program presents a major question not answered by statute

Courts will not assume that Congress has assigned to the Executive Branch questions of "vast economic and political significance" without a "clear statement" to that effect. *West Virginia*, 142 S. Ct. at 2605 (simplified). This is particularly so "[w]hen an agency claims to discover in a long-extant statute an unheralded power to regulate a significant portion of the American economy." *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014) (simplified). In such circumstances, a court should adopt a narrow reading of a statute. *See Ala. Ass'n of Realtors v. HHS*, 141 S. Ct. 2485, 2489 (2021) (simplified).

Outright debt cancellation—on a categorical basis for 40 million borrowers and costing more than $500 billion—is a "power of vast

economic and political significance." *Id.* And it is also clear that ED's plan relies on as-yet-undiscovered powers in the HEROES Act.

First, relief under the Act has never been so broad and included so many individuals who do not actually meet statutory criteria. Until COVID-19, ED has "generally invoked the HEROES Act relatively narrowly to grant relief to limited subsets of borrowers, such as deployed military service members or victims of certain natural disasters." Kevin M. Lewis & Edward C. Liu, *The Biden Administration Extends the Pause on Federal Student Loan Payments*, Congressional Research Service, LSB10568 Version 3, at 2–3 (Jan. 27, 2021).[3] Nor has the statute ever been used to broadly cancel loan principals before. *See* Department of Education, Office of the General Counsel, *Memorandum to Betsy DeVos, Secretary of Education* 6 (Jan. 12, 2021).[4]

Recasting the HEROES Act from a statute permitting limited modifications to one that can sweep away debt for 40 million people and effectively spend more than $500 billion "effects a fundamental revision

[3]https://crsreports.congress.gov/product/pdf/LSB/LSB10568.
[4]https://static.politico.com/d6/ce/3edf6a3946afa98eb13c210afd7d/ogcmemohealoans.pdf.

of the statute, changing it from one sort of scheme . . . into an entirely different kind." *West Virginia*, 142 S. Ct. at 2596 (2022).

Congress itself has struggled over the question of whether to cancel student-loan principals. *See* Student Loan Debt Relief Act of 2019, S. 2235, 116th Cong. (2019); Income-Driven Student Loan Forgiveness Act, H.R. 2034, 117th Cong. (2021). Given the inevitably controversial nature of such a program, it is "doubt[ful] that Congress intended to delegate decisions of such economic and political significance" to the Executive in the HEROES Act; and it is equally doubtful that that power lay dormant in that statute all along in the "oblique" words of § 1098bb(a)(2). *See West Virginia*, 142 S. Ct. at 2596, 2609 (simplified).

c. The statute should be read to avoid constitutional questions

Even if the HEROES Act could bear the weight of ED's extraordinary, unilateral actions, the Court should construe the statute to avoid "serious constitutional problems, . . . unless such construction is plainly contrary to the intent of Congress." *Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 173 (2001) (simplified). The Act contains important limits to ED's discretion, including the requirements under § 1098bb(a)(2)(A). But those limitations would be

rendered meaningless if the statute were to be construed as allowing ED to freely grant waivers or modifications to individuals who are not financially worse off with respect to their student loans because of their status as affected individuals. Such a construction would violate the non-delegation doctrine and must therefore be rejected. *See AFL-CIO v. Am. Petroleum Inst.*, 448 U.S. 607, 645–46 (1980) (plurality opinion).

B. The statute violates the non-delegation doctrine

The Secretary's authority to waive or modify statutory provisions under the HEROES Act itself violates the non-delegation doctrine, whether or not the statute contains an intelligible principle. The authority is substantially the same as the line-item veto disapproved in *Clinton v. City of New York*, 524 U.S. at 438, 441, because the "legal and practical effect" of waiver-and-modification is to amend an Act of Congress, even if it does not formally "effect a repeal."

Whether an act has a "legislative character" is "confirmed by the character of the Congressional action it supplants." *INS v. Chadha*, 462 U.S. 919, 953 (1983). Waiving and modifying a statute, then replacing it with "the terms and conditions to be applied in lieu of such statutory . . . provisions," 20 U.S.C. § 1098bb(b)(2), has a "legislative character"

because it "supplants" the congressional action of legislative amendment. Because the relevant statutory provisions became "entirely inoperative" for the borrowers under ED's program, yet the Act vests discretion in the Secretary as to whether, when, and how to suspend the law, it vests the Secretary with lawmaking power in violation of the Constitution. *See Clinton*, 524 U.S. at 441.

C. Appellants Will Suffer Irreparable Harm

Appellants must show they are "likely to suffer irreparable harm before a decision on the merits can be rendered." *Winter v. NRDC*, 555 U.S. 7, 22 (2008) (citation omitted). "Imposition of monetary damages that cannot later be recovered for reasons such as sovereign immunity constitutes irreparable injury." *Chamber of Com. of U.S. v. Edmondson*, 594 F.3d 742, 770–71 (10th Cir. 2010).

Potentially millions of members of the proposed class face irreparable harm from the automatic tax liability that loan cancellation will impose on them.[5] If ED is not enjoined, there is no way to recover

[5] While ED has attempted to moot the class representative's claims by excluding them from automatic cancellation, "the termination of a class representative's claim does not moot the claims of the unnamed members of the class." *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 51–52 (1991) (citations omitted). Moreover, "[t]hat the class was not certified until

that loss. Individuals in Indiana, for instance, would become liable for more than $500 in state income tax as soon as ED automatically cancels $10,000 of their outstanding loans. *See* Ind. Code. § 6-3-2-1(b)(3). ED estimates that 856,400 borrowers in Indiana will be eligible for loan cancellation, with 555,500 eligible for Pell Grant cancellation of up to $20,000. *See FACT SHEET*, *supra*.

But the class is even larger, and potentially millions face the same irreparable harm. At least five other states will tax cancellation as income. *See* Ark. Code § 26-51-404(b)(1); Minn. Stat. § 290.01(19)(f); Miss. Code § 27-7-15(4)(mm); N.C. Stat. § 105-153.5(c2)(22); Wis. Stat. § 70.01. And ED expects more than 3.5 million borrowers in those states will have their loans canceled. *See FACT SHEET*, *supra*. But there is no way for Appellants, or anyone else, to recover for the new tax bill, even though ED's actions are unlawful, because Section 702 of the APA forbids monetary damages against the federal government. *See California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018) ("harm is irreparable here because

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after the named plaintiffs' claims had become moot does not deprive us of jurisdiction." *Id*. ED did not try to moot Mr. Johnson's claim until after Appellants moved for class certification.

the states will not be able to recover monetary damages" because of 5 U.S.C. § 702). Those harms are irreparable.

D. The Injunction Is Equitable and in the Public Interest

A party seeking relief must demonstrate "that the balance of equities tips in [its] favor, and that an injunction is in the public interest." *Winter*, 555 U.S. at 20. "These factors merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). A government "does not have an interest in enforcing a law that is likely" invalid. *Edmondson*, 594 F.3d at 771. Instead, "'the public interest will perforce be served by enjoining the enforcement of the invalid provisions of [] law.'" *Id.* (citation omitted). Thus, the Supreme Court has held that when a rule exceeds an agency's authority, the court should not "weigh [] tradeoffs" between its intended effect and harms. *NFIB v. OSHA*, 142 S. Ct. 661, 666 (2022).

Appellees have not only exceeded their authority under the HEROES Act but have also violated constitutional limits. They thus have no *legitimate* interest in avoiding an injunction. Huge numbers of borrowers face the immediate possibility of unwanted, and unlawful, tax liability through automatic cancellation, while *every* American will foot

the half-trillion-dollar bill for ED's improper actions. *See Abbott Lab'ys v. Mead & Johnson & Co.*, 971 F.2d 6, 11 (7th Cir. 1992) (this factor considers "the consequences of granting or denying the injunction to non-parties.").

Even if none of this were so, the public interest would not be harmed by an injunction. Loan repayments and interest accrual are still paused, so no borrower will be disadvantaged by an injunction that allows this Court to consider Appellants' claims in an orderly fashion.

CONCLUSION

This Court should enjoin the rule pending appeal.

DATED: October 24, 2022.

Respectfully submitted,

/s/ Caleb Kruckenberg

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I hereby certify that this document complies with Federal Rule of Appellate Procedure 27(d)(2)(A). It is printed in Century Schoolbook, a proportionately spaced font, and includes 5,200 words, excluding items enumerated in Rule 32(f)). I relied on my word processor, Microsoft Word, to obtain the count.

I hereby certify that all required privacy redactions have been made, any required paper copies to be submitted to the Court are exact copies of the version submitted electronically, and the electronic submission was scanned for viruses with the most recent version of a commercial virus scanning program, and is free of viruses.

DATED: October 24, 2022.

Respectfully submitted,

/s/ Caleb Kruckenberg

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CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which sent notification of such filing to all counsel of record.

Respectfully submitted,

/s/ Caleb Kruckenberg

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Counsel for Plaintiffs-Appellants

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FRANK GARRISON on behalf of himself and all others similarly situated and NOEL JOHNSON on behalf of himself and all others similarly situated,	)	
Plaintiffs,	)	
v.	)	No. 1:22-cv-01895-RLY-TAB
U.S. DEPARTMENT OF EDUCATION and MIGUEL CARDONA in his official capacity as U.S. Secretary of Education,	)	
Defendants.	)	

ENTRY DISMISSING PLAINTIFFS' AMENDED COMPLAINT

Plaintiffs Frank Garrison and Noel Johnson allege they will be injured by how the Indiana Revenue Code treats certain types of debt forgiveness. To remedy the problem of an increased state tax burden, Garrison and Johnson sue the Federal Government. But the Federal Government's student loan relief program did not injure them. The State's legislative decision did. Thus, the injury-in-fact is not fairly traceable to the Defendants—the United States Department of Education and Miguel Cardona, the Secretary of Education. As Garrison and Johnson do not have standing, the court is obligated to **DISMISS** the amended complaint (Filing No. 23).

I. Background

Plaintiff Frank Garrison is a Pell Grant recipient who has taken out federal student loans. (Filing No. 4-2, Garrison Decl. ¶ 2). To pay back his student loans, Garrison

utilizes an income-driven repayment program and intends to seek forgiveness of his student loans through the Department of Education's Public Service Loan Forgiveness ("PSLF") plan. (*Id.* at ¶¶ 5, 10).

Under income-driven repayment programs, a student loan borrower contributes a standard portion of their income toward outstanding loans. 20 U.S.C. §§ 1087e(d), 1098e. These plans only last for a set period, after which any remaining balance is forgiven. 34 C.F.R. § 685.209 (setting loan forgiveness period at 20 years). Under the PSLF plan, borrowers who make a qualifying number of payments while working in public service will have remaining balances forgiven. 20 U.S.C. § 1087e(m).

On August 24, 2022, the Department of Education announced that it would cancel $10,000 of federally held student debt for unmarried borrowers who made less than $125,000 per year. (Filing 25-3, Ex. 1 Debt Relief Plan at 2). Pell Grant recipients like Garrison would receive $20,000 dollars of benefit. (*Id.*). These benefits apply automatically to borrowers the government has data on unless those borrowers opt out. (Ex. 1 at 3 ("[Eight] million people for whom we have data . . . will get the relief automatically.")). As an unmarried individual with an annual income below $125,000, Garrison submits he would have automatically received debt relief. (Garrison Decl. ¶ 3).

Indiana, however, will treat these federal benefits as taxable income. Ind. Code § 6-3-1-3.5(a)(30). Accordingly, when $20,000 of his loans are automatically forgiven, Indiana will tax Garrison approximately $1,000 dollars more than before he received relief. (Garrison Decl. ¶ 18). Not wanting to pay Indiana more than necessary, Garrison brought suit against the Secretary of the Department of Education and the Department

itself. (Compl. ¶¶ 2–5; Am. Compl. ¶¶ 6–9). He sought a temporary restraining order to prevent the Department of Education from implementing student debt relief plan. (Filing 4, Motion for Temporary Restraining Order).

On September 29, the court held a telephonic scheduling conference. (Filing No. 12). Prior to that conference, the Department of Education opted Garrison out of the loan forgiveness program which prevented Garrison from establishing irreparable harm. (Filing No. 13, Notice from Defendants). The Department of Education also created an opt-out provision that would allow other individuals who would otherwise automatically receive relief to opt-out of the program. (Filing No. 31-1, Kvaal Decl. at 28). During the conference, Plaintiff orally requested leave to amend his complaint, which the court granted. Following the conference, the court denied the motions for a temporary restraining order and preliminary injunction without prejudice. (Filing No. 16). That denial was without prejudice pursuant to the parties' agreement. (*Id.*).

Plaintiffs then filed an Amended Complaint on October 10, 2022. (Filing No. 23). In this Amended Complaint, Garrison added an additional Plaintiff, Noel Johnson, who is in a materially identical position as Garrison was before the Department of Education opted Garrison out of the relief program. (Am. Compl. ¶¶ 78–91 (describing Johnson as an Indiana resident and a public interest employee pursuing PSLF forgiveness with a household income of less than $125,000 per year)). The Amended Complaint also alleges the beginnings of a class action suit for a putative class of "[a]ll persons who qualify for . . . impending automatic loan cancellation and reside in states imposing tax obligations for any amount of debt cancelled." (*Id.* at ¶ 95). Plaintiffs then moved for a

temporary restraining order (Filing No. 26), a preliminary injunction (Filing No. 25), and to certify this class (Filing No. 24).

II. Legal Standard

A court has an "independent duty" to investigate its own subject matter jurisdiction. *Dexia Crédit Loc. v. Rogan*, 602 F.3d 879, 883 (7th Cir. 2010). These potential jurisdictional problems "must" be addressed "at whatever point they arise in the proceedings." *United States v. Furando*, 40 F.4th 567, 579 (7th Cir. 2022) (quoting *George v. Islamic Rep. of Iran*, 63 F. App'x 917, 918 (7th Cir. 2003)). Article III standing is one of those jurisdictional problems. *Bazile v. Fin. Sys. of Green Bay, Inc.*, 983 F.3d 274, 278 (7th Cir. 2020). Providing "notice and a hearing or an opportunity to amend" is preferred, but a court may dismiss the case immediately if it determines the jurisdictional "defect is incurable."[1] *Furando*, 40 F.4th at 579 (quoting *George*, 63 F. App'x at 918).

Ultimately, the plaintiff "bears the burden of establishing" standing. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). Where the case is at the pleading stage, the plaintiff need "clearly . . . allege facts demonstrating" they are the "proper party to invoke judicial resolution of the dispute." *Warth v. Seldin*, 422 U.S. 490, 518 (1975). "That a suit may be a class action . . . adds nothing to the question of standing." *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 40 n.20 (1976).

[1] The Plaintiffs were made aware of possible jurisdictional deficiencies, given an opportunity to amend, amended their complaint, and briefed this issue. (*See* Filing Nos. 13 (explaining possible standing issues and granting leave to amend), 23 (Am. Compl.), 25 at 6–10 (Pls.' Br.)).

III. Discussion

Garrison and Johnson do not have standing because their injury is not traceable to the Department of Education or Secretary Cardona. Because this defect is incurable,[2] the court must dismiss the Amended Complaint.

The Article III standing requirement that triggers a federal court's jurisdiction is "founded in concern about the proper—and properly limited—role of the courts in a democratic society." *Warth*, 422 U.S. at 498. "No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Raines v. Byrd*, 521 U.S. 811, 818 (1997) (quoting *Simon*, 426 U.S. at 37). The importance of this doctrine precludes treating the analysis as "a mechanical exercise." *Allen v. Wright*, 468 U.S. 737, 751 (1984). Instead, standing questions are answered "chiefly by comparing the allegations of the particular complaint to those made in prior cases" as well as by referencing the "single basic idea" behind standing: the separation of powers. *Id.* at 751–52; *see also Flast v. Cohen*, 392 U.S. 83, 97 (1968) (explaining adjudication is acceptable only where it is "consistent with a system of separated powers"). The standing doctrine therefore "serves to prevent the judicial process from being used to usurp the powers of the political branches." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013).

[2] As the court concludes Garrison and Johnson have sued the wrong defendant for their injury (i.e. the Federal Government rather than Indiana), any further amendment of the complaint would be unresponsive to the jurisdictional deficiency. That makes amendment futile. *Campania Mgmt. Co. v. Rooks, Pitts & Poust*, 290 F.3d 843, 850 (7th Cir. 2002).

"The irreducible constitutional minimum of standing contains three elements": (1) a concrete and particularized injury-in-fact that is "actual or imminent, not conjectural or hypothetical," (2) that is "fairly . . . traceable to the challenged action of the defendant" and (3) will likely be "redressed by a favorable decision." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (cleaned up). Plaintiffs fail to establish the second element.

Traceability measures causation. *Allen*, 468 U.S. at 753 n.19. It does so to ensure the injury-in-fact does not flow from "the independent action of some third party not before the court." *Simon*, 426 U.S. at 41–42. Relatedly, "the right to complain of *one* administrative deficiency" does not "automatically confer the right to complain of *all* administrative deficiencies." *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996) (emphasis in original). Were the law otherwise, a citizen injured by one law "could bring the whole structure of [government] administration" into question. *Id.* That would be inconsistent with the carefully balanced "tripartite allocation of power," *Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, Inc.*, 454 U.S. 464, 474 (1982), and the principle that courts will not undertake tasks assigned to other branches would be become "hollow rhetoric," *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 353 (2006).

An injury is not traceable to the decision of a defendant where the injury flows from a different, independent decision made by a third party. *Id.* at 350–53 (finding injury traceable to municipality's decision to levy tax did not create standing to challenge state decision to levy different taxes). That means where there is nothing but a state's independent, discretionary decision to create harm, "the federal government cannot be the

cause of [plaintiff's] injuries" in the constitutional sense. *Segovia v. United States*, 880 F.3d 384, 389 (7th Cir. 2018).

Segovia, 880 F.3d at 388–89, illustrates this concept. Congress enacted a bill that required States to permit "overseas voters to . . . vote by absentee ballot." *Id.* at 387. While the federal law required States to permit absentee voting by individuals in overseas territories, the law did not extend this command to "Puerto Rico, Guam, [and] the Virgin Islands." *Id.* Illinois complied, but excluded voters, through state statute, in Guam, Puerto Rico and the Virgin Islands from voting through absentee ballot. *Id.* Plaintiffs challenged both the federal and state law. *Id.*

The Seventh Circuit held the plaintiffs' injuries were not traceable to the federal law because it only provided a benefit (requiring absentee ballots in certain territories) while Illinois law caused the harm (prohibiting absentee ballots in other territories). *Id.* at 388. That meant "the reason the plaintiffs cannot vote in federal elections in Illinois is not the [federal law], but Illinois' own election law." *Id.* And Illinois had "wide[]" discretion "to determine eligibility for overseas absentee ballots under its election laws." *Id.* at 389. As "the federal government [did not] run the elections in Illinois . . . whether the plaintiffs can obtain absentee ballots is entirely up to Illinois." *Id.*

Likewise in *Pennsylvania v. New Jersey*, 426 U.S. 660 (1976), the Court held that a unilateral decision by some States to reimburse their residents for taxes levied by other States was not a basis to attack the other States' tax schemes. *FEC v. Cruz*, 142 S. Ct. 1638, 1647 (2022) (describing the holding of *Pennsylvania v. New Jersey*). The challenged tax schemes did not require the plaintiff States to enact any law; the injury

flowed "from decisions by [plaintiffs'] respective legislatures" made at their own discretion.[3] *Pennsylvania*, 426 U.S. at 664. *Simon* is similar. 426 U.S. 26. There, the Supreme Court determined the injury of not providing emergency services to indigent patients was not traceable to an IRS policy that gave favorable tax treatment to hospitals without such services. *Id.* That was because "it was the hospitals—not the IRS—that made the decision not to treat the patients." *Segovia*, 880 F.3d at 388 (describing *Simon*, 426 U.S. at 41–42).

The same is true here. It is Indiana—not the Department of Education—that made the decision to impose a higher tax burden. (Compl. ¶ 90 (describing harm from Ind. Code § 6-3-1-3.5(a)(30))). Indiana has wide latitude to determine its own tax policy, U.S. Const. amend X; Ind. Const. art. 10 §§ 1, 8, and its decision caused Plaintiffs' injuries. The debt relief program only provides a benefit by eliminating part of Plaintiffs' debt load. As federal law only provides benefits and Indiana law solely causes the injury, whether Plaintiffs face an injury is entirely up to Indiana. Indeed, allowing a Plaintiff to subject a government program to review solely because the plaintiffs were injured by an entirely separate legal code was the exact theory of standing rejected by the *Lewis* Court. *Lewis*, 518 U.S. at 358 n.6 (describing that theory as "not the law"). Such a suit would be inconsistent with the principles governing the separation of powers as well as those undergirding our system of Federalism. *See Younger v. Harris*, 401 U.S. 37, 44–45

[3] Importantly, *Pennsylvania* does not stand for the principle that a party lacks standing when it self-inflicts an injury. *See Cruz*, 142 S. Ct. at 1647 (rejecting this reading and holding a party choosing to self-inflict injuries still has standing if it satisfies traceability and redressability).

(1971) (explaining "Our Federalism" represents "a system . . . in which the National Government," which necessarily includes the judiciary, will "always endeavor" to avoid "unduly interfer[ing] with the legitimate activities of the States").

Plaintiffs attempt to circumvent the precedents discussed above by distinguishing their facts. In their view, this case is unlike *Segovia* because there "the alleged harm arose solely because of a state law decision *permitted* by federal statute" while the injury here results from "the inevitable operation of state tax law" following the administration of a federal benefits program. (Pls.' Br. at 10) (emphasis in original). That is no distinction at all; it simply rephrases the point. State tax law is a state decision permitted by federal law. As Plaintiffs concede, the thrust of *Segovia* is that "state law inflicted the harm" instead of federal law. (*Id.*). That is true here as well: state tax burdens are solely a state law decision—Indiana's "policymakers . . . retain broad discretion to make policy decisions concerning state" financing. *DaimlerChrysler*, 547 U.S. at 346. Whether Plaintiffs suffer an injury, then, is solely a matter of Indiana law.

This proposition becomes more apparent after examining those excluded from Plaintiffs' class action. The proposed class encompasses "[a]ll persons who qualify for . . . automatic loan cancellation and reside in states imposing income tax obligations." (Am. Compl. ¶ 95). These states are currently limited to Arkansas, Indiana, Minnesota, North Carolina, and Wisconsin. *See* Ark. Code § 26-51-404(b)(10); Ind. Code § 6-3-1-3.5(a)(30); Minn. Stat. § 290.01(19)(f); N.C. Stat. § 105-153.5(c2)(22); Wis. Stat § 70.01. A person in California, for example, suffers no injury at all despite the application of the same federal benefits program. The only difference between this hypothetical California

plaintiff and the current Plaintiffs is the decisions of their respective state legislatures. Put differently, the injury-in-fact materializes only once a state legislature decides to structure its tax code in a particular way. That theory of traceability is untenable under established standing precedents. *See, e.g.*, *Pennsylvania*, 426 U.S. at 664 ("The injuries to plaintiffs . . . result[ed] from decisions by their respective state legislatures," and as "[n]othing required" the plaintiff States to enact these laws, there was no standing.); *Segovia*, 880 F.3d at 389 (finding no standing to challenge federal law "because there is *nothing* other than [state] law" causing harm) (emphasis in original).

Plaintiffs' last redoubt misidentifies the traceability principle at issue. They argue this injury-in-fact is traceable to the Department of Education because the application of Indiana's tax code is a "predictable" result of granting student loan relief. *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2566 (2019) (explaining that Article III only requires "*de facto*" causality). When the Court spoke of *de facto* causality, it spoke not of the results of the Government action but of the "predictable effect of Government action *on the decisions of third parties*." *Dep't of Com.*, 139 S. Ct. at 2566 (emphasis added). The question is, therefore, whether the federal policy influenced the decision making of a third-party in a predictable way; if the decision of the third-party is independent from the federal policy, there is no traceability. *See Bennett v. Spear*, 520 U.S. 154, 169 (1997) (explaining there is no standing where the injury "is the result of the *independent action* of some third party not before the court" but that "does not exclude injury produced by determinative or coercive effect upon the action of someone else") (emphasis in original); *see also California v. Texas*, 141 S. Ct. 2104, 2117 (2021) (explaining an "independent

third party" action will only establish traceability where the third party "will likely *react*" to the federal program) (emphasis added). Put another way, this strand of traceability is satisfied only where the allegedly unlawful Government decision predictably encourages a third-party to decide to injure the plaintiff. *See, e.g.*, *Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Norton*, 422 F.3d 490, 501 (7th Cir. 2005).

So in *Lac Du Flambeau*, an Indian tribe had standing to challenge a gaming compact between Wisconsin and another tribe that limited the Lac Du Flambeau band's ability to start up an off-reservation casino. *Id.* Under the relevant statutory scheme, the United States had to reject the compact within 45 days or it would take effect and injure Plaintiff. *Id.* at 494. That injury, created by the compact between a State and another tribe, was traceable to the United States because the United States gave "silent approval" to the plan. *Id.* at 501. That silent approval predictably encouraged the third parties to enforce the plan to harm the Lac Du Flambeau tribe, which created causation. *Id.*

That is not the issue here. The student loan relief program did not persuade, cajole, or otherwise influence Indiana's legislature in the construction of its tax code. Much the opposite, Indiana's "power to levy and collect taxes is one of the highest attributes of [its] sovereignty, and can only be exercised by the authority of the legislature." *Bright v. McCullough*, 27 Ind. 223, 232 (1866). This is not to say the federal government can never coerce a state legislature to implement a tax, as federal coercion of state legislatures does occur on occasion. *See, e.g.*, *New York v. United States*, 505 U.S. 144, 175–77 (1992). That is just not the case here. The Department of Education does not give silent approval to Indiana's tax code; those decisions are entirely

within the discretion of the Indiana legislature. "Given that type of unfettered discretion with respect to the plaintiffs, the federal government cannot be the cause of their injuries." *Segovia*, 880 F.3d at 389.

At bottom, "that a litigant cannot, 'by virtue of his standing to challenge one government action, challenge other governmental actions that did not injure him'" is a fundamental principle of Article III standing. *Cruz*, 142 S. Ct. at 1650 (quoting *DaimlerChrysler*, 547 U.S. at 353 n.5). "Standing is not dispensed in gross," *Lewis*, 518 U.S. at 359 n.6, but dispensed only toward "the challenged action" that fairly causes the injury, *Poe v. Ullman*, 367 U.S. 497, 504 (1961). Because Garrison and Johnson fail to establish the student loan relief plan fairly caused their injury, Plaintiffs lack standing to challenge that plan and this case does not present a justiciable controversy.

IV. Conclusion

For the reasons discussed above, the complaint is **DISMISSED without prejudice**. *See T.W. and M.W. v. Brophy*, 124 F.3d 893, 898 (7th Cir. 1997) (explaining dismissals for want of subject-matter jurisdiction are necessarily without prejudice). Plaintiffs' Motions to Certify Class (Filing No. 24), for a Preliminary Injunction (Filing No. 25), and for a Temporary Restraining Order (Filing No. 26) are **DENIED as moot**. Defendants' Motion to Dismiss for Lack of Jurisdiction (Filing No. 30) and Motion for Extension of Time to File Response (Filing No. 34) are **DENIED as moot**.

IT IS SO ORDERED this 21st day of October 2022.

RICHARD L. YOUNG, JUDGE
United States District Court
Southern District of Indiana

Distributed Electronically to Registered Counsel of Record.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FRANK GARRISON, on behalf of himself and all others similarly situated, and NOEL JOHNSON, on behalf of himself and all others similarly situated,	)	
Plaintiffs,	)	
v.	)	No. 1:22-cv-01895-RLY-TAB
U.S. DEPARTMENT OF EDUCATION, MIGUEL CARDONA, in his official capacity as U.S. Secretary of Education,	)	
Defendants.	)	

FINAL JUDGMENT

In today's Entry, the court dismissed the Plaintiffs amended complaint without prejudice. In doing so, the court resolved all of the claims at issue in the case. Accordingly, the court now enters final judgment in favor of the Defendants and against the Plaintiffs.

IT IS SO ORDERED this 21st day of October 2022.

RICHARD L. YOUNG, JUDGE
United States District Court
Southern District of Indiana

Roger A.G. Sharpe, Clerk

BY: Dina M. Dafle
Deputy Clerk, U.S. District Court

Distributed Electronically to Registered Counsels of Record.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

FRANK GARRISON, *et al.*, Plaintiffs, v. U.S. DEPARTMENT OF EDUCATION, *et al.*, Defendants.	CIVIL ACTION NO.: 1:22-cv-1895

NOTICE OF APPEAL

Plaintiffs Frank Garrison and Noel Johnson, on behalf all those similarly situated, hereby appeal, pursuant to 28 U.S.C. § 1291, to the United States Court of Appeals for the Seventh Circuit from the memorandum and order of the district court, entered on October 21, 2022 (ECF Nos. 36 and 37), dismissing Plaintiffs' Amended Complaint and entering final judgment in favor of Defendants and against Plaintiffs.

DATED: October 21, 2022

Respectfully submitted,

/s/ Caleb Kruckenberg
CALEB KRUCKENBERG*

/s/ Michael Poon
MICHAEL POON*

**Pro Hac Vice*
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that on this day, October 21, 2022, I served copies of the foregoing on counsel of record for all Defendants using the Court's CM/ECF system.

/s/ Caleb Kruckenberg
CALEB KRUCKENBERG