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On Student Loans, the Biden Administration Hopes the Arc of Justice Bends Away from Supreme Court Precedent

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KEY TAKEAWAYS

The current student loan debt cancellation proposal is a regressive redistribution of wealth from non-college graduates to college graduates.

The proposed rule canceling certain student loans exceeds the limited authority that Congress delegated to the Secretary of Education over student loans.

The only limit discernible in the current proposal is the Administration's estimate of how much student loan debt can be erased before voters reject this policy.

The Biden Administration, like its ideological predecessor the Obama Administration, takes a secular millenarian view of history. To paraphrase their favorite prophet of progress, history is forever arcing toward justice.[1] Thus, whenever the Administration recasts a policy issue as a matter of fundamental justice, it will pursue its preferred solutions with an unapologetic disregard for restraint. After all, what good is rigid legal formalism when a higher justice is at stake?

Student loan debt is one such policy issue that has been elevated by the White House and the Department of Education into a question of justice. The "relief" touted by the Administration in its tedious litany of press releases supposedly reaches only the most deserving borrowers. That relief is, therefore, never a (regressive) redistribution of wealth from non-college graduates to college graduates. No, it is

an imperative, analogous to oxygen in its basic necessity. Per Secretary of Education Miguel Cardona, by canceling or transferring debt to others, the Administration gives the newly unburdened borrowers "breathing room from bills that, too often, compete with basic needs."[2]

But debt cancellation is not only economic oxygen for borrowers, it is also the stuff that dreams are made of. As President Joe Biden put it, "[W]e all... share one goal: Give everybody a fair shot—just a shot—freedom to chase their dreams."[3] Rest assured that the Administration is prepared to deploy "every tool at [its] disposal to get student loan borrowers the relief they need to reach their dreams."[4] And where the therapeutic language of dreams and self-realization does not do the trick, the Administration has other still more sordid appeals. Student debt cancellation is (predictably) a matter of "racial equity,"[5] and the Administration will exert all the authority it has (and some that it does not) to "provide significant relief to black and Latino borrowers."[6] When identitarian-leftism is the order of the day, racial justice is always preferable to the more complex, but more genuine, article.

Of course, it is not the first time the executive branch has appointed itself the guardian of certain dreams and "dreamers."[7] And now, as then, those who question the legality of the executive branch's pro-dream intrigues are dismissed as unfeeling and irrational because they deny the supposedly self-evident necessity of relief. When two federal courts recently paused portions of the latest debt-canceling plans, Secretary Cardona inveighed against the rulings, reminding the public that no legitimate argument against debt cancellation can be made, and those who try are merely mouthpieces for shadowy "special interests."[8] Never mind that the two judges who ruled against the core provisions of the Administration's latest gambits were both appointed by President Barack Obama.[9]

Obscured by faith in the moral necessity of student loan cancellation are rudimentary questions of responsibility. For instance, to what extent are borrowers responsible for the debts they incurred to improve their professional prospects? To what extent are they responsible for their choice of degree or profession and the resulting consequences for their inability to repay their loans? To what extent should those without student debt (because they repaid in full or never borrowed) be obliged to shoulder some of the burdens incurred by others? To what extent are any of these questions or decisions the responsibility of the executive branch?

The answer to that last question does not inevitably derive from how one answers the preceding questions. One may be convinced that the burden of student loan debt has become a kind of crisis, that borrowers bear little responsibility for it, and still acknowledge that any solution worthy of the

name must be legislative. Legislation would offer a more durable resolution than executive action. Yet a legislative solution is precisely what the Administration has avoided. It is not that a bill cannot be had, but such a bill would involve compromises, and one simply does not compromise on matters of justice—at least to those on the left.

That sheer, uncompromising conviction counts for something—approximately $167 billion in fact,[10] the amount of debt which the Administration has relieved borrowers of through a series of dubiously legal maneuvers, ones which it brags about in public but dissembles about when dragged before judges.

In its relentless student debt–transfer campaign, the Biden Administration has taken advantage of the fact that the executive branch gets the first crack at interpreting laws. Even old laws can be renovated and made new, provided that executive branch lawyers bring enough ends-oriented creativity to the task. This is how the Higher Education Act, a law enacted in 1965, has become the font from which fresh streams of executive debt-cancelling power flow for the first time in its 60-year existence.

By seizing the initiative, the executive branch forces the other branches to become reactive, panting after the President in an (often vain) attempt to outpace his policy changes. A substantial portion of Congress agrees enough with the President's aims not to be bothered by the fact that he and the administrative state are, in effect, legislating without Congress. The courts, while somewhat more protective of their Article III interpretive prerogative, are limited by time-intensive procedures and can address only those questions that have concrete effects on the litigants before them—facts that have always made courts ill-suited for settling major policy disputes.

The Administration's bet—cynical, but canny—is that opinions of the relevant portions of the public will have warmed to the policy by the time the ponderous machinations of the courts or legislature have worked out a response. As Americans shift to viewing constitutional constraints as useless impediments rather than safeguards, they come to prize short-term rewards, sparing little concern for which part of government enacts a policy from which they might reap some financial benefit.

The analysis and arguments that follow address the latest installment in the Administration's hydra-policy approach to student loan debt, which comes in the form of a proposed Department of Education rule sonorously titled, "Student Debt Relief for the William D. Ford Federal Direct Loan Program (Direct Loans), the Federal Family Education Loan (FFEL) Program, the Federal Perkins Loan (Perkins) Program, and the Health Education Assistance Loan (HEAL) Program."[11] Neither the costliest nor best-known

rule to emerge, it is nonetheless one that exemplifies the spirit of legal evasion with which the Administration has responded to its defeat in *Biden v. Nebraska*. In the main, it proposes to "waive"—a euphemism for canceling or transferring to taxpayers—the loan balances of certain classes of borrowers who have been in repayment for significant periods or who have allowed the accrual of interest on their loans to exceed their original principal amounts. The following arguments were part of a longer comment that the author co-wrote and which was submitted to the Department of Education.[12]

Exceeding Lawful Authority

The ailment underlying the department's approach can be diagnosed simply enough: The proposed rule exceeds the limited authority that Congress delegated to the Secretary of Education over student loans. In the Higher Education Act (HEA), Congress created a few targeted programs under which the Secretary could forgive student loan debts in "certain limited circumstances and to a particular extent."[13] Per the Supreme Court:

> [T]he Secretary can cancel a set amount of loans held by some public servants—including teachers, members of the Armed Forces, Peace Corps volunteers, law enforcement and corrections officers, firefighters, nurses, and librarians—who work in their professions for a minimum number of years. §§ 1078–10, 1087j, 1087ee. The Secretary can also forgive the loans of borrowers who have died or been "permanently and totally disabled," such that they cannot "engage in any substantial gainful activity." § 1087(a)(1). Bankrupt borrowers may have their loans forgiven. § 1087(b). And the Secretary is directed to discharge loans for borrowers falsely certified by their schools, borrowers whose schools close down, and borrowers whose schools fail to pay loan proceeds they owe to lenders. § 1087(c).[14]

The Court gave no indication that the HEA contains a further delegation of power to the Secretary to create new cancellation programs on an ad hoc basis. Nevertheless, under the proposed rule, the Secretary asserts that the power to waive a "right, title, claim, lien, or demand" contained in 20 U.S.C. § 1082 enables him to erase up to $84 billion-worth of student debt held by roughly 17 million borrowers, conceding that in many instances the result of waiver will be that the "entire outstanding balance of a loan" is erased.[15] This is neither a reasonable reading of the HEA, nor a faithful execution of Congress' purpose.

A Power More Imagined Than Real

As explained below, the waiver power, when it applies, is an inadequate legal basis for the vast undertaking previewed in the notice. But a threshold problem precedes that difficulty: By the HEA's plain terms, the Secretary lacks the power to waive loans issued under the Ford Federal Direct Loan Program. Thus, those portions of the proposal that waive balances on direct federal loans are flatly beyond the Secretary's authority. Whatever waiver authority the Secretary has applies only in the context of the Federal Family Education Loan (FFEL) Program.

Statutory Authority. Section 1082(a), where the waiver power is found, is an adjunct to the responsibilities conferred on the Secretary in "this part," which refers to "Part B" covering FFEL loans.[16] The direct loan program, by contrast, is dealt with in a separate part of the HEA, Part D.[17] Part D contains no stand-alone waiver authority. Thus, the Secretary tries to import it. Relying on 20 U.S.C. § 1087a(b)(2) and a handful of thinly reasoned district court opinions, the Secretary maintains that all his powers over the FFEL program necessarily apply with equal force to the direct loan program.[18] That assumption is unwarranted.

Section 1087a(b)(2) states that "loans made to borrowers under this part… have the same terms, conditions, and benefits as loans made" under the FFEL program.[19] Congress, however, characterized the Secretary's waiver authority not as term, condition, or benefit, but as a "general power."[20] The notice makes no argument for why these manifestly different concepts should be conflated. Principles of sound statutory interpretation dictate the contrary approach; each word in a statute should be given its own commonly understood meaning, not blended willy-nilly into a mélange of implausible synonyms.

Legal Precedent. The notice gains little in the way of legal support by citing a few district court opinions.[21] For instance, in *Sweet v. Cardona*, an opinion out of the U.S. District Court for the Northern District of California, the judge made no effort to parse the HEA's text; the court noted only that the department has operated under the assumption that the Secretary's FFEL powers applied to the direct loan program.[22]

An opinion issued by a judge on the District Court for the District of Columbia in *Weingarten v. Department of Education* contains no reasoning at all on this issue, nor a scrap of legal authority for the court's conclusion that the Secretary has the same powers over direct loans as he does over FFEL loans; instead, the decision contains a lonely record citation to allegations in the borrowers' amended complaint.[23] To call these legal justifications a foundation of sand would be an injustice to the cohesive properties of sand.

The HEA offers the Secretary no clear power to waive borrower balances on direct loans. At best, the Secretary's assertion of waiver authority rests on the existence of an ambiguity as to whether the words "terms, conditions, and benefits" in § 1087a incorporate the "general powers" in § 1082(a). This was the conclusion implicit in the court's approach in *Sweet*, when the judge stated that "courts generally will defer to an agency's construction of the statute it is charged with implementing."[24] But this raises several difficulties unaddressed in the notice.

First, the Secretary makes no argument that the HEA is ambiguous. Presumably, the Secretary's general powers must fit within one of the three headings listed in § 1087a, but which is it? Are the general powers a term, a condition, or a benefit? One sifts the notice's 279 pages for an answer in vain. Moreover, contra the *Sweet* opinion, there is no such thing as generalized judicial deference to agencies when a law is ambiguous. When that case was decided, there were two specifically denominated forms of deference: *Chevron* deference, which requires judicial acquiescence to "reasonable" agency interpretations, and *Skidmore* deference which is dependent on the persuasiveness of the agency's reasoning.[25]

As of June, however, *Chevron* is no more. Per Chief Justice John Roberts' majority opinion, "*Chevron* is overruled. Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority."[26] Now, instead of looking for "permissible" readings, courts must do their level best "to determine the best reading of the statute."[27] Could Secretary Cardona maintain with a straight face that his novel reading of the HEA, one that not a single predecessor in his office shared, is the best reading of the statute? He will surely give it the old college try, but federal judges need not be a credulous audience for that performance.

Though *Skidmore* remains, whatever deference that decision affords is so conditional that several sitting justices maintain that it is not a form of deference at all.[28] That it will not apply to the proposed rule anyway is a conclusion strengthened by the fact that courts are (and ought to be) unwilling to *imply* powers of such consequence and potency as what the Secretary asserts in the notice.[29] Therefore, proceeding with the current proposal under the assumption that a supposed ambiguity is sufficient to support the rule is unreasonable.

A Better Approach. The better approach to the HEA comes from an opinion emanating from the District Court for the District of Connecticut, which stated that

> while there are provisions making clear that loans issued under Part D are subject to the same terms, conditions, and benefits as loans issued under Part B…I

> have not found, and the parties have not cited, language incorporating into Part D the Secretary's "general powers"…from Part B.[30]

That is the most natural interpretation of the interplay between Sections 1087a and 1082(a). Congress plainly could have drafted § 1087a to say that direct loans would be subject to the same terms, conditions, benefits *and powers or authority*, but it did not. The Secretary is not free to rewrite the law under the pretense of interpretation so that Congress' handiwork better suits his party's past and future campaign promises.[31]

An Unfaithful Interpretation of Congressional Intent

Putting that aside and assuming for argument's sake that the Secretary has the waiver power over all the affected loans, the legal interpretation the Secretary advances in the proposed rule is not consistent with the HEA's text and structure. Congress created only a few cancellation programs, all subject to stringent criteria, indicating that Congress saw a need only for limited instances of student debt forgiveness. These few debt-relief programs stand against a statutory backdrop that "specifies in detail the terms and conditions attached to federal loans, including applicable interest rates, loan fees, repayment plans, and consequences of default."[32]

Among the details specified by Congress is an explicit distinction between student loans and educational grants.[33] Additionally, where Congress gave the Secretary of Education power to dispose of direct loans (through sale or purchase), Congress required him or her to confer with the Secretary of the Treasury and to determine that the proposed redisposition of student loans was "in the best financial interests of the Federal Government" in the case of sales or would "not result in any net cost to the Federal Government" in the case of loan purchases.[34]

Taken together, these attributes of the HEA warrant several conclusions. First, Congress was, and remains, well aware that some borrowers become encumbered by student debt that they will struggle to repay in full. Yet Congress determined that it was desirable to provide relief programs only for a limited subset of such borrowers. Given the degree of specificity in the HEA, it beggars belief that when Congress granted the Secretary of Education authority to "waive" a "right, title, claim [or] lien," it intended to give the Secretary authority to create—in his sole discretion—new, and much broader, debt-relief programs with wide-ranging consequences for the federal balance sheet.

New debt-relief programs like the ones the Secretary proposes cannot be erected within the HEA's existing structure without disregarding the

definitions and limits that Congress carefully worked out for other programs.[35] The creation of these novel programs also disregards the fact that Congress nowhere gave the Secretary authority to convert monies appropriated for loans into grant funding, though this is in many cases the intended effect of the proposal as a significant number of borrowers will repay less than the amount loaned to them.

These are difficulties that the notice does not acknowledge, let alone address; rather, it asserts that the Secretary has "existing and longstanding authority" to implement these new relief programs single-handedly.[36] Rather than explain that legal authority, the notice merely begs the question: What exactly is this power and where are the past exercises of it that mirror the current project in scope? If the power of mass debt cancellation is indeed long-standing, then why have previous secretaries been unaware of the vast untapped potential lurking in a law extant since 1965 with even older statutory antecedents?[37] Where are the past instances evidencing the existence of anything akin to the scope of authority the Secretary now claims to find in the "statutory backwater" that is Section 1087a?[38]

Finally, whatever waiver power the Secretary has, he can exercise it only in furtherance of a limited set of aims: those entailed in the "performance of, and with respect to, the functions, powers, and duties" vested in him by the parts of the HEA that create the relevant loan program.[39] The notice bats away this concern, explaining that here "waiver authority operates within the context of the HEA's goals" and that "considerations of equity and fairness" militate in favor of this exercise of the waiver authority.[40] Describing the Secretary's duties at that level of generality eliminates any meaningful constraint on the Secretary's discretion, even as the notice assures the reader that the Secretary has only "bounded flexibility."[41] Bounded by what exactly? A gymnastically flexible approach to the separation of powers?

Absent reference to the Secretary's specific responsibilities under the HEA, considerations of equity and fairness could just as easily become a pretext for expanding student debt relief beyond the programs authorized by Congress and a means for the Secretary to avoid his duty to administer the student loan program. To the extent the Secretary can waive loan balances on the basis of financial hardship, that power is evidently limited to interstitial application on a retail-level basis.

Major Questions Raise Proportional Doubts

Looming over this proposal and every executive branch effort to eliminate outstanding student loan debt unilaterally is the major questions

doctrine. Where an agency "claim[s] to discover in a long-extant statute an unheralded power representing a transformative expansion in [its] regulatory authority," the Supreme Court has stated that courts should not presume that Congress has delegated the asserted authority.[42] Instead, it will require the agency to identify "clear congressional authorization for the power it claims," not merely to a "plausible textual basis" for that power.[43]

Biden v. Nebraska. Here, the proposed rule bears every relevant hallmark of a major question that Congress alone is competent to address. And the reasons why can be found in the decision that struck down the Secretary's last student-debt-cancellation bid: *Biden v. Nebraska*. There, as here, the Secretary claimed authority effectively "to rewrite [the Higher Education Act] from the ground up" and institute "a novel and fundamentally different loan-forgiveness program" from those designed by Congress.[44] There, as here, the "Secretary's assertion of administrative authority has 'conveniently enabled [him] to enact a program' that Congress has chosen not to enact itself."[45] And there, as here, the "sweeping and unprecedented impact of the secretary's loan forgiveness program" places the issue squarely in the purview "of the House and Senate Committees on Appropriations," not the Department of Education.[46]

Price Tag. Nor do the legally relevant similarities end there. "The economic and political significance of the secretary's action is staggering."[47] The proposed plan, like its predecessor, is expensive. Its $84 billion price tag may be small relative to the Administration's previous debt jubilee, but it is no modest sum, and compared with the dollar figure attached to past major questions, it is evident that this amount is more than sufficient.[48]

Political Importance. As for political salience, the issue of student loan debt is and remains a matter of great political import. What, if anything, could possibly have intervened between June 2022 and now to make that any less so? One gets the distinct impression that it is precisely the issue's enduring political significance that has prompted the Secretary to undertake this and other impromptu executive initiatives to eliminate student debts in an election year. The Secretary cannot avoid the issue's political valence by simply invoking a new statutory justification for the giveaway, particularly when the new statutory basis is as dubious as the last.

No Limiting Principle. More alarming than the exact dollar figure is the lack of any real limiting principle to the authority that the Secretary asserts. Here, as in *Biden v. Nebraska*, under "the Government's reading of the [Higher Education] Act, the secretary would enjoy virtually unlimited power to rewrite the Education Act" as it pertains to student loans.[49]

The notice repeatedly claims that this is only a "one-time waiver."[50] But the notice is clear that the already broad contours of the current proposal do not "limit the Secretary's discretion to waive debt in other circumstances."[51] Even were this waiver-en-masse a one-off, that fact would do nothing to bolster its legality. Nothing in the Secretary's thumbnail sketch of a legal theory would prevent future secretaries from doing the same thing as often as the officeholder deems it desirable.[52]

Legislative, Not Discretionary. What the Secretary purports to exercise in the proposed rule is no "discretionary" authority appropriate to the executive branch; it is full-blown legislative authority, treading into the appropriations domain constitutionally reserved to Congress, unmoored from any intelligible principled limit to its application.[53] The only limit discernible in the current proposal is the Administration's estimate of how much debt can be erased before more voters will punish the President's party for his profligacy than will reward it.

The major questions doctrine poses an inescapable legal obstacle to the Secretary's designs. For the reasons explained, the problem is not obviated simply because the Secretary now purports to find his authority in the HEA instead of the HEROES Act.[54] Thus, the Secretary must confront the matter before he can forge ahead with a dubiously legal undertaking. Agency policymaking is required to be reasonable, not wishful.

Conclusion

The rule discussed above has yet to be finalized. It may be rolled out before the November election. It may be timed out by a change in the party controlling the executive branch. Vice President Kamala Harris has given every indication that she would continue her predecessor's exertions on student loans were she to prevail this fall.[55]

Whether the merits of this rule or its cognate policies are ever fully litigated, the underlying questions are likely to persist: What enforceable barriers or consequences prevent the executive branch from reallocating funds spent by Congress to favor certain politically salient groups? Suffice it to say that the temptation to use the executive office to redistribute public funds to one's supporters has plagued democracy since its inception as a political form.[56] Thus, the problem is likely to recur, in one form or another, until either Congress or the courts provide some relatively durable answer.

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Endnotes

1. *See* Deborah Ellis, *The Arc of the Moral Universe Is Long, But It Bends Toward Justice*, White House (Oct. 21, 2011) (quoting Dr. Martin Luther King, Jr.), https://obamawhitehouse.archives.gov/blog/2011/10/21/arc-moral-universe-long-it-bends-toward-justice.
2. U.S. Dep't of Educ., Statement from U.S. Secretary of Education Miguel Cardona on Missouri and Kansas District Court Rulings on Biden–Harris Administration's Saving on a Valuable Education (SAVE) Plan (June 25, 2024), https://www.ed.gov/news/press-releases/statement-us-secretary-education-miguel-cardona-missouri-and-kansas-district-court-rulings-biden-harris-administrations-saving-valuable-education-save-plan.
3. *Remarks by President Biden on His Student Loan Debt Relief Plan for Tens of Millions of Americans| Madison, Wisconsin*, White House (April 8, 2024), https://www.whitehouse.gov/briefing-room/speeches-remarks/2024/04/08/remarks-by-president-biden-on-his-student-loan-debt-relief-plan-for-tens-of-millions-of-americans-madison-wisconsin/.
4. *Statement from President Joe Biden on Student Loan Debt Cancellation for More Than 800,000 Borrowers*, White House (Aug. 14, 2023), https://www.whitehouse.gov/briefing-room/statements-releases/2023/08/14/statement-from-president-joe-biden-on-student-loan-debt-cancellation-for-more-than-800000-borrowers/.
5. *Fact Sheet: President Biden Announces Student Loan Relief for Borrowers Who Need It Most*, White House (Aug. 24, 2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/24/fact-sheet-president-biden-announces-student-loan-relief-for-borrowers-who-need-it-most/.
6. *Fact Sheet: President Biden Announces New Plans That Would Provide Relief to Borrowers Disproportionately Burdened by Student Loan Debt*, White House (April 8, 2024), https://www.whitehouse.gov/briefing-room/statements-releases/2024/04/08/fact-sheet-president-biden-announces-new-plans-that-would-provide-relief-to-borrowers-disproportionately-burdened-by-student-loan-debt/.
7. Barack Obama, Remarks by the President on Immigration (June 15, 2012), https://obamawhitehouse.archives.gov/the-press-office/2012/06/15/remarks-president-immigration.
8. Jonathan Butcher and Jack Fitzhenry, *Biden–Harris Administration Keeps Breaking the Law To Buy Votes From College Grads*, Federalist (July 31, 2024), https://thefederalist.com/2024/07/31/biden-harris-administration-keeps-breaking-the-law-to-buy-votes-from-college-grads/.
9. Judge Daniel Crabtree of the U.S. District Court for the District of Kansas and Judge John Ross of the U.S. District Court for the Eastern District of Missouri.
10. Press Release, U.S. Dept. of Educ., Biden–Harris Administration Announces Additional $7.7 Billion in Approved Student Debt Relief for 160,000 Borrowers, (May 21, 2024), https://www.ed.gov/news/press-releases/biden-harris-administration-announces-additional-77-billion-approved-student-debt-relief-160000-borrowers.
11. Docket ID ED–2023–OPE–0123.
12. *See* Jack Fitzhenry Madison Marino, and Lindsey M. Burke, Comment Letter on Proposed Rule for Student Loan Cancelation (May 19, 2024), https://www.regulations.gov/comment/ED-2023-OPE-0123-31915.
13. Biden v. Nebraska, 143 S. Ct. 2355, 2363 (2023).
14. *Id.*
15. Student Debt Relief for the William D. Ford Federal Direct Loan Program (Direct Loans), the Federal Family Education Loan (FFEL) Program, the Federal Perkins Loan (Perkins) Program, and the Health Education Assistance Loan (HEAL) Program (proposed Apr. 17, 2024) (codified at 34 C.F.R. pts. 30 and 682), at 17, https://public-inspection.federalregister.gov/2024-07726.pdf (hereinafter Notice); *see also Analysis of President Biden's New Plans for Student Loan Debt Relief—April 2024* (Apr. 11, 2024), Univ. of Penn., https://budgetmodel.wharton.upenn.edu/issues/2024/4/11/biden-student-loan-debt-relief.
16. 20 U.S.C. § 1082(a).
17. *See* 20 U.S.C. § 1087a *et seq*.
18. Notice at 17 n.4.
19. 20 U.S.C. § 1087a(b)(2).
20. 20 U.S.C. § 1082(a).
21. Notice at 17 n.4.
22. Sweet v. Cardona, 641 F. Supp. 3d 814, 823–24 (N.D. Cal. 2022).
23. Weingarten v. DOE, 468 F.Supp.3d 322, 328 (D.D.C. 2020).
24. *Sweet*, 641 F. Supp. 3d at 823–24.
25. Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984); Skidmore v. Swift & Co., 323 U.S. 134 (1944). Heckler v. Chaney, 470 U.S. 821, 834 (1985), the only decision cited by the district court, has not been interpreted to establish a separate, freestanding form of deference.
26. Loper Bright Enterprises v. Raimondo, 603 U. S. _____ (2024) slip op. at 35.

27. *Id.* at 23.
28. See Relentless Inc. v. Dept. of Commerce, No. 22–1219, Oral Arg. Tr. at 52; Loper Bright v. Raimondo, No. 22–451 Oral Arg. Tr. at 31.
29. *See* Biden v. Nebraska, 143 S. Ct. 2355, 2380 (2023) (Barrett, J. concurring).
30. Pennsylvania Higher Educ. Assistance Agency v. Perez, 416 F. Supp. 3d 75, 96 (D. Conn. 2019).
31. *See* Jack Fitzhenry and GianCarlo Canaparo, *The Dean Wormer Theory of Administrative Law*, 27 Texas Rev. of L. & Politics 371, 375–76, 423 (2023) (describing President Biden's student loan–related campaign promises).
32. *Biden*, 143 S. Ct. at 2362.
33. *Compare* 20 U.S.C. § 1070a *et seq.* (Part A—Grants to Students in Attendance at Institutions of Higher Education) *with* 20 U.S.C. § 1087a (Part D—William D. Ford Federal Direct Loan Program).
34. 20 U.S.C. §§ 1087i, 1087i–1.
35. *Cf.* Biden v. Nebraska, 143 S. Ct. 2355, 2369 (2023) ("No prior limitation on loan forgiveness is left standing.").
36. Notice at 42.
37. Colin Mark, *May the Executive Branch Forgive Student Loan Debt Without Further Congressional Action?* 42 J. Nat'l Ass'n Admin. L. Judiciary 97 (2022).
38. W. Virginia v. Env't Prot. Agency, 597 U.S. 697, 730 (2022).
39. 20 U.S.C. § 1082(a).
40. Notice at 18, 19.
41. *Id.* at 18.
42. W. Virginia v. Env't Prot. Agency, 597 U.S. 697, 724 (2022) (internal quotation marks omitted).
43. *Id.* at 723.
44. Biden v. Nebraska, 143 S. Ct. 2355, 2368 (2023).
45. *Id.* at 2373.
46. *Id.* at 2374.
47. *Id.* at 2358.
48. *See, e.g.*, Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs., 141 S. Ct. 2485, 2489 (2021) (per curiam) (noting that $50 billion would be a "reasonable proxy of the moratorium's economic impact").
49. *Biden*, 143 S. Ct. at 2373.
50. *See, e.g.*, Notice at 28, 45.
51. Notice at 34.
52. *See* Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., 142 S. Ct. 661, 669 (2022) (Gorsuch, J., concurring) ("Under OSHA's [Occupational Safety and Health Administration] reading, the law would afford it almost unlimited discretion—and certainly impose no 'specific restrictions' that 'meaningfully constrai[n]' the agency. OSHA would become little more than a 'roving commission to inquire into evils and upon discovery correct them.'" (alteration in original) (citations omitted).
53. Congress may delegate policymaking authority to the executive branch only when it provides an "intelligible principle" to cabin the scope of the delegation.
54. The Higher Education Relief Opportunities for Students Act of 2003, specifically 20 U.S.C.A. § 1098bb(a)(1), was the asserted basis for the secretary's unlawful attempt at debt cancellation.
55. *See* Press Release, Kamala Harris, Statement from Vice President Harris on Biden–Harris Administration's New SAVE Plan for Student Loan Repayment, (Aug. 22, 2023), https://www.whitehouse.gov/briefing-room/statements-releases/2023/08/22/statement-from-vice-president-harris-on-biden-harris-administrations-new-save-plan-for-student-loan-repayment/; Press Release, Kamala Harris, Statement from Vice President Kamala Harris on Additional Student Loan Forgiveness (July 14, 2023), https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/14/statement-from-vice-president-kamala-harris-on-additional-student-loan-forgiveness/.
56. *See, e.g.*, Aristotle, Politics, Bk. 5, Ch. 5.