No. 24A173

IN THE SUPREME COURT OF THE UNITED STATES

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

v.

STATE OF MISSOURI, ET AL.

REPLY IN SUPPORT OF THE APPLICATION TO VACATE THE INJUNCTION PENDING APPEAL ENTERED BY THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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The Eighth Circuit fundamentally erred by issuing a sweeping universal injunction based on a demonstrably erroneous theory of standing and without meaningful analysis of the statutory text. Yesterday, the Eighth Circuit made clear that the injunction extends even more broadly to forgiveness under regulations adopted in 1994, disrupting the settled expectations of borrowers who have made payments for years or even decades. The States fail to justify allowing that extraordinary injunction to continue to harm millions of borrowers while this appeal is litigated.

On standing, the States principally assert that any loan forgiveness necessarily reduces MOHELA's servicing fees. But the amount of those fees depends on <u>how long</u> a loan is outstanding, not <u>how much</u> the borrower owes. This Court has thus recognized

that MOHELA's monthly fees could be reduced by early forgiveness. See Biden v. Nebraska, 600 U.S. 477, 490 (2023). But none of the provisions at issue here involve such early forgiveness; instead, they govern only what a borrower owes each month and what happens to the balance of the loan after 20 or 25 years. The States do not even try to explain how those provisions affect MOHELA's fees. And the States also fail to substantiate their fallback theory based on the consolidation of pre-2010 FFEL loans, which this Court did not endorse in Nebraska and which neither the Eighth Circuit nor the district court accepted here.

On the merits, the States assert that the Department can never forgive loans under the income-contingent repayment (ICR) statute. But that contradicts the statutory text, which makes clear that repayment is "contingent" on a borrower's income. It also contradicts three decades of practice spanning five presidential administrations and renders subsequent statutory amendments inexplicable. And the States go badly astray in suggesting that the Department's longstanding interpretation would allow it to forgive "every penny of every student loan" (Opp. 1). Congress imposed limits on the Department's authority to set the parameters of ICR plans, including the portion of a borrower's income that must be devoted to payments and the length of the repayment period. But the States make no serious effort to show that the rule exceeds those limits -- indeed, like the Eighth Circuit, they do not even

engage with the relevant statutory text.

Finally, the States' opposition underscores the inequity of the Eighth Circuit's injunction. The States fail to justify blocking the application of the rule to millions of borrowers whose loans were never held or serviced by MOHELA. The States also acknowledge that the necessary consequence of the injunction -- forbearance -- leaves everyone, including the States themselves, worse off. And the States cannot deny the harm that the injunction is inflicting on borrowers, including those who have been steadily making payments for years while counting on now-enjoined forgiveness at the end of preexisting repayment periods.

This Court should simply vacate the injunction and allow this litigation to proceed in the ordinary course. But if the Court is not prepared to take that step, the States agree that at a minimum the Court should grant certiorari before judgment.

I. THIS COURT WOULD LIKELY GRANT REVIEW IF THE EIGHTH CIRCUIT DIRECTED THE ENTRY OF A PRELIMINARY INJUNCTION

The States agree (Opp. 38) that this Court's review would be warranted if the Eighth Circuit directed the entry of a preliminary injunction like its injunction pending appeal. An intervening order by the Eighth Circuit underscores that conclusion by making clear that the injunction sweeps even more broadly to enjoin forgiveness under other ICR plans that have been in effect for years.

Before seeking relief in this Court, the government asked the Eighth Circuit to clarify that its injunction did not prohibit

(1) loan forgiveness under statutory authorities other than ICR, such as income-based repayment (IBR) and the Public Service Loan Forgiveness program; or (2) loan forgiveness offered to borrowers enrolled in previously existing ICR plans (i.e., the original ICR plan or the PAYE plan) on timelines established as part of those plans. Opp. Supp. App. 6a. As to the first request, the States agreed that the injunction should not be understood to apply to loan forgiveness under non-ICR authorities, but argued that "clarification [wa]s unnecessary" because they had "not challenge[d]" non-ICR forgiveness. States C.A. Resp. to Mot. 1. The States opposed the second request, asserting entitlement to an injunction preventing forgiveness under all ICR plans, even those that have been in effect for more than a decade. Id. at 2. Yesterday, the Eighth Circuit denied the motion to clarify without explanation. C.A. Order 1 (Aug. 19, 2024).

The government understands the Eighth Circuit's denial to reflect agreement with the States. Thus, while the injunction does not reach loan forgiveness under non-ICR authorities, it does extend to forgiveness offered to borrowers enrolled in the original ICR plan (which provides for forgiveness after 25 years of repayment, see 59 Fed. Reg. 61,664, 61,699 (Dec. 1, 1994)) and the PAYE plan (which provides for forgiveness after 20 years, see 77 Fed. Reg. 66,088, 66,139 (Nov. 1, 2012)). Those provisions were adopted in 1994 and 2012, respectively, Appl. 7, and millions of borrowers

remain enrolled in those plans. The fact that the injunction extends to those longstanding provisions -- and upends the expectations of borrowers who have participated in those plans for years -- reinforces the need for this Court's review.

II. THE GOVERNMENT IS LIKELY TO SUCCEED ON THE MERITS

A. The States Lack Article III Standing

The States offer two theories of Article III standing, one based on MOHELA's asserted loss of servicing fees and the other based on the consolidation of MOHELA's FFELs. Neither theory establishes standing to challenge the provisions at issue here.[1]

1. The States' servicing-fee theory lacks merit

In Nebraska, this Court held that Missouri had established an Article III injury "directly traceable" to the HEROES Act plan because the plan would have caused many accounts to "close[]" earlier than they otherwise would have -- thus costing MOHELA "fees that it otherwise would have earned" from servicing those accounts. 600 U.S. at 490. Missouri's injury in Nebraska thus arose from cutting short the duration of the loans it serviced.

Here, however, the States are not complaining about the duration of any loans serviced by MOHELA. The rule's protected-income, payment-calculation, and accrued-interest provisions do nothing to

[1] The States note that they presented "additional theories of standing to the district court." Opp. 19 n.20. But the States did not present any other theories to the Eighth Circuit, see States C.A. Mot. 16; States C.A. Mot. Reply Br. 2-6, and they do not advance any other theories in this Court.

shorten the duration of the loans serviced by MOHELA. Instead, those provisions affect only the calculation of a borrower's payment each month. And MOHELA receives the same fee "per borrower per month" regardless of how much a borrower owes. Appl. App. 100a. Implementation of the protected-income, payment-calculation, and accrued-interest provisions thus will not cost MOHELA any "fees that it otherwise would have earned." Nebraska, 600 U.S. at 490.

The States' challenge to the Department's ability to grant forgiveness under the preexisting provisions of the original ICR plan, the PAYE plan, and the REPAYE plan likewise has nothing to do with the duration of any loan. After all, the States are not challenging the Department's authority to prescribe a repayment period of 20 or 25 years -- as the Department has done under the preexisting provisions of the original ICR plan, the PAYE plan, and the REPAYE plan. Indeed, the statute makes clear that the Department cannot adopt a repayment period longer than 25 years. 20 U.S.C. 1087e(d)(1)(D). Instead, the States are challenging the Department's authority to forgive any outstanding balance after that period is over. While the States apparently want the final payment to reflect the entire remaining balance of the loan, that would have no effect on the amount of fees MOHELA receives. Again, those fees depend only on the duration of the repayment period -- and again, the States are not challenging the 20- or 25-year re-payment periods in the preexisting plans. Thus, the continued

application of the preexisting forgiveness provisions of the original ICR plan, the PAYE plan, and the REPAYE plan will not cost MOHELA any "fees that it otherwise would have earned." Nebraska, 600 U.S. at 490; see Appl. 17-18.

Consider, for example, the original ICR plan's preexisting forgiveness provision. It provides forgiveness after 25 years of repayment, 59 Fed. Reg. at 61,699 -- but the statute does not allow a longer repayment period, 20 U.S.C. 1087e(d)(1)(D), and Missouri thus does not contend that the plan's repayment period is too short. Rather, Missouri argues only that borrowers should not be granted forgiveness after 25 years. But whether they are granted forgiveness or not has no effect on the amount of fees MOHELA receives -- which will be up to 25 years' worth in any event.

The States assert (Opp. 16) that MOHELA's "greatest harm" comes from "the combination" of the "forgiveness" provisions and the rule's protected-income, payment-calculation, and accrued-interest provisions. But considering those provisions "in conjunction" (ibid.) does not change the fact that none has anything to do with the duration of a borrower's loan. Missouri contends (Opp. 17) that the protected-income and payment-calculation provisions "increase forgiveness" -- by which Missouri means that they increase the amount that is forgiven. But the amount that is forgiven has nothing to do with the amount of fees MOHELA receives. Thus, whether the provisions at issue are considered in combination

or alone, the bottom line is the same: The States cannot plausibly argue that those provisions will cause the loss of any "fees that [MOHELA] otherwise would have earned," Nebraska, 600 U.S. at 490.[2]

2. The States' FFEL-consolidation theory lacks merit

Departing from the theory of standing this Court accepted in Nebraska, the States offer (Opp. 18) an alternative theory based on FFEL consolidation. But as we have explained (Appl. 20-22), that theory fails for two independent reasons: (1) the States have not shown that consolidation inflicts any Article III injury at all, and (2) the States have not shown that any injury would be fairly traceable to the rule.

As to the first point, the States do not dispute (Opp. 19) that consolidation results in full repayment to MOHELA. The States assert (ibid.) that they have no obligation to account for the value of early repayment. But under this Court's precedents, that is the States' "burden." Murthy v. Missouri, 144 S. Ct. 1972, 1986 (2024) (citation omitted). And although the States presume (Opp. 19) that a lender is necessarily better off receiving future interest rather than early repayment, they have not substantiated that premise.

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[2] The States assert (Opp. 17-18) "harm[]" from two other provisions of the rule: one about "family size," and the other about "deferment for bankruptcy and unemployment." But the Eighth Circuit did not enjoin those provisions, which thus are not at issue here. Appl. App. 9a. The States also mention (Opp. 17) the rule's shortened-repayment-period provision, but that provision is also not at issue here because it will remain enjoined even if the Court grants this application. Appl. 15 n.2.

If, for example, the interest rate today is higher than the interest rate on an existing loan, consolidation (and thus early repayment) would help, not hurt, MOHELA's pocketbook.

As to the second point, Missouri purports (Opp. 20) to identify an increase in consolidations after the Department announced in January 2024 that it was designating the rule's shortened-repayment-period provision for early implementation. See Appl. 10. But that provision, which is separately blocked by the district court's preliminary injunction, is not at issue here. Appl. 15 n.2. And Missouri's evidence proves nothing about the provisions that are at issue -- two of which (the protected-income and accrued-interest provisions) took effect in July 2023, and the third of which (the payment-calculation provision) took effect a year later. Appl. App. 82a; Appl. 38.

B. The States' Statutory Challenges Lack Merit

1. The States' challenges to preexisting forgiveness provisions lack merit

The States assert (Opp. 23) that the ICR statute does not authorize any forgiveness under an ICR plan under any circumstances -- and thus that every Secretary of Education since 1994 has administered the statute unlawfully. But as the government explained (Appl. 23), the plain text of Section 1087e(d)(1)(D) establishes two principles: First, the amount a borrower repays each year will be "based on the income of the borrower." 20 U.S.C. 1087e(d)(1)(D). Second, no borrower will be required to make

payments indefinitely; rather, each borrower will be required to make payments for a period "not to exceed 25 years." Ibid. The only type of plan that complies with both principles is one that allows the borrower to make income-contingent payments for a prescribed period and then forgives any outstanding balance.

The States fail to show otherwise. They assert (Opp. 24) that "the Secretary could promulgate a plan stating that a borrower each year shall pay X% of annual income or 4% of the principal balance, whichever is higher." But such a plan would violate the first principle: If the borrower must pay at least "4% of the principal balance" every year, that payment would be based on her "principal balance," not on her income. The States also assert (Opp. 24) that "the Secretary could permit lower payments for four years but require catch-up payments in the fifth." But such a plan would violate the first principle too, because the "catch-up payments" would not be based on the borrower's income.

The States assert that because Section 1087e(d)(1)(D) refers to "repayment," it must mean full "repayment" -- i.e., repayment of the entire "balance due." Opp. 24 (quoting 20 U.S.C. 1087e(d)(1)(D) and (e)(5)). But the text does not refer to "full" repayment. To the contrary, it refers to repayment that is "contingent" -- that is conditioned -- on a borrower's "income." 20 U.S.C. 1087e(d)(1)(D). The States err in reading a statute that expressly conditions repayment on a borrower's income as

though it imposed an absolute obligation of repayment in full no matter how much -- or how little -- the borrower earns.

The States assert (Opp. 25) that Section 1087e(d)(1)(D)'s "not to exceed 25 years" language cannot "authorize forgiveness" because similar text is used in provisions governing repayment plans that do not provide for forgiveness. But the statute's durational limit reflects only the second of the two principles in Section 1087e(d)(1)(D). The first principle, as noted above, is that how much a borrower repays each year must be "based on [her] income." 20 U.S.C. 1087e(d)(1)(D). None of the other repayment plans the States cite (Opp. 25) includes similar language.

The States also attempt to "contrast" Section 1087e(d)(1)(D) with other provisions that "expressly authorize forgiveness." But there is no "magic words" requirement; Congress can provide for forgiveness using different language. Department of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz, 601 U.S. 42, 48 (2024) (citation omitted). And as we explained (Appl. 25), both the text of Section 1087e(d)(1)(D) and the text of the 2007 amendments to Section 1087e(e) make clear that Congress provided for forgiveness here.

Notably, the States make no meaningful attempt to reconcile their reading with the 2007 amendments. Opp. 25 n.21. The States acknowledge (Opp. 30) that it would be "absurd[]" to read the statute to "push borrowers into default." Yet under the States' interpretation, that is exactly what the 2007 amendments would do:

By requiring that periods of nonpayment count toward a borrower's fixed repayment period, the amendments would perversely accelerate a borrower's obligation to pay her loan in full. Appl. 24.

Moreover, as the government explained (Appl. 23-24), Congress enacted the 2007 amendments against the backdrop of the Department's consistent practice of granting forgiveness under ICR plans. The States dismiss (Opp. 28) that consistent practice as "atmospherics." But the Department's interpretation was "issued contemporaneously with the statute at issue," Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2262 (2024); it has "remained consistent over time," ibid.; and Congress has enacted subsequent amendments presupposing that it is correct.

The States' reliance (Opp. 25-26) on the provisions governing IBR plans is also misplaced. IBR was enacted alongside the 2007 amendments premised on the understanding that ICR plans provide for forgiveness. Pub. L. No. 110-84, § 203, 121 Stat. 792-795. And Congress viewed IBR as "build[ing] on the existing [ICR plans] and extend[ing] this option to individuals participating in the FFEL loan program." H.R. Rep. No. 210, 110th Cong., 1st Sess. 44 (2007); see id. at 71 (CBO estimate describing IBR as providing "similar relief" as "the current ICR plan").

The major-questions doctrine has no application here. The States acknowledge (Opp. 22) that the "forgiveness" provided under "previous ICR plans" "might not trigger the doctrine." But that

is precisely what the Eighth Circuit's injunction blocks: forgiveness under preexisting ICR plans. The States contend (ibid.) that those plans' preexisting "forgiveness provisions cannot be assessed in isolation." But principles of severability (which the States never mention) require analyzing each provision separately. Appl. 29 n.6. And the States do not dispute (Opp. 22) that, viewed on their own terms, the preexisting "forgiveness provisions" do not implicate the major-questions doctrine. In any event, the major-questions doctrine would be satisfied here because the text of Section 1087e(d)(1)(D) plainly authorizes forgiveness.

2. The States' challenges to the rule's protected-income and payment-calculation provisions lack merit

"The States do not dispute that the Secretary has a fair amount of discretion in setting payment amounts based on income." Opp. 29. The States nevertheless contend (Opp. 30) that the Department must "require payment amounts large enough for borrowers to repay fully within 25 years." That contention repeats the same error above by assuming that Section 1087e(d)(1)(D) requires "full[]" repayment rather than "income contingent repayment."

To be clear, that does not mean that the Department's authority has no limits. But the limits are the ones Congress enacted into the statute. Congress specified that the repayment period be an "extended period," "not to exceed 25 years." 20 U.S.C. 1087e(d)(1)(D). Congress also required that payments "vary in relation to the appropriate portion of the annual income of the bor-

rower." 20 U.S.C. 1087e(e)(4). A plan that resulted in forgiveness of "every penny of every federal student loan" (Opp. 1, 2, 21, 22, 23, 28) would plainly exceed those limits.

The States do not contend, however, that the rule's protected-income and payment-calculation provisions exceed those limits. In fact, the States do not even cite Section 1087e(e)(4). Beyond arguing that the statute requires "full[]" repayment, the States observe (Opp. 30) only that under the protected-income provision, many borrowers will owe monthly payments of $0. But that is also true of borrowers under each of the preexisting ICR plans. See, e.g., 80 Fed. Reg. 67,204, 67,229 (Oct. 30, 2015); 77 Fed. Reg. at 66,117; 59 Fed. Reg. at 61,676. Indeed, that is an inherent feature of protected-income provisions: Borrowers whose incomes fall below the protected-income threshold pay $0 per month so long as their incomes remain below the threshold.

3. The States' challenge to the rule's accrued-interest provision lacks merit

As we explained (Appl. 30-31), the rule's accrued-interest provision is an exercise of the Department's authority to "establish[]" "[i]ncome contingent repayment schedules" under Section 1087e(e)(4). The States do not cite Section 1087e(e)(4) -- let alone engage with its text. Instead, they quote (Opp. 28) the first sentence of Section 1087e(e)(5), which provides that "[t]he balance due on a loan" shall include "any accrued interest." 20 U.S.C. 1087e(e)(5). But that sentence merely identifies the com-

ponents of the balance due. See 88 Fed. Reg. at 43,827. It does not preclude the Department from exercising its authority under Section 1087e(e)(4) to determine, based on a borrower's income, how much of that balance must be repaid.

C. The Eighth Circuit's Injunction Is Vastly Overbroad

1. As we explained (Appl. 32-33), the Eighth Circuit erred in issuing a universal injunction. The States dispute (Opp. 31) that characterization, arguing that the injunction reflects the principle that "relief can extend incidentally to nonparties if necessary to provide complete relief to the plaintiff." But the injunction does not "extend incidentally to nonparties." Ibid. It bars the application of the challenged provisions to millions of borrowers who have no connection whatsoever to MOHELA -- and nullifies the Tenth Circuit's contrary order in the process.

The States assert (Opp. 32) that it is not "clear what other injunction the Eighth Circuit could have issued and still given the States adequate relief." But as we explained (Appl. 34), the court could have issued an injunction that blocked the relevant provisions only as applied to loans serviced by MOHELA. The States contend (Opp. 32) that such an injunction would "permit the Government to simply transfer accounts before forgiving the balances." But if that were a concern, the solution would simply be to enjoin the Department from transferring accounts away from MOHELA if the loans are or soon will be eligible for forgiveness under an ICR plan.

The States also assert (Opp. 33) that the Administrative Procedure Act (APA) authorizes universal relief. The United States has long argued otherwise, and Members of this Court have agreed that the APA "does not say anything about 'vacating' agency action ('wholesale' or otherwise)." United States v. Texas, 599 U.S. 670, 695 (2023) (Gorsuch, J., concurring in the judgment). But that question is not presented here because the Eighth Circuit did not purport to invoke the APA to vacate or stay the rule; instead, it entered a traditional injunction -- and one extending beyond the rule itself to preexisting ICR provisions. Appl. App. 9a. The APA thus does not even arguably excuse the court's disregard of traditional equitable principles.

2. As we explained (Appl. 33-34), the injunction is also overbroad because it enjoins the REPAYE plan's preexisting provision of forgiveness -- a provision that the district court found the States had neither challenged nor sought to enjoin. And the Eighth Circuit's refusal to clarify the injunction makes clear that it reaches even further, blocking forgiveness under the original ICR plan and the PAYE plan as well. The district court likewise found that the States had not challenged or sought to enjoin forgiveness under those plans. Appl. App. 12a.

The States still have not explained how they could have challenged regulatory provisions that have been in effect for years or decades. Nor have the States explained how an injunction against

those provisions could properly issue without accounting for the profound inequity of disrupting the settled expectations of borrowers who have long been making payments under those plans. The States note (Opp. 8, 12) that the rule includes provisions reflecting forgiveness under the original ICR and PAYE plans. But those provisions are not new; they simply recodify long-extant requirements. Even if the relevant provisions of the rule were enjoined, therefore, there would be no basis for enjoining forgiveness under those preexisting provisions -- or the prior provisions of the REPAYE plan, which would remain effective if the rule's amendments to those provisions were enjoined.[3]

III. THE EQUITIES OVERWHELMINGLY FAVOR VACATING THE EIGHTH CIRCUIT'S INJUNCTION

A. The States have not shown that they would suffer any injury -- let alone irreparable injury -- if the injunction were vacated. They assert (Opp. 33) that MOHELA stands to lose $285 million each year in servicing fees. But that figure assumes the immediate closing of every single one of the eight million accounts

[3] There is no merit to the States' continued assertion (Opp. 32) that the Department "violated the plain text of the district court's order" by continuing to implement preexisting regulatory provisions after the district court enjoined the rule's shortened-payment-period provision. The district court itself understood its injunction to reach only the change the rule made to the REPAYE plan's repayment periods. Appl. App. 12a; see Appl. 26. And the States' related assertion (Opp. 13) that the Department promulgated a new "hybrid" plan without "go[ing] through notice and comment" continues to misunderstand the district court's application of basic severability principles. See Appl. 26-27.

MOHELA services -- including millions of accounts not enrolled in an ICR plan. Appl. App. 99a. Especially because none of the provisions at issue here cause the early closing of any borrower's account, the States' reliance on that figure is badly misplaced.

The States contend (Opp. 33) that the "equities favor maintaining the injunction here even more strongly than in 2022." But the opposite is true. In Nebraska, the absence of immediate injunctive relief could have allowed implementation of a one-time loan-forgiveness program. Here, in contrast, vacating the injunction would not have any similar effect. As to the relevant provisions of the rule, it would simply affect the monthly payment amounts owed by some borrowers while this appeal is litigated. And as to forgiveness under preexisting plans, it would simply allow the Department to forgive outstanding balances for borrowers who reach the 20- and 25-year thresholds that long predated the rule.

2. On the other side of the ledger, the Eighth Circuit's injunction is imposing serious and irreparable harm on the Department and the public. Appl. 36-37. The States assert (Opp. 34) that the government "has no legitimate interest in unlawful action." But that wrongly collapses the equities into the merits. Repeating the same error, the States argue (Opp. 34) that the Department "underestimated the cost of the rule" and committed other procedural violations. But the district court found "no indication that the Secretary's reasoning for creating the Final

Rule is somehow invalidated by [the State's] preferred cost estimates." Appl. App. 65a. The court also found that the States were unlikely to succeed on any of their other procedural arguments. Id. at 66a-69a. The States did not renew any of those arguments in the Eighth Circuit. See States C.A. Mot. 17-25.

The States also assert (Opp. 34) that the injunction will not "harm borrowers" because borrowers' "positions will remain the same." That is incorrect. Far from preserving the status quo, the Eighth Circuit's "administrative stay" and injunction disrupted the status quo: By the time the Eighth Circuit intervened, the rule's protected-income, payment-calculation, and accrued-interest provisions had each gone into effect, while forgiveness had been an essential feature of ICR plans for decades. Appl. 37-38. The States also note (Opp. 34) that the Department has placed affected borrowers into "administrative forbearance." But that has caused "substantial confusion and concern, and will extend borrowers' time in repayment." Appl. App. 93a (Carter decl.).[4]

3. The States also fail to explain their delay in bringing

[4] The States err in asserting (Opp. 35) that the government "waived" reliance on the Carter declaration by presenting it in the Eighth Circuit. The injunction at issue here was granted by the Eighth Circuit, not the district court. And the government had no occasion to present the declaration in the district court because the court denied the States' motion for an injunction pending appeal without awaiting a response. Appl. App. 13a. In any event, the government did argue in the district court that an injunction "would result in chaos and uncertainty, especially for borrowers." D. Ct. Doc. 22, at 55 (May 7, 2024).

suit. Appl. 35-36. They contend that the district court rejected concerns about their delay, but the court did so only with respect to their challenge to the rule's shortened-repayment-period provision -- a provision not at issue here. Appl. App. 71a-72a. When the States asked for an injunction against the rule's protected-income, payment-calculation, and accrued-interest provisions, the court found that the States' "delay in bringing this case undermine[d] their request for immediate relief." Id. at 14a. Indeed, millions of borrowers had already received -- and paid -- bills that reflected the protected-income and accrued-interest provisions for months. Id. at 85a.

IV. ALTERNATIVELY, THE COURT MAY WISH TO TREAT THIS APPLICATION AS A PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT

The States acknowledge that it would be "appropriate" to grant certiorari before judgment and to schedule this case for oral argument in the Court's November sitting. Opp. 3, 39. But the States assert (Opp. 39) that it would be unnecessary to grant certiorari on the standing question, on the view that "this Court already settled the issue of standing" in Nebraska. As explained above, that is demonstrably wrong. The States also ask (ibid.) that the third question presented be broadened to include other merits arguments they made in the district court. Although the court rejected those arguments and they plainly lack merit, Appl. App. 62a-69a, the government has no objection to broadening the question presented to include them if the States wish to pursue them in this Court.

* * * * *

This Court should vacate, or at a minimum narrow, the injunction pending appeal entered by the Eighth Circuit. If, however, the Court declines to vacate the injunction, it may wish to construe this application as a petition for a writ of certiorari before judgment, grant the petition, and set this case for expedited briefing and argument.

Respectfully submitted.

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AUGUST 2024