



Why the Supreme Court got it right on student loans

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In a lawsuit brought by six state governments, the Supreme Court on Friday ruled that President Joe Biden's massive \$430 billion student loan forgiveness plan is illegal because it was never authorized by Congress, and the Constitution gives Congress – not the president – the power to determine how federal funds are spent. The court made the right decision: If the administration had won, Biden and future presidents would have been empowered to use vague statutes to usurp Congress' constitutional control over the federal budget. Moreover, because of the context for this case, it also would have allowed the president to abuse emergency powers for partisan ends.

The administration's loan forgiveness plan, announced in August 2022, would have canceled up to \$20,000 for those with Pell Grants (federal grants for low-income students) or up to \$10,000 in other federal student-loan debt for single borrowers with incomes under \$125,000 per year and under \$250,000 for married couples or heads of households. The legal rationale for the plan is based on a provision of the 2003 HEROES Act, a law that was enacted in large part to help people affected by the War on Terror, particularly members of the armed forces who might have trouble repaying loans while deployed abroad.

But the Biden administration was relying on a provision of the act that gives the secretary of education authority to “waive or modify” federal student loan requirements in order to ensure that recipients of financial assistance who have been affected by a national emergency “are not placed in a worse position financially in relation to that financial assistance” because they were affected by the emergency. The administration claimed beneficiaries of the loan-forgiveness plan qualified because they have been negatively affected financially as a result of the Covid-19 national emergency declared by then-President Donald Trump in March 2020.

The Supreme Court on Friday rightly ruled that the HEROES Act's language comes nowhere near authorizing such a massive loan forgiveness plan. As Chief Justice John Roberts explained in the majority opinion, “The authority to ‘modify’ statutes and regulations allows the Secretary to make modest adjustments and additions to existing provisions, not transform them.” The word “waive” also doesn't give the government the power to forgive loans on a massive scale, because, as Roberts noted, the government conceded that the term “waiver” as used in the HEROES Act cannot refer to waiving loan repayments.

In addition, for the majority of the more than 40 million borrowers the White House claims would be eligible for forgiveness, the government presented no proof that, as a result of Covid, they were placed “in a worse position financially.” Over 80% of employed college graduates did not even report a decrease in salary during the pandemic, and few suffered prolonged unemployment, according to data from the US Bureau of Labor Statistics. The lack of evidence that most beneficiaries’ ability to pay was impaired by the pandemic seems to me a stronger basis for the court’s ruling than Roberts’ analysis of the terms “waive” and “modify.”

Another key issue in the case was whether the states challenging the program had “standing” to sue, which requires them to have suffered an injury as a result of the loan forgiveness plan. The court rightly ruled that Missouri, at least, had standing because it has a state-created student-loan servicer that stands to lose revenue if some of the loans it processes are forgiven. An injury to that entity is an injury to the state, because it’s a public corporation “created” and under to control of the state, and a “part of the Government itself.”

The court also rightly ruled that the administration’s ultra-broad interpretation of the HEROES Act ran afoul of Supreme Court precedent on the “major questions” doctrine. The doctrine requires Congress to “speak clearly” when authorizing an executive branch agency to exercise “decisions of vast ‘economic and political significance.’” In other words, if the statute is ambiguous, courts must presume that Congress didn’t give the agency the power the agency is trying to claim.

In this case, as Roberts put it, the economic and political significance of the administration’s action is “staggering by any measure,” and the HEROES Act is – at the very least – far from clear about granting this power to the executive. As Justice Amy Coney Barrett pointed out in her concurring opinion, the major questions doctrine wasn’t necessary to invalidate the administration plan. But it “reinforces that conclusion.”

While the major questions doctrine has been criticized by some commentators, it is an application of the common-sense principle that a large-scale delegation of power requires more clarity than a narrow one. Barrett made a similar point in her concurrence, noting that “commonsense principles of communication” lead us to expect greater clarity when delegating very broad authority to an agent. A legal document authorizing a contractor to “repair and upgrade” a house is reasonably interpreted to give her the power to replace a broken door but not to tear the house down and build a new one – even if a clever lawyer could potentially interpret the latter as just a type of “upgrade.”

The major questions doctrine helps guard against the executive usurpation of congressional power that could occur if the White House could use vague statutory language to enact sweeping policies that otherwise could never have gotten through Congress. In a dissenting opinion for the three liberal justices, Justice Elena Kagan argued that the HEROES Act must be interpreted expansively in order to give presidents flexibility during emergencies. But Roberts rightly rejected such a “grant [of] unlimited power.”

Presidents of both parties can be tempted to use emergency powers as a pretext to enact policies they otherwise can’t pass. In 2019, Trump used a dubious emergency declaration to try to divert

Pentagon funds to build a wall along the southern border. Trump's emergency declaration was bogus, and the statutes he cited didn't give him the power to transfer military funds. His diversion could have set a dangerous precedent.

Democrats rightly condemned Trump's actions, and Biden rightly terminated the diversion when he took office, thereby also ending ongoing litigation challenging Trump's actions. Unfortunately, Biden's loan forgiveness policy attempted to repeat Trump's scheme on a larger financial scale, diverting some 40 times more funds.

Biden's abuse of emergency powers, like Trump's before it, would likely have caused more harm than good. His student loan forgiveness plan would have been a waste of taxpayer funds when the US is already facing a looming fiscal crisis, a regressive policy in that it helps the relatively affluent (former college students) and potentially inflationary by infusing vast amounts of additional cash into the economy.

Those who differ on policy should still be able to agree that it is dangerous to give one politician the power to circumvent the Constitution and divert federal funds to political projects not authorized by Congress. Even if you trust Biden to wield such power wisely, you likely do not have similar faith in the next Republican president – and vice versa.

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