Nos. 22-506 and 22-535

IN THE

Supreme Court of the United States

JOSEPH R. BIDEN, PRESIDENT OF THE UNITED STATES, *et al.*,

Petitioners,

v.

STATE OF NEBRASKA, *et al.*,

Respondents.

DEPARTMENT OF EDUCATION, *et al.*,

Petitioners,

v.

MYRA BROWN, *et al.*,

Respondents.

On Writs of Certiorari Before Judgment to the United States Courts of Appeals For the Eighth and Fifth Circuits

BRIEF OF *AMICI CURIAE* AMERICAN FEDERATION OF TEACHERS; AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS; AND AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES IN SUPPORT OF PETITIONERS

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INTERREST OF *AMICI CURIAE*[1]

Amici are unions representing American workers, including in the healthcare, education, and government fields. They have a strong interest in ensuring that workers with student loan debt are not left in a worse position as to their student loans by the COVID-19 pandemic.

The American Federation of Teachers ("AFT"), founded in 1916, is an affiliate of the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO") that represents more than 1.7 million members in more than 3,000 local affiliates nationwide. Its membership includes pre-K through 12th-grade teachers; paraprofessionals and other school-related personnel; higher education faculty and professional staff; federal, state, and local government employees; and nurses and other healthcare professionals. The AFT is devoted to fairness, democracy, economic opportunity, and high-quality public education, healthcare, and public services for students, their families, and our communities. Its members include many student loan borrowers in public service, and the organization has, for years, devoted significant resources to researching and supporting equitable solutions for addressing the Nation's fast-growing student debt crisis.

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amici curiae* states that no counsel for a party authored this brief in whole or in part, and no person or entity other than *amici curiae* or their counsel made a monetary contribution to this brief's preparation or submission.

The American Association of University Professors ("AAUP") is a nonprofit organization that represents more than 44,000 faculty, librarians, graduate students, and academic professionals at institutions of higher education across the United States. Since its founding in 1915, the AAUP has been committed to advancing academic freedom and shared governance, defining professional values and standards, promoting the economic security of faculty and other academic workers, and ensuring higher education's contribution to the common good. The AAUP issues statements and legal interpretations that have been cited by the Supreme Court and are widely respected and followed in American colleges and universities. *See, e.g.*, *Bd. of Regents v. Roth*, 408 U.S. 564, 579 n.17 (1972); *Tilton v. Richardson*, 403 U.S. 672, 681–82 (1971). The AAUP frequently submits *amicus* briefs in cases that involve legal issues important to faculty members, academic workers, and the higher education community in general. AAUP members include many student loan borrowers employed as higher education faculty members and academic professionals dedicated to carrying out the public mission of colleges and universities.

The American Federation of State, County and Municipal Employees, AFL-CIO ("AFSCME") is a labor organization of approximately 1.4 million members serving the public in the United States. The majority of AFSCME members are employed by states, counties, municipalities, and other local governments. These public service workers—including, among others, nurses, librarians, social workers, and childcare providers—dedicate their lives and make great sacrifices to keep the Nation's communities strong. Many of them must take on student loans to attain the skills and credentials needed to pursue jobs in public service. Student debt relief is critical to helping these public service workers attain greater economic security.

AFT, AAUP, and AFSCME file this brief to offer their insights on why student debt cancellation is essential for American workers, including teachers, faculty members, nurses, and government workers, who are struggling to overcome financial setbacks caused by the COVID-19 pandemic.

SUMMARY OF ARGUMENT

The COVID-19 pandemic has severely exacerbated the burden of student debt for American workers, including those in the healthcare and education sectors, and Petitioners' student debt relief program is reasonably calculated to alleviate those workers' burdens. Nicole Brun-Cottan is one such worker. She is a physical therapist who devotes her days to healing those with serious trauma or long-term disabilities. Since the onset of the pandemic, her job has included treating COVID-19 patients in the intensive care unit. Ms. Brun-Cottan's daily work with severely ill patients comes at a serious cost to her own physical and mental health. Ms. Brun-Cottan is also saddled with over $105,000 in student loan debt and is unable to afford a home of her own. The pandemic has left her no choice but to consider leaving public service work to seek an alternative that provides more financial security. *See* Nicole Brun-Cottan, *In debt and on the frontlines of healthcare*, Am. Fed'n Teachers (Sept. 14, 2021), https://tinyurl.com/28sz9wjb; Virginia Myers, *Millions brace for a return of student loan payments*, Am. Fed'n Teachers (Nov. 21, 2022), https://tinyurl.com/bdfj6ntr.

Petitioners Joseph R. Biden, et al. (collectively, "Petitioners" or the "Administration") acted reasonably in exercising their authority under the Higher Education Relief Opportunities for Students Act of 2003 (the "HEROES Act") to offer student debt relief that will mitigate the extent to which borrowers like Ms. Brun-Cottan were made worse off by the pandemic.

I. The COVID-19 pandemic had a devastating impact on American workers, many of whom were already struggling and saddled with crushing student debt. Those workers' precarity and risk of delinquency on their debt has severely worsened during the pandemic. Public service workers, including teachers, who must invest significant sums in their education and work at low wages, were hit especially hard by tremendous professional and personal strains during the pandemic, which jeopardized their livelihoods and ability to pay their student debt. Nurses' financial and professional burdens were similarly exacerbated by the pandemic, making it more difficult for them to stay in the healthcare profession and pay down their student loans. The Administration lawfully provided the needed relief pursuant to its authority under the HEROES Act. Under that statute, the Secretary of Education "may waive or modify any statutory or regulatory provision applicable to [federal student loans] … in connection with a … national emergency … as may be necessary to ensure that … recipients of [such loans] who are affected individuals are not placed in a worse position financially in relation to [their loans] because of [the emergency]." 20 U.S.C. § 1098bb(a). Petitioners did exactly that in offering student debt relief.

II. The Administration's decision to address the pandemic's impact on student borrowers through debt cancellation is far superior to Respondents' alternatives. Given the long-term economic impacts of the pandemic, which continues to drive workers out of public service, a permanent solution—rather than a temporary deferment—was necessary. Additionally, given the previous failings of other debt relief programs to address the debt crisis holistically, the Administration appropriately chose a realistic, administratively feasible approach.

ARGUMENT

The COVID-19 pandemic substantially worsened the Nation's student-debt crisis by increasing inflation, driving up the costs of consumer goods, and precipitating substantial job loss—first, through mass layoffs and, later, through mass resignations. The Secretary invoked the HEROES Act to alleviate that harm. The HEROES Act covers all "affected individuals" who would otherwise be left in a "worse position" as to their student loans due to a national emergency. 20 U.S.C. §§ 1098bb(a)(2)(A), 1098ee(2); *see infra* Section I.A. American workers in general were affected by COVID-19, but this brief focuses primarily on workers in public service, on whom the impact of the pandemic has been particularly acute. *Amici*, who represent millions of public service workers, have unique insight into their experiences—the consequences of crushing student loan debt, a struggle to make ends meet, and widespread burnout.

As of February 2022, for example, 23% of healthcare workers indicated they were likely to leave the healthcare field soon. Am. Fed'n Teachers, *Healthcare Staffing Shortage Task Force Report* 3 (2022) ("Nursing Shortage Report"), https://tinyurl.com/ywrt3apf. And healthcare workers are not alone. So severe was the medical, financial, and vocational toll of COVID-19 on teachers and other school employees that their numbers have plummeted by over half a million since the onset of the pandemic. Emma Mayer, *More Teachers Are Facing Penalties For Quitting During Pandemic*, Newsweek (Mar. 25, 2022), https://tinyurl.com/4zbhc8k9; *see also* Am. Fed'n Teachers, *Here Today, Gone Tomorrow? What America Must Do to Attract and Retain the Educators and School Staff Our Students Need* 7 (2022) ("Teacher Shortage Report"), https://tinyurl.com/48zmexkp. One of the principal reasons for this mass exit: COVID-19 related burnout. *See* Tim Pressley, *Factors Contributing to Teacher Burnout During COVID-19*, 50 Educ. Researcher 325, 325 (2021).

The Administration acted pursuant to the HEROES Act to grant waivers to ensure that borrowers are not "placed in a worse position financially in relation to [their federal student loans]" because of COVID-19. 20 U.S.C. § 1098bb(a)(2). That relief will help all Americans harmed by COVID-19, including teachers, nurses, and public employees. After carefully reviewing data from prior emergencies—including how quickly and substantially default rates shot up after prior deferment periods ended, App. 234–35, 304—the Secretary rightly concluded that the more permanent measure of debt cancellation, as opposed to temporary measures like deferment extensions, was necessary to ensure that borrowers are not left in a financially worse position as to their student loans because of the pandemic. This determination lay readily "within the bounds of reasoned decisionmaking." *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 105 (1983).

Student debt cancellation will help the Nation's economy, including its crucial public service sectors, recover from the pandemic's toll. *See* Teacher Shortage Report at 7; Nursing Shortage Report at 3. The Secretary's action will reduce the burden of exceedingly high educational costs, which has kept talented professionals from entering public service. *See* Nursing Shortage Report at 7; Teacher Shortage Report at 31. And, in keeping its application process simple and straightforward, the debt cancellation action also aligns with the HEROES Act's directive to "minimize[]" "administrative requirements" and "ease the burden on ... students." 20 U.S.C. § 1098bb(a)(2)(B).

The cancellation thus falls squarely within the statutory authority Congress granted the Secretary in the HEROES Act. Cancellation will help ensure that the millions of people represented by *amici* are not left in a "worse position" as to their loan payments due to the devastating COVID-19 pandemic. This Court should hold that the Department of Education's student debt forgiveness plan is authorized under the HEROES Act.

I. Student Debt Cancellation Is A Reasoned Application Of The HEROES Act

As Petitioners explain (at 5–6), Congress gave the Secretary of Education authority in the HEROES Act to "waive or modify any statutory or regulatory provision applicable to [federal student loans] … as the Secretary deems necessary in connection with a … national emergency" when "necessary to ensure … that … recipients of [federal] student financial assistance … who are affected individuals are not placed in a worse position financially in relation to that financial assistance because of their status as affected individuals." 20 U.S.C. § 1098bb(a). As detailed below, student borrowers, including public service workers like teachers, adjunct faculty, and nurses, are among the "affected individuals" who "reside[] or [are] employed in an area that is declared a disaster area by any Federal, State, or local official in connection with a national emergency … or … suffered direct economic hardship as a direct result of a … national emergency," *id.* § 1098ee(2), as the Secretary concluded in a reasoned determination. *See* App. 228–62.

A. COVID-19 Has Made Student Borrowers Across All Sectors Worse Off

The economic tolls of the COVID-19 pandemic, which "triggered the sharpest economic contraction in modern American history," Scott Horsley, *3 Months Of Hell: U.S. Economy Drops 32.9% In Worst GDP Report Ever*, NPR (July 30, 2020), https://tinyurl.com/5dc2sp5s, have been formidable. The Secretary reasonably concluded that student debt relief is an appropriate step to redress the long-lasting and even permanent financial wounds wrought by a global multi-year pandemic and ensure that borrowers are not "placed in a worse position financially in relation to [their federal student loans] because of their status as affected individuals." 20 U.S.C. § 1098bb(a)(2)(A).

Abundant data support the Secretary's decision. Approximately half of all student loan borrowers face an increased risk of delinquency when pandemic-related student loan deferments end. U.S. Gov't Accountability Office, *COVID-19: Significant Improvements Are Needed for Overseeing Relief Funds and*

Leading Responses to Public Health Emergencies, Rep. to Cong. Comms. No. 105291, at 102 (2022), https://tinyurl.com/3v37uv9b. The number of borrowers reporting that they will have difficulty making full repayments—or even any repayments at all—has spiked compared to those who reported being unable to make full payments before the pandemic: Over half of all those earning under $40,000 expect that they will have trouble making loan repayments following the end of the pandemic-based deferment period, compared to just a quarter of that population who reported they either never or only occasionally made full payments in 2019. The same holds true for those earning between $40,000 to $75,000 and between $75,000 to $125,000—the number of people in those income groups saying they will have trouble making payments has doubled and increased by a third, respectively, compared to 2019. App. 235–36. Americans who entered the pandemic in the most "financially vulnerable" condition—including those with low incomes, limited access to cash and credit, and difficulty meeting ordinary expenses—"are most likely to experience negative financial impact from the … pandemic." Carol Bruce et al., *Financial vulnerability and the impact of COVID-19 on American households*, 17 PLoS ONE, no. 1 (2022), https://tinyurl.com/mt7p4d2u.

The Secretary's decision is also reasonably calculated. A $10,000 cancellation is not a hand-out that will wipe out the preexisting debt of most student loan borrowers, who owe almost $30,000 in student loan debt on average. Alicia Hahn, *2022 Student Loan Debt Statistics: Average Student Loan Debt*, Forbes (Sept. 19, 2022), https://tinyurl.com/yas5mmcr. Nor is the cancellation of $20,000 for Pell Grant recipients, who tend to have 34% more associate degree student debt than non-recipients, Nancy Wong, *New Data Show Recent Graduates Who Received Pell Grants Left School with $6 Billion More in Debt than Their Peers*, Inst. for Coll. Access & Success (Dec. 21, 2020), https://tinyurl.com/2yvy265w, and who experience larger increases in default after exiting mandatory administrative forbearance than their non-Pell counterparts, App. 235. Rather, the cancellation is a targeted pandemic countermeasure that will help ensure that the Nation's workers—"affected individuals" during a national emergency—are not put "in a worse position financially" by defaulting on their loans after the payment pause ends.

B. COVID-19 Severely Impacted America's Teachers

Among workers, student debt relief is particularly important to educational and healthcare professionals, who have had some of the highest quit rates over the course of the pandemic and would be left in a significantly worse position absent relief under the HEROES Act. *See* Chris Gilligan, *Health Care, Education, Food Service: A Data Snapshot of Job Departures*, U.S. News (Oct. 26, 2022), https://tinyurl.com/yuy65uya. As much as educators and nurses want to make a difference in the lives of others, this exodus has been driven largely by the increased risks, workload, and stresses of COVID-19, which make lower-paying and higher-risk jobs simply no longer worth the costs. *See* Teacher Shortage Report at 31–32; Kim Parker & Juliana Menasce Horowitz, *Majority of workers who quit a job in 2021 cite low pay, no opportunities for advancement, feel-*

ing disrespected, Pew Rsch. Ctr. (Mar. 9, 2022), https://tinyurl.com/9nbshhds; William Mahan, *Reasons Employees Quit their Job During the Coronavirus Pandemic*, Work Inst. (May 13, 2020), https://tinyurl.com/mr4ymbmb.

Student debt relief will help remediate the crushing impact of COVID-19 on teachers, who must amass substantial debt to enter their profession and who often work at low wages. The prerequisites to become a teacher, which include both higher education and licensing requirements, leave the average teacher with an outstanding student loan debt balance of $58,500, with 1 in 8 owing more than $105,000. Teacher Shortage Report at 31–32. Yet, the average teacher earns $65,090 per year. Nat'l Ctr. for Educ. Stats., *Digest of Education Statistics* (Aug. 2021), https://tinyurl.com/ycku2mzt. Teachers make these financial sacrifices so that they may fill a vital public role in educating the Nation's children.

But the last two years have left many teachers wondering whether staying in education is worth the increased burdens and psychological stress of the COVID-19 pandemic. Since the onset of the pandemic, teachers—tasked with implementing a sudden mass shift to online learning—have been expected to take on more work than ever. *See* Teacher Shortage Report at 31–32. When instruction returned to being in-person, they also shouldered the increased personal risks of teaching large classrooms of students during an ongoing pandemic. *See id.* at 32–33; Michael Sainato, *'Exhausted and underpaid': teachers across the US are leaving their jobs in numbers*, The Guardian (Oct. 4, 2021), https://tinyurl.com/bddk52af. Rather than being rewarded for their sacrifices, teachers instead faced further financial setbacks, many of which are also attributable to COVID-19. They were paid salaries that did not keep up with the pace of inflation, Nic Querolo et al., *Part 1: Why Teachers Are Quitting*, Bloomberg (Sept. 2, 2022), https://tinyurl.com/26ybwdns, which has risen partly due to persistent, pandemic-related supply-chain disruptions, Laurence Ball et al., *Understanding US inflation during the COVID era*, Brookings (Sept. 7, 2022), https://tinyurl.com/9cvpmdh6. Further, most of the 2020 statewide initiatives to increase teacher salaries were scrapped due to concerns that COVID-19 would reduce sales and income tax revenue. *See* Daarel Burnette II & Madeline Will, *How Coronavirus Is Jeopardizing Teacher Pay Raises*, Educ. Wk. (Mar. 26, 2020), https://tinyurl.com/yc3vewyt.

Teachers and other educational professionals, 53% of whom were satisfied with their jobs in June 2020, just after the pandemic began, have seen the balance flip: Today, only 19% are satisfied and 79% are dissatisfied. Hart Rsch., *Under Siege: The Outlook of AFT Members* 4 (2022), https://tinyurl.com/5n7cnzhx. 71% of teachers and staff describe the 2021–22 school year as one of their worst. *Id.* at 7. 38% of teachers are likely to quit their jobs in the next two years, often citing pandemic-related reasons for their desire to leave. *See id.* at 9; Querolo et al., *supra*. The pandemic's stress has already led to a loss of around 600,000 educators—who are now left without their teaching income but still under the burden of their student debt—since the onset of COVID-19. Mayer, *supra*. Teachers would be left in a substantially worse position as to their student loans absent Petitioners' action.

Just one example among many is Bonnie Weiler-Sagraves, who became a teacher nearly 30 years ago. She borrowed $10,000 for her bachelor's degree and an additional $28,000 for her master's degree. From the outset of her career, she sought assistance paying down her loans. She first worked at a Title I school serving children in communities with low socioeconomic status. She then moved to teaching in a middle school to qualify for forgiveness for teachers working in "critical shortage" areas. Next, she followed her loan servicer's advice to enter forbearance on her loans for ten years. On the government's promise of an additional $6,000 a year if she became a board-certified teacher, she spent three years and $2,500 to obtain her National Board Certification. Bonnie Weiler-Sagraves, *Roadblocks to student debt relief*, Am. Fed'n Teachers (July 30, 2021), https://tinyurl.com/hk6ef35b. Though she has been working towards achieving Public Service Loan Forgiveness since 2007, she encountered consistent servicer errors that prevented her from successfully obtaining forgiveness. Myers, *Millions*, *supra*. Ms. Weiler-Sagraves is now 61 years old and has been working diligently to pay back her loans since 1988. She even sold her home to help with repayment. Yet she retains a loan balance of over $60,000—nearly double her net income after deductions. Weiler-Sagraves, *supra*. And Ms. Weiler-Sagraves' already precarious financial situation has been further exacerbated by the pandemic. COVID-19 has limited her opportunities to supplement her paycheck, such as tutoring and working Saturday school, and increased the costs of the additional training she needs to take on to meet her license renewal requirements. *See* Myers, *Millions*, *supra*.

Financial challenges affect teachers at the university level as well, and data reflecting these hardships support the Secretary's decision. Today, 75% of university faculty are not eligible for tenure, and 47% hold only part-time positions. Am. Fed'n Teachers, *An Army of Temps: AFT Adjunct Faculty Quality of Work/Life Report* 1 (2022) ("AFT Adjunct Report"), https://tinyurl.com/5cf2es85. Nearly a quarter of these faculty have an annual salary below the federal poverty line, 38% access government assistance, and only 20% can comfortably cover basic monthly expenses. *Id.* Over a fifth of adjunct faculty have had problems accessing adequate food or have reduced the quality of the food they eat. *Id.* at 5. Less than half currently have health insurance through their employer and "[i]t's shockingly common for contingent faculty to put off seeing a doctor because of costs not covered by their insurance." *Id.* at 6. Finally, these faculty also bear crushing student debt. The average student loan debt for professionals with master's degrees—required for adjunct faculty—totals over $80,000. Melanie Hanson, *Average Graduate Student Loan Debt*, Educ. Data Initiative (Oct. 26, 2022), https://tinyurl.com/2j6k8hyr.

For example, Timothy Babulski, a 44-year-old adjunct professor, has a student loan balance of $230,000. Mr. Babulski sought advanced education because that "was the only way for him to progress in his teaching career." Though his student loans were deferred during the three-and-a-half years it took him to obtain his Ph.D., interest continued to accumulate. Ayelet Sheffey, *Meet a Gen Xer with $230,000 in student debt who worries payments will restart without Biden's loan forgiveness: 'It will be an* *excuse to say they'd done all they can'*, Bus. Insider (Dec. 24, 2022), https://tinyurl.com/5567jy9r.

Maria (who declined to share her last name for privacy reasons) is an adjunct professor who has been unable to secure a full-time position despite completing a master's degree and Ph.D. To support her family on her part-time adjunct salary, she has been forced to cash out her 401(k), and, at the age of 48, has $430,000 in student debt. Ayelet Sheffey, *Meet a single mom and adjunct professor with $430,000 in student debt*, Bus. Insider (Dec. 4, 2021), https://tinyurl.com/2fxkp6fj.

COVID-19 has deepened the already substantial financial hardships and employment instability of adjuncts and other university faculty: This pandemic-exacerbated financial strain places faculty "in a worse position financially in relation to [their federal student loans]." 20 U.S.C. § 1098bb(a)(2)(A). Facing pandemic-related budgetary shortfalls, many universities implemented hiring freezes, instituted salary freezes or reductions, suspended benefits, or fired employees. Jacqueline Bichsel et al., *2021 Faculty in Higher Education Annual Report* 5, College & Univ. Prof'l Ass'n for Human Resources (2021), https://tinyurl.com/2p8km2mh; Am. Ass'n Univ. Professors, *The Annual Report on the Economic Status of the Profession, 2021-22*, at 4, 15 (June 2022) ("2022 AAUP Report"), https://tinyurl.com/4yss43zn. An AAUP survey shows that, in response to COVID-19, more than half of responding institutions froze or reduced faculty salaries, and more than 25% eliminated or reduced fringe benefits. Am. Ass'n Univ. Professors, *The Annual Report on the Economic Status of the Profession, 2020-21*, at 4 (July 2021) ("2021

AAUP Report"), https://tinyurl.com/nhb6e2jz. Nearly 20% of full-time non-tenure-track faculty lost their appointments or saw their contracts expire without renewal. *Id.* And 27.5% of responding institutions have laid off non-tenure-track faculty. Am. Ass'n Univ. Professors, *Special Report: COVID-19 and Academic Governance* 34 (May 2021), https://tinyurl.com/2p8sz6hy. Tenure-track faculty have suffered too: Nearly 10% of four-year higher education institutions with a tenure system "have laid off tenured and tenure-track faculty since the onset of the pandemic." *Id.* at 34.

Put simply, "the COVID-19 pandemic has devastated the livelihoods of thousands of contingent faculty members," who have experienced massive job loss. 2022 AAUP Report at 15. Adjunct faculty faced "a staggering 8.7% decrease in part-time appointments" from fall 2019 to fall 2020, *id.*, and a nearly 5% workforce reduction between 2020 and 2021—the largest decrease in size of any faculty type, Bichsel et al., *supra*, at 4. These job cuts have had a disparate impact on women and people of color, who are more likely to hold contingent faculty appointments. *See* 2022 AAUP Report at 15. That is of particular concern, given that the majority of all student loan debt belongs to women, who take "[two] years longer to pay off their student loans despite making higher payments," Melanie Hanson, *Student Loan Debt By Gender*, Educ. Data Initiative (Dec. 16, 2021), https://tinyurl.com/ysmwap55, and that Black college graduates "owe an average of $25,000 more in student loan debt than White college graduates," Melanie Hanson, *Student Loan Debt By Race*, Educ. Data Initiative (June 13, 2022), https://tinyurl.com/nn9r9uf9.

On the whole, "[g]iven the actions taken by institutions in response to the COVID-19 pandemic, the economic status of contingent faculty members is as precarious as ever." 2021 AAUP Report at 12.

C. COVID-19 Severely Impacted America's Nurses

The psychological and financial impacts of the COVID-19 pandemic have also been severe for nurses and other healthcare professionals. And, like teachers, many of these professionals struggle under a burden of debt. On average, nurses with a master's degree who carry student debt owe more than $47,000 in debt. Nursing Shortage Report at 8. Nurses, like teachers and adjunct faculty, "suffered direct economic hardship" as a result of the COVID-19 pandemic, 20 U.S.C. § 1098ee(2)(D), which has made it even more difficult for them to pay off their student loan debts.

Nurses saw enormous strains at work during the pandemic, which compounded their already precarious financial position and led to a mass exodus from the profession: About one in five healthcare workers has left their job since the pandemic started, Ed Yong, *Why Health-Care Workers Are Quitting In Droves*, The Atlantic (Nov. 16, 2021), https://tinyurl.com/ybpj7sez, and, as described above, an additional almost quarter of healthcare workers indicated they were likely to leave the healthcare field in 2022, Nursing Shortage Report at 3. Perhaps paradoxically, the healthcare sector also saw severe job losses during the pandemic due to a sharp dip in elective surgeries, with 12% of those workers experiencing layoffs since the pandemic began. Yong, *supra*; Margot Sanger-Katz, *Why 1.4 Million Health*

Jobs Have Been Lost During a Huge Health Crisis, N.Y. Times (May 10, 2020), https://tinyurl.com/489d9ebn. As the pandemic has abated and elective surgeries have resumed, the number of job openings for healthcare workers has ballooned, but there are virtually no more workers hired relative to those quitting the profession. Nursing Shortage Report at 3. Some healthcare workers cannot justify a return to jobs that traumatized them during the pandemic, in exchange for often-inadequate pay. *See* Yong, *supra*. As a result, many nurses who found themselves drowning in student loan debt prior to the pandemic find themselves even worse off today. The Secretary's action was reasonably calculated to lessen this harm.

Nurse Melissa Cain began her training at 18, paying for her schooling through loans and a job at McDonald's. She worked towards her nursing degrees while caring for her ill grandmother. By the time she graduated with her associate degree, she was $55,000 in debt. Ms. Cain then entered a bachelor's degree program. "Our profession requires a college degree and a license," she explained—"it's not like we have a choice and can skip college but still be nurses." Melissa Cain, *When choosing to be a nurse means choosing student debt*, Am. Fed'n Teachers (Apr. 9, 2021), https://tinyurl.com/up8epjyv. To become a specialist in gerontology and treat elderly patients in need of care, Ms. Cain also needed a master's degree, which she pursued while continuing to work. Her loans prior to graduation totaled $110,000. Ms. Cain's debt has taken a severe toll. She has been unable to pursue her dream of becoming a certified registered nurse anesthetist because of the cost of the additional degree. Even as a single mother, she has gone years without a reliable car. *Id.*

Between the time Ms. Cain began her education and the time she became a nurse, the quit rate in the profession more than doubled, with a sharp spike during the COVID-19 pandemic. Nursing Shortage Report at 2. Because of the pandemic, Ms. Cain's sacrifice to become a nurse has steepened—growing staffing shortages increase the burden of the job and make it likelier that Ms. Cain, like many colleagues, may have no choice but to leave her job due to its mental and emotional toll. But even if Ms. Cain leaves the healthcare profession for the sake of her own health, she cannot leave her debt behind her. *Id.*

II. Student Debt Cancellation Better Serves The Aims Of The HEROES Act Than Respondents' Proposed Alternatives

A. The Pandemic's Long-Lasting Harms Require Permanent Solutions

Respondents wrongly brand the pandemic a "temporary" emergency that requires only a temporary solution. Nebraska Resp. to App. to Vacate Inj. at 25. That is not the reality on the ground. Rather, permanent relief was necessary to ensure borrowers are not "placed in a worse position financially" as to their loans. 20 U.S.C. § 1098bb(a)(2)(A). Respondents' characterization wrongly dismisses the innumerable ill effects that will last far beyond the pandemic, including business closures, job loss, pay cuts, persistent inflation, COVID-19-related medical bills, and individuals being forced to take on even more debt to cover these unexpected financial hits. Juliana Menasce Horowitz et al., *A Year Into the Pandemic, Long-Term Financial Impact Weighs Heavily on Many Americans*, Pew Rsch. Ctr. (Mar. 5, 2021), https://tinyurl.com/yckrm4pr; *Local Economic Impact Report*, Yelp (Sept. 2020), https://tinyurl.com/2p8empad; Ball et al., *supra*; Jessica Wapner, *Covid-19: Medical expenses leave many Americans deep in debt*, BMJ (Aug. 14, 2020), https://tinyurl.com/4ksmun8v. COVID-19 continues to cause illness and death across the U.S.: The Centers for Disease Control and Prevention reported 470,699 new cases and 2,731 deaths caused by COVID-19 just this week. CDC, *COVID Data Tracker*, (Jan. 10, 2023), https://perma.cc/44FY-VNCH. And the millions of Americans who lost a spouse or family member to COVID-19 know all too personally that the consequences of losing a loved one are not temporary—a sudden shift from a dual- to a single-income household adds unexpected financial burdens. *See* Harriet Lancaster & Tom Johnson, *Losing a partner: the varying financial and practical impacts of bereavement in different sociodemographic groups*, 10 BMJ Supportive & Palliative Care 17 (2020), https://tinyurl.com/2hks4xad.

Continued forbearance and other temporary relief measures, *see* Nebraska Resp. to App. to Vacate Inj. at 33, would be a mere bandage over the financial wounds wrought by the unprecedented, years-long global pandemic and thus would not help avoid "placed in a worse position financially" as to their loans, 20 U.S.C.§ 1098bb(a)(2)(A). Data that the Secretary considered in making his reasoned determination show that borrowers exiting mandatory administrative forbearances caused by natural disasters—such as Hurricanes Harvey, Irma, and Maria and the 2017 California wildfires—defaulted at the *far higher* rate of 6.5%, compared to an average default rate of only 0.3% the year prior. App. 234–35. The Consumer Financial Protection Bureau ("CFPB") is already predicting that, absent student loan debt relief, this same pattern will repeat itself following the end of pandemic-related loan deferment. Thomas Conkling & Christa Gibbs, *Update on Student Loan Borrowers During Payment Suspension*, Consumer Fin. Prot. Bureau (Nov. 2, 2022), https://tinyurl.com/v7ahp36p.

The CFPB has pointed to rising inflation and increased delinquencies and balances across consumer credit products as particularly troublesome indications of future loan repayment defaults. *Id.*; *see also* App. 238 (considering the impact of inflation rising "to levels not seen in 40 years" on the risks of delinquency and default). Regardless of when borrowers are forced to resume their loan payments, evidence from prior emergencies and current market signals indicate that people with middle to low incomes will struggle to make these payments following the financial tolls of the pandemic. Petitioners reasonably concluded that these borrowers will become delinquent or default at a higher rate than they would have had COVID-19 never existed—becoming indisputably worse off as to their loans. *See* App. 232–39; Conkling & Gibbs, *supra*.

Even those who are able to successfully restart their student loan payments are likely to be "placed in a worse position financially," 20 U.S.C. § 1098bb(a)(2)(A), in relation to those loans by the pandemic, absent debt cancellation. They may be able to eke out their monthly loan payments but be left unable to save for retirement, to afford a home, or to care for aging parents. *See* Myers, *Millions*, *supra*. During the pandemic, Ms. Brun-Cottan was relying on relatives for housing; she is now dreading the restart of student loan payments after the pandemic deferment ends. *Id.* Ms. Weiler-Sagraves expressed similar concerns over her ability to begin repaying her loans, adding that she will have to "find the money somewhere": "I would have to … cancel my life insurance policy or something else." *Id.*

Respondents fail to recognize that the financial repercussions of a national emergency cannot be wiped away if borrowers are given a few months—or even a few years—of paused payments. Approximately one in ten of those who reported experiencing a worse financial situation during the pandemic think their finances will *never* recover. Horowitz et al., *supra*. Instead of offering up the same inadequate temporary solutions to the long-lasting financial harms induced by past national emergencies, Petitioners' student debt cancellation action takes an appropriately robust approach to ensure that borrowers are not "placed in a worse position" because of COVID-19.

B. Student Debt Relief Will Best Facilitate The Recovery Of The Public Service Sector

Petitioners' student debt cancellation action will not only help all "affected individuals," including individual public service workers impacted by the COVID-19 emergency; it will also hasten the recovery of the broader public service sector following pandemic-driven workforce losses by helping to attract and retain talented workers. The COVID-19 pandemic showed the Nation just how critical public service workers are to its collective well-being. But the pandemic also pushed many of these workers to their limits, exposing them to unsafe working conditions and forcing them to work until exhaustion. This state of affairs threatens to push these workers out of their jobs, leaving them in a substantially "worse position" relative to their loans because of the pandemic.

Ms. Weiler-Sagraves reports that "[t]he [school] district is forced to use anyone who they can find even if they are not qualified for the job, because there are so few people interested in teaching these days." Myers, *Millions*, *supra*. Ms. Brun-Cottan echoes similar sentiments in the healthcare context: "I work in a system that is in total collapse …. Healthcare is in freefall in this country. Sick people need help and there are not enough of us to help them." *Id.* And there is no relief in sight—in fact, short staffing has created a domino effect by placing intense pressure on remaining staff, causing them to consider leaving their jobs, *see* Nursing Shortage Report at 3; Yong, *supra*, or to discourage others from joining the profession. As Ms. Brun-Cottan says: "I cannot in good conscience recommend to any young person I know that they incur debt for the gift of involving themselves in this mess. I used to guest lecture to … first-year doctoral students …. This year I declined to lecture because the only thing I have to say to anyone who wants to enter healthcare right now is 'Have you considered what your other options are? Whatever you have considered, do that instead.'" Myers, *Millions*, *supra*.

Projections estimate that, if current trends hold, the United States will have a shortage of approximately 3.2 million healthcare workers by 2025. Tanner Bateman et al., *US Healthcare Labor Market* 4, Mercer (2021), https://tinyurl.com/2s428m49; *see also* Nursing Shortage Report at 3 (noting that healthcare staff shortages are growing as job openings increase due to an aging U.S. population). Teacher shortages are projected to reach around 200,000 by 2025, up from 110,000 in 2018. Emma García & Elaine Weiss, *The teacher shortage is real, large and growing, and worse than we thought*, Econ. Policy Inst. (Mar. 26, 2019), https://tinyurl.com/nhuf49nk. Faced with plummeting morale, major staffing shortages, and projected increases in the number of workers that will be needed in coming years, it remains more important than ever to allow workers to enter critical public service industries like healthcare and teaching—and the student debt cancellation action accomplishes exactly that.

The Secretary's action will reduce the burden of high educational costs, one of the main barriers keeping talented professionals from entering public service work despite promises of relief like the Public Service Loan Forgiveness ("PSLF") program. *See* Nursing Shortage Report at 7; Teacher Shortage Report at 31. Critically, debt cancellation will also help keep part-time public service workers—who do not qualify for PSLF—afloat after these workers faced particularly brutal mass layoffs during the pandemic. *See, e.g.*, Caroline Leddy, *CUNY Leaders Pressed on Thousands of Faculty Layoffs*, Gotham Gazette (Nov. 13, 2020), https://tinyurl.com/2p8nzvpe.

The assertion that the student debt cancellation action will "undermine[] PSLF," New Civil Liberties Alliance CA8 Amicus Br. Supporting Resp. at 12, is entirely unfounded. Student debt relief would be a shot in the arm for public service workers, as it would for other Americans. As demonstrated above, *see supra* Section I.A, the cancellation action will not come close to eliminating the debt of public service workers like nurses and teachers and thus cannot possibly incentivize those workers to leave public service.

Student debt relief will enhance, not undermine, Americans' ability to enter public service careers as the Nation emerges from the pandemic. Many who might otherwise aspire to enter a career in public service may have been deterred by the difficult financial conditions they have faced and the debt they have accumulated during the pandemic. Financial sacrifice is, in fact, the leading reason students choose not to enter teaching. Teacher Shortage Report at 32. High educational costs, a barrier to entry in many public service professions, *see id.* at 31; Nursing Shortage Report at 7, have become particularly insurmountable following a pandemic that markedly drove up the costs of food, housing, and other basic necessities, Ben Popken, *Consumer prices rose 5.4 percent in July as pandemic disruptions continue*, NBC News (Aug. 11, 2021), https://tinyurl.com/2c6wddw3 (reporting that, from 2020 to 2021, the average prices of consumer goods increased by over 5% due largely to pandemic-related supply chain bottlenecks); John V. Duca & Anthony Murphy, *Why House Prices Surged as the COVID-19 Pandemic Took Hold*, Fed. Reserve Bank of Dallas (Dec. 28, 2021), https://tinyurl.com/yckfrhbu (reporting a record rise in house prices in 2021 in part due to greater need to work from home and for more socially distanced housing due to the pandemic). Student debt cancellation reduces these COVID-exacerbated financial barriers, allowing more Americans to enter the public service sector now, when they are sorely needed.

Student debt cancellation also helps to support adjunct faculty, paraprofessionals, and other part-time workers, who perform essential public service work but are unable to qualify for the PSLF program if they work less than an annual average of 30 hours per week. *See* 34 C.F.R. § 685.219(b). Absent debt cancellation, these workers would be left in a substantially "worse position" relative to their loans. For many adjunct faculty, only the time they spend teaching in a classroom has counted towards the PSLF program's requirement, which fails to account for the many hours these professionals spend preparing their lessons and hosting office hours for students. *See* Carolina Bank Muñoz, *Victory for adjunct debt relief*, Am. Fed'n Teachers (Oct. 20, 2022), https://tinyurl.com/37fe24dv; *see also* Sheffey, *Gen Xer*, *supra*. These uncounted and unpaid hours only increased during the pandemic, during which the majority of adjunct faculty received no compensation for the enormous effort it took to switch to online learning—a process that would normally take colleges months to prepare for, Lauren Kaori Gurley & Aaron Gordon, *The Move to Online College is Hitting Adjunct Professors the Hardest*, Vice (Mar. 20, 2020), https://tinyurl.com/yckrpkhj—and 33% had to cover costs related to the transition to virtual learning out of their own pockets, AFT Adjunct Report at 10.

In addition to adjunct faculty, hardworking paraprofessionals like Ashley Brice and Ihsan Musawwir are unable to receive the benefit of PSLF. *See* AFL-CIO, *AFL-CIO Roundtable on Student Debt Cancellation*, YouTube (June 22, 2022), https://tinyurl.com/2p8evcad. Ms. Brice, who was herself a child with a disability, now works with children with disabilities; Ms. Musawwir, a single mother, is a dedicated paraprofessional supporting a special needs child. *Id.* Both are burdened by substantial student loan debt, which prevents Ms. Brice from fulfilling her dream of becoming a social worker and has Ms. Musawwir struggling as she works full time, goes to school, and supports her children. *Id.* Unlike PSLF, the student loan cancellation action ensures that part-time public service workers are not left in a "worse position" by COVID-19-related financial difficulties.

Petitioners' debt cancellation action also furthers the express goals of the HEROES Act by minimizing the administrative burden on applicants for debt relief. *See* 20 U.S.C. § 1098bb(a)(2)(B). One of the marked failures of the PSLF program has been its complex and opaque administrative requirements. Virginia Myers, *A ray of hope for massive student debt relief*, Am. Fed'n Teachers (Oct. 7, 2021), https://tinyurl.com/442bw5pe. Ms. Brun-Cottan, who works with COVID-19 patients in the intensive care unit, was already "exhausted" and "traumatized" from "see[ing] so many people die" during the pandemic. Brun-Cottan, *supra*. When she applied for PSLF relief last year, she heard "crickets": The PSLF administrators could not even confirm whether she qualified for the program. *Id.* Despite Ms. Brun-Cottan's desire to work in underserved rural communities, she does not feel that choice is available to her, given her mounting student loan debt and the "unreliab[ility]" of the PSLF program. *Id.*

Congress unambiguously sought to avoid such outcomes under the HEROES Act, by assigning the Secretary the authority to "minimize[]" "administrative requirements" "to ease the burden on … students." 20 U.S.C. § 1098bb(a)(2)(B). Petitioners' student debt cancellation action fulfills that congressional mandate, making it easy for borrowers, including public service workers, to ensure they are not left in a worse position as to their student loans by the COVID-19 pandemic.

CONCLUSION

For the foregoing reasons, this Court should hold that the Department of Education's student debt forgiveness plan is authorized under the HEROES Act.

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Respectfully submitted,

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