VIRGINIA LAW REVIEW
ONLINE

VOLUME 108 APRIL 2022 129–151

ESSAY

STANDING AND STUDENT LOAN CANCELLATION

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As the public policy debate over broad student loan cancellation continues, many have questioned whether the Executive Branch has the legal authority to waive the federal government's claim to up to $1.6 trillion in debt. Some have argued that loan nullification would prompt a years-long battle in the courts. However, commentators and policymakers should not assume that federal courts would have anything at all to say about the legality of federal debt cancellation, as it is likely that no party would have standing to challenge the executive action. This Article considers taxpayers, former borrowers, Congress, state governments, and loan servicers, determining that none of these parties could assert both the Article III standing and the prudential standing required to sustain a suit against the Executive for student loan forgiveness. Even if student loan cancellation never occurs, this "standing dead zone" has broader implications for debt cancellation powers held by department heads across the federal government as well as the wisdom of current federal standing doctrine.

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INTRODUCTION

There is an ongoing public policy debate over whether the Executive Branch, acting through the Secretary of Education, can and should eliminate most student debt owed to the federal government using powers enumerated in the Higher Education Act of 1965 ("HEA").[1] Publicly owned student debt has tripled in just a little over a decade, increasing from $516 billion in 2007 to $1.6 trillion in 2021.[2] Policymakers and commentators have flooded op-ed sections with arguments for and against implementation of the policy. Some advocates posit that eliminating debt will boost the economy[3] or work to narrow the racial wealth gap.[4] Others point out that prospects for repayment are dim regardless and that up to $500 billion in loans may never be recovered anyway.[5] Detractors argue that debt forgiveness would disproportionately benefit high-earning households[6] and that broader economic benefits are unlikely.[7]

[1] See Pub. L. No. 89-329, 79 Stat. 1219 (codified as amended in scattered sections of 20 U.S.C.) and subsequent amendments.

[2] U.S. Dep't of Educ., Spreadsheet, Federal Student Aid Portfolio Summary, https://studentaid.gov/sites/default/files/fsawg/datacenter/library/PortfolioSummary.xls, [https://perma.cc/DAX8-57FQ]. The number of individuals carrying student debt increased from 28 million people to 43 million during the same timespan. The average public loan borrower now carries $37,100 in debt, double the amount carried by the average borrower in 2007. Total student debt stands at $1.75 trillion, and there is approximately $138 billion in privately-owned debt. Board of Governors of the Federal Reserve System, Consumer Credit – G.19, https://www.federalreserve.gov/releases/g19/hist/cc_hist_memo_levels.html [https://perma.cc/RFZ6-D3SQ].

[3] Hillary Hoffower & Madison Hoff, The Case for Cancelling Student Debt Isn't Political — It's Practical. Here Are the Benefits of Erasing $1.6 Trillion, No Strings Attached, Bus. Insider (Feb. 17, 2021, 10:26 AM), https://www.businessinsider.com/economic-benefits-of-student-debt-forgiveness-2020-12 [https://perma.cc/W366-5BDF].

[4] Naomi Zewde & Darrick Hamilton, Opinion, What Canceling Student Debt Would Do for the Racial Wealth Gap, N.Y. Times (Feb. 1, 2021), https://www.nytimes.com/2021/02/01/opinion/student-debt-cancellation-biden.html [https://perma.cc/TRA4-BZ2X].

[5] Josh Mitchell, Is the U.S. Student Loan Program Facing a $500 Billion Hole? One Banker Thinks So., Wall St. J. (Apr. 29, 2021), https://www.wsj.com/articles/is-the-u-s-student-loan-program-in-a-deep-hole-one-banker-thinks-so-11619707091 [https://perma.cc/DA7U-57UE].

[6] Adam Looney, Opinion, Biden Shouldn't Listen to Schumer and Warren on Student Loans, Wash. Post (Nov. 17, 2020), https://www.washingtonpost.com/opinions/biden-shouldnt-listen-to-schumer-and-warren-on-student-loans/2020/11/17/b5839042-2915-11eb-9b14-ad872157ebc9_story.html [https://perma.cc/9BMT-82BP].

[7] Editorial Board, Opinion, The Great Student Loan Scam, Wall St. J. (Feb. 9, 2021), https://www.wsj.com/articles/the-great-student-loan-scam-11612915210 [https://perma.cc/8VJD-W4V9].

Many prominent politicians continue to push for executive action to cancel student loans. Among these voices are Senate Majority Leader Chuck Schumer and Senator Elizabeth Warren.[8] More than sixty members of Congress signed a letter supporting up to $50,000 in debt relief per borrower,[9] and calls for action have persisted. Schumer, for example, has repeatedly asked President Biden to provide student debt relief through executive action.[10] Others have called for cancellation of all $1.6 trillion in student debt.[11] During his campaign, President Biden advocated $10,000 in debt relief per borrower facilitated through congressional action,[12] later remarking that he is prepared to write off the debt through executive powers.[13] A recently released, redacted memo indicates that the administration may be more seriously considering unilateral executive action.[14] Given that student loan balances continue to increase and will not decrease significantly without loan forgiveness, this political discussion is unlikely to disappear any time soon.

The debate has led some to question whether debt relief through executive action alone would be legal. A majority of the relief would come through 20 U.S.C § 1082(a), which affords the Secretary of

[8] Press Release, Sen. Elizabeth Warren et al., Warren, Schumer, Pressley, Colleagues: President Biden Can and Should Use Executive Action to Cancel up to $50,000 in Federal Student Loan Debt Immediately (Feb. 4, 2021) [hereinafter Warren et al., Press Release], https://www.warren.senate.gov/newsroom/press-releases/warren-schumer-pressley-colleagues-president-biden-can-and-should-use-executive-action-to-cancel-up-to-50000-in-federal-student-loan-debt-immediately [https://perma.cc/YC2Z-JQP9].

[9] Id.

[10] See, e.g., Chuck Schumer (@SenSchumer), Twitter (Dec. 6, 2021, 5:41 PM), https://twitter.com/SenSchumer/status/1467987566750322694 [https://perma.cc/6285-Q2XT].

[11] See, e.g., Bernie Sanders (@SenSanders), Twitter (Aug. 7, 2020, 12:31 PM), https://twitter.com/SenSanders/status/1299021647392002049 [https://perma.cc/Y4RF-7CWB]; Ayanna Pressley (@AyannaPressley), Twitter (Jan. 19, 2021, 1:50 PM), https://twitter.com/AyannaPressley/status/1351602827504750595 [https://perma.cc/RW3Q-GDTD].

[12] Sydney Ember, Biden Was Asked About Canceling Student Loan Debt. Progressives Saw an Opening., N.Y. Times (Nov. 16, 2020), https://www.nytimes.com/2020/11/16/us/biden-was-asked-about-canceling-student-loan-debt-progressives-saw-an-opening.html [https://perma.cc/DN3Y-VTQE].

[13] Lauren Egan, 'I Will Not Make That Happen': Biden Declines Democrats' Call to Cancel $50K in Student Debt, NBC (Feb. 17, 2021), https://www.nbcnews.com/politics/joe-biden/i-will-not-make-happen-biden-declines-democrats-call-cancel-n1258069 [https://perma.cc/Q6X9-HDY2].

[14] In October, the Biden administration released the redacted version of a memorandum evaluating the president's authority to unilaterally cancel student loans. Andrew Marantz, What Biden Can't Do on Student Debt—And What He Won't Do, New Yorker (Oct. 29, 2021), https://www.newyorker.com/news/news-desk/what-biden-cant-do-on-student-debt-and-what-he-wont-do [https://perma.cc/V65Q-MKWK].

Education the power to "enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption" related to certain types of student loans.[15] Although advocates introduced the idea of forgiveness using § 1082(a) in 2015,[16] only one piece in the legal literature focuses on the proposal's merits.[17] Some commentators have argued that § 1082(a) provides the Secretary of Education with the power to cancel the majority of student loans,[18] while others contend that this action would exceed the Executive's powers under the HEA.[19] Numerous commentators have further warned that any loan cancellation would likely be held up in the judiciary amid legal challenges and injunctions.[20]

However, commentators, Congress, and the Executive should be aware of the strong possibility that the judicial branch will have nothing at all to

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[15] Warren et al., Press Release, supra note 8. Section 1082(a) codifies § 432(a) of the HEA, as originally enacted in 1965.

[16] National Consumer Law Center, Comment Submitted by the National Consumer Law Center to the Consumer Financial Protection Bureau Re: Request for Information Regarding Student Loan Servicing (July 13, 2015), https://www.nclc.org/images/pdf/special_projects/sl/NCLC_Comments_Student_Loan_Servicing_Jul2015.pdf [https://perma.cc/2Q9K-H9K4].

[17] Luke Herrine, The Law and Political Economy of a Student Debt Jubilee, 68 Buff. L. Rev. 281, 342–43 (2020) (arguing that the Department of Education's inherent enforcement discretion should settle the issue in favor of legality); see also Dalié Jiménez & Jonathan D. Glater, Student Debt Is a Civil Rights Issue: The Case for Debt Relief and Higher Education Reform, 55 Harv. C.R.-C.L. L. Rev. 131, 142 (2020) (discussing the policy benefits of debt relief).

[18] Letter from Eileen Connor, Legal Dir., Harvard L. Sch. Legal Servs. Ctr., to Elizabeth Warren, U.S. Sen. from Massachusetts (Jan. 13, 2020), https://static.politico.com/4c/c4/dfaddbb94fd684ccfa99e34bc080/student-debt-letter-2.pdf.pdf [https://perma.cc/WU39-ATP5].

[19] Michael Stratford, Pelosi Rebuffs Schumer's Push to Get Biden to Cancel Student Debt, Politico (July 29, 2021, 10:32 AM), https://www.politico.com/news/2021/07/29/pelosi-schume-student-debt-501521 [https://perma.cc/A6US-5AP6].

[20] For example, a Harvard law professor and student argued that there is "a strong possibility that the initiative might be tied up in court for many years." Howell Jackson & Colin Mark, Opinion, Executive Authority to Forgive Student Loans Is Not So Simple, Regul. Rev. (Apr. 19, 2021), https://www.theregreview.org/2021/04/19/jackson-mark-executive-authority-forgive-student-loans-not-simple/ [https://perma.cc/ZG4V-FJ66]; see also Jordan Weissman, What Biden Should Do About Student Debt, Slate (Nov. 19, 2020, 10:40 AM) (arguing that loan forgiveness through unilateral executive action may not hold up to legal challenges), https://slate.com/business/2020/11/biden-student-debt-forgiveness.html [https://perma.cc/6X4G-EHQD]; Annie Nova, Student Loan Forgiveness Is Still Up in the Air. What to Do in the Meantime, CNBC (Sep. 24, 2021, 10:58 AM EDT) (explaining that experts believe cancelling student loans via executive action may be held up in the courts), https://www.cnbc.com/2021/09/24/what-to-do-while-waiting-for-news-on-student-loan-forgiveness-.html [https://perma.cc/T62C-WKEB].

say about the legality of student debt relief using the HEA, given that it is unlikely any party would have standing to challenge the government's action if the government makes the decision through an adjudication rather than negotiated rulemaking. Current standing doctrine under both Article III and the Administrative Procedure Act ("APA") places narrow limits on who exactly may stake a claim against particular interpretations of federal law. These requirements create a null set of litigants with standing to challenge cancellation of federally owned debt. In this "standing dead zone," which authors have recognized in similar contexts,[21] constraints on the Executive Branch will either be political or result from the government's own interpretation of the law. Thus, while litigation and injunctions might occur, litigants may never receive clarification on the scope of § 1082(a).

This issue extends beyond student debt obligations—many department heads and other officials retain the apparent power to broadly compromise and settle debts. Similar compromise and settlement provisions allow the Secretary of the Interior the power to waive financial development loans made to Indians,[22] the Secretary for Veterans Affairs to waive certain loans made to veterans,[23] the Secretary of Agriculture to release loans made to farmers,[24] and the Administrator of the Small Business Association to compromise any debt at all held by the agency.[25] These actions may also escape judicial review. Many other provisions raise similar questions because they provide a financial benefit to one party while not directly harming another.[26]

Part I of this article provides a brief background on contemporary standing doctrine, the likely cause of action under the Administrative Procedure Act, and other executive student debt cancellation actions. Part II then considers all classes of potential litigants who might try to

[21] Mila Sohoni, On Dollars and Deference: Agencies, Spending, and Economic Rights, 66 Duke L.J. 1677, 1706–08 (2017) (discussing standing and Executive-driven funding schemes); Gillian E. Metzger, Taking Appropriations Seriously, 121 Colum. L. Rev. 1075, 1110–11 (2021) (noting difficulties obtaining standing to challenge Appropriations Clause violations).

[22] 25 U.S.C. § 1496(d).

[23] 38 U.S.C. §§ 3720(a)(4); 5302(b).

[24] 7 U.S.C. § 1981(b)(4).

[25] 15 U.S.C. § 634(b)(2).

[26] The Treasury Secretary may also unilaterally waive customs claims. 19 U.S.C. § 1617 (2018). Fee waivers might provide another example of this standing dead zone. See, e.g., 15 U.S.C. § 636(a)(33)(E) (waiving guarantee fees for veterans applying for small business loans).

challenge student loan cancellation, including taxpayers, former borrowers, Congress, state governments, and loan servicers. It concludes that, under current standing doctrine, none of these entities will meet requirements for standing in federal court. Because most of these parties clearly fail at the stage of Article III standing, the analysis only proceeds to the APA's requirements when considering loan servicers. As a result, commentators should not assume that the merits of student loan cancellation can be litigated in federal court.

I. BACKGROUND

A. Standing

To bring a suit in federal court under contemporary Supreme Court guidance, a plaintiff must have standing. Justice Scalia's opinion in *Lujan v. Defenders of Wildlife* outlines the Court's current perspective on standing, viewing the limitation as protecting the separation of powers, defining which disputes may be "appropriately resolved through the judicial process," and setting out three requirements as the "irreducible constitutional minimum of standing."[27] These include (1) injury in fact that is actual, concrete, and particularized; (2) a causal connection between the injury and the conduct complained of; and (3) a likelihood that exercise of judicial power will redress the injury.[28] The Court furthermore differentiated between cases in which government regulation targets the plaintiff and cases where the plaintiff complains about "unlawful regulation (or lack of regulation) of *someone else*," in which case "much more is needed" for standing to exist.[29] The Court has regularly reaffirmed this formulation of its standing requirements.[30]

The requirement that the plaintiff directly suffer injury means that mere objection to government conduct, or injury commonly held by all members of the public, is not enough to create standing.[31] In *Ex parte Lévitt*, for example, a lawyer challenged the constitutionality of Justice

[27] Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992).
[28] Id. at 560–61.
[29] Id. at 561–62.
[30] See, e.g., TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2203 (2021).
[31] Schlesinger v. Reservists Comm. to Stop the War, 418 U.S. 208, 208, 220 (1974) (determining that plaintiff did not have standing to allege that members of Congress were violating the Incompatibility Clause by holding commissions in the military while serving in office).

Hugo Black's 1937 appointment to the Supreme Court.[32] The Court determined that the lawyer lacked standing to bring the claim, explaining that "he must show that he has sustained . . . a direct injury as the result of that action and it is not sufficient that he has merely a general interest common to all members of the public."[33] The Court has continued to view standing in this way.[34]

As Justice Blackmun noted in dissent, *Lujan* shifted power from Congress to the Executive Branch.[35] Where Congress passes a statute constraining the range of options available to the Executive, courts do not err by intervening to enforce those constraints at Congress's request, Blackmun asserted.[36] Yet the Court has stated that it is acceptable even if *no party* has standing to challenge the legality of a particular government action.[37] According to the Court, separation of powers requires that grievances beyond the reach of the courts be reserved for the political branches.[38]

The Court's restrictive standing doctrine was not inevitable. The very notion of "standing" arose in the 1930s, with *Lujan*'s tripartite requirements coming into focus during the 1970s.[39] The strength of this limitation on access to the courts has no basis in the Framers' original intent and appears to be the Supreme Court's own creation.[40] From a realist perspective, it is quite possible that the Supreme Court could choose any case—including the issue presented here—to reformulate its standing jurisprudence. Yet, as discussed below in Part III, each of the potential plaintiffs who could challenge student loan forgiveness lies far outside the bounds of current standing doctrine.

[32] Ex parte Lévitt, 302 U.S. 633, 633 (1937) (per curiam).
[33] Id. at 634.
[34] *Lujan*, 504 U.S. at 575–76; Gill v. Whitford, 138 S. Ct. 1916, 1931 (2018).
[35] *Lujan*, 504 U.S. at 602 (Blackmun, J., dissenting).
[36] Id. at 604.
[37] See, e.g., Schlesinger v. Reservists Comm. to Stop the War, 418 U.S. 208, 227 (1974) ("The assumption that if respondents have no standing to sue, no one would have standing, is not a reason to find standing."); Clapper v. Amnesty Int'l USA, 568 U.S. 398, 420 (2013).
[38] Id. at 408; see also *Lujan*, 504 U.S. at 576–77.
[39] Cass R. Sunstein, What's Standing After Lujan? Of Citizen Suits, "Injuries," and Article III, 91 Mich. L. Rev. 163, 168, 179 (1992).
[40] Id. at 173. Alternative standards for granting standing include whenever Congress creates a cause of action or when the plaintiff is the party most interested in the outcome of the case. Richard M. Re, Relative Standing, 102 Geo. L.J. 1191, 1197 (2014).

B. The APA Cause of Action

The Administrative Procedure Act provides the most likely cause of action a potential challenger would invoke to oppose student debt cancellation.[41] Other statutes that might be relevant, such as the Antideficiency Act or the Federal Credit Reform Act, impose additional restrictions on the Executive but do not provide relevant causes of action.[42] The Department of Education's student loan cancellation would constitute agency action under the APA, meaning that any party who has constitutional standing, is adversely affected by the agency action within the meaning of the relevant statute, and meets the APA's additional requirements[43] may bring a suit to challenge the government's activity.

The APA provides a complicated blueprint for the operation of most government authorities within the Executive Branch. The statute resulted from painstaking negotiations during Franklin Delano Roosevelt's presidency over the scope of the federal government,[44] and it represents a New Deal compromise under which Congress may give the Executive Branch greater autonomy to make choices but imposes judicial oversight on the resulting decisions.[45] The APA therefore defines how the Executive Branch must make rules,[46] adjudicate decisions,[47] and hold hearings.[48] To facilitate judicial review of these executive functions, the APA provides that any "person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."[49] Aggrieved litigants may use this cause of action to argue in federal court that an Executive Branch agency has neglected to take action that it must

[41] Administrative Procedure Act, Pub. L. No. 79-404, 60 Stat. 237 (1946) (codified as amended in scattered sections of 5 U.S.C.).

[42] Antideficiency Act, Pub. L. No. 97-258, 96 Stat. 877 (1982); Federal Credit Reform Act, Pub. L. No. 93-344, 104 Stat. 1388-610 (1990) (codified as amended at 2 U.S.C. §§ 661–661f).

[43] To be subject to review, agency action must be final and there must be no alternative remedy. 5 U.S.C. § 704. Judicial review may also be precluded or committed to agency discretion by law. 5 U.S.C. § 701(a).

[44] See generally Walter Gellhorn, The Administrative Procedure Act: The Beginnings, 72 Va. L. Rev. 219, 219–26 (1986) (describing negotiations lasting from 1933 until 1946).

[45] Richard B. Stewart & Cass R. Sunstein, Public Programs and Private Rights, 95 Harv. L. Rev. 1193, 1248 (1982).

[46] 5 U.S.C. § 553.

[47] 5 U.S.C. §§ 554–55.

[48] 5 U.S.C. §§ 556–57.

[49] 5 U.S.C. § 702.

take, or that an agency exceeded statutory powers, violated the Constitution, or erred in one of several other ways.[50] For example, New York used the APA to successfully challenge the Trump administration's addition of a question regarding citizenship on the 2020 decennial census, pointing to defects in the government's reasoning.[51]

In this case, a litigant would use the APA to sue the Department of Education, arguing that student loan cancellation exceeded the Secretary of Education's powers under the HEA. To do so, a plaintiff would need to show the Article III standing described in Part II.a., including injury, causation, and redressability. However, the plaintiff would also need to satisfy the specific cause of action set out in the APA, namely that the injury falls "within the meaning of a relevant statute."[52] This requirement—called the "zone of interests test" and sometimes described as a subset of "prudential standing"—is further explored in Part III.e.

C. Statutory Bases for Loan Modification

Advocates of student loan forgiveness hope that the Executive will use 20 U.S.C. § 1082(a) to cancel federal student loans without further involvement from Congress. The Trump and Biden administrations have used statutory mechanisms to broadly modify student loan obligations on at least three occasions since early 2020. None of these actions, however, relied on § 1082(a).

The modification affecting the largest number of Americans came through deferment of student loans during the pandemic, meaning that borrowers were not required to make loan payments and interest did not accrue. The CARES Act provided authority for deferment from March 27, 2020 until September 30, 2020,[53] and the Trump[54] and then Biden[55] administrations relied on a provision of the HEA allowing relief when a

[50] 5 U.S.C. § 706.

[51] Dep't of Com. v. New York, 139 S. Ct. 2551, 2562, 2576 (2019).

[52] 5 U.S.C. § 702 (2018).

[53] CARES Act, Pub. L. No. 116-136, § 3513, 134 Stat. 281, 404 (2020).

[54] Press Release, Memorandum on Continued Student Loan Payment Relief During the COVID-19 Pandemic (Aug. 8, 2020), https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-continued-student-loan-payment-relief-covid-19-pandemic/ [https://perma.cc/VTU6-2339].

[55] Memorandum from President Donald J. Trump to the Secretary of Education, Pausing Federal Student Loan Payments (Jan. 20, 2021), https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-continued-student-loan-payment-relief-covid-19-pandemic/ [https://perma.cc/L24P-XP8Z].

borrower experiences "economic hardship" to continue the deferment.[56] In August 2021, the Biden administration used a separate statutory provision under the HEA to discharge the loans of 323,000 people who had been permanently disabled.[57] Then in early October, the administration reformulated the Public Service Loan Forgiveness program, basing its action on a provision of the 2003 Heroes Act allowing the Secretary to "waive or modify any statutory or regulatory provision applicable to the student financial assistance programs . . . as the Secretary deems necessary in connection with a war or other military operation or national emergency."[58] As of February 2022, the Biden administration had provided $16 billion in loan cancellation to 680,000 borrowers.[59]

Broad relief under § 1082(a) remains untested as of early 2022. Supporters of student loan cancellation argue that the statute provides the Secretary of Education unreviewable discretion to cancel loans up to $1,000,000 per borrower, and that loans exceeding that amount only require review by the Attorney General.[60] Supporters also argue that although § 1082(a) is in the part of the HEA associated with the Federal Family Education Loan Program ("FFELP"), the provision applies to Direct Loans as well, likely because that part of the HEA in fact regulates many other programs. In addition, they point to § 1087hh(1) as covering

[56] 20 U.S.C. § 1087e(f)(2)(D).

[57] 20 U.S.C. § 1087; Total and Permanent Disability Discharge of Loans Under Title IV of the Higher Education Act, 86 Fed. Reg. 46972, 46972 (Aug. 23, 2021). Press Release, U.S. Dep't of Educ., Over 323,000 Federal Student Loan Borrowers to Receive $5.8 Billion in Automatic Total and Permanent Disability Discharges (Aug. 19, 2021), https://www.ed.gov/news/press-releases/over-323000-federal-student-loan-borrowers-receive-58-billion-automatic-total-and-permanent-disability-discharges [https://perma.cc/H2V2-VPL5].

[58] HEROES Act of 2003, Pub. L. No. 108-76, § 2, 117 Stat. 904 (2003) (codified at 10 U.S.C. §§ 1098aa–1098ee); Press Release, U.S. Dep't of Educ., U.S. Department of Education Announces Transformational Changes to the Public Service Loan Forgiveness Program, Will Put Over 550,000 Public Service Workers Closer to Loan Forgiveness (Oct. 6, 2021), https://www.ed.gov/news/press-releases/us-department-education-announces-transformational-changes-public-service-loan-forgiveness-program-will-put-over-550000-public-service-workers-closer-loan-forgiveness [https://perma.cc/Y77B-QGPZ]. The Department of Education did not publish its action in the Federal Register but confirmed the basis of the action to the author.

[59] Press Release, U.S. Dep't of Educ., Education Department Approves $415 Million in Borrower Defense Claims Including for Former DeVry University Students (Feb. 16, 2022), https://www.ed.gov/news/press-releases/education-department-approves-415-million-borrower-defense-claims-including-former-devry-university-students [https://perma.cc/G5TW-8FGQ].

[60] Letter from Eileen Connor to Elizabeth Warren, supra note 18, at 3.

Perkins loans, which are owned by third parties. Some argue instead that the government would need to acquire FFELP and Perkins loans to gain the ability to cancel them.[61] However, inquiring into the specific statutory mechanisms for federal debt cancellation is beyond the scope of this Article, which questions only whether a plaintiff would be able to challenge the government's interpretation of the statutory scheme.

II. THE POTENTIAL LITIGANTS

This Article contemplates five classes of potential litigants, including taxpayers, former borrowers, members of Congress, state governments, and loan servicers. The analysis proceeds from the broadest class to the class with the fewest members. A different body of Supreme Court cases applies to each of these groups, and each line of jurisprudence leaves little room for these entities to claim both Article III and prudential standing.

A. Taxpayers

If the Executive cancels all or part of federally owned student loans, some members of the public may seek to challenge the action, arguing that their tax dollars funded unlawful activity. While those plaintiffs would put forward colorable policy objections to loan cancellation, a federal court is unlikely to hear their legal claims. The Supreme Court has severely restricted standing based on taxpayer status, with only one *sui generis* exception.

The Supreme Court initially rejected taxpayer standing in *Frothingham v. Mellon*, in which a citizen-taxpayer brought suit alleging that Congress exceeded its powers in enacting the Maternity Act of 1921.[62] The Court determined that it lacked jurisdiction to consider the merits of the case because administration of a federal statute would spread a tax burden among a "vast number of taxpayers," whose financial interests would be difficult to discern and in constant flux.[63] Yet in the 1960s, the Court created a single, narrow exception in *Flast v. Cohen*.[64] Citizens have standing to challenge the federal government as taxpayers only when alleging the unconstitutionality of congressional appropriations under Article I, Section 8 of the Constitution, which covers the congressional

[61] Herrine, supra note 17, at 395–97.
[62] 262 U.S. 447, 478–80 (1923).
[63] Id. at 487.
[64] 392 U.S. 83, 104–06 (1968).

taxing and spending power. Furthermore, this argument is possibly limited to when such congressional appropriations are used to violate the Establishment Clause of the First Amendment.[65] However, this pathway to taxpayer standing is unique, and the Court has rejected taxpayer standing in every other context to come before it.[66] The Court reaffirmed its approach in a recent case, *Hein v. Freedom From Religion Foundation, Inc.*, in which a taxpayer challenged the George W. Bush administration's creation of the Faith-Based and Community Initiatives program, arguing that it violated the Establishment Clause.[67] The Court reasserted that status as a taxpayer is not enough to create standing and that *Flast* did not apply because the Executive's spending came from general appropriations for the Executive Office of the President, not unconstitutional legislation.[68] Taxpayer standing is therefore available to challenge some congressional actions but not to oppose Executive Branch activity.

This line of taxpayer standing jurisprudence would foreclose a taxpayer lawsuit seeking to enjoin executive cancellation of federally owned debt. Congress provides appropriations for student loans as an entitlement program, meaning that the legislature does not set a specific amount to loan from the Treasury.[69] While Congress nonetheless appropriates funding for the Executive to disburse loans, and the Executive would essentially be waiving the government's claim that borrowers must return the funds to the Treasury, this action would approximate the facts of *Hein*, where taxpayers alleged that the Executive disbursed funds illegally. Furthermore, even if the Court were to diverge from its previous jurisprudence on taxpayer standing, it would likely limit standing to constitutional violations similar to *Flast*.[70] Instead of entertaining a taxpayer lawsuit challenging loan cancellation, the Court would determine that the issue is more appropriate for the political branches.

[65] Flast v. Cohen, 392 U.S. 83, 102–04 (1968).

[66] Joshua G. Urquhart, Disfavored Constitution, Passive Virtues? Linking State Constitutional Fiscal Limitations and Permissive Taxpayer Standing Doctrines, 81 Fordham L. Rev. 1263, 1271 (2012).

[67] Hein v. Freedom From Religion Found., Inc., 551 U.S. 587, 592 (2007).

[68] Id. at 593, 605.

[69] Letter from Eileen Connor to Elizabeth Warren, supra note 18, at 2. See also 2 U.S.C. § 661c (referencing student loans as exempt from general appropriations requirements).

[70] See *Hein*, 551 U.S. at 633, (Scalia, J., concurring) (2007).

B. Former Borrowers

Student loan forgiveness would certainly leave borrowers who fully paid off their loans feeling aggrieved, and some may oppose executive action asserting that it is unfair to cancel others' loans while providing no benefit to those who previously paid off their balances. Again, while these individuals may have political arguments against student loan forgiveness, a court is unlikely to hear the merits of their complaints. As noted above, former borrowers would need to show some form of concrete injury, and their complaints would reduce to the fact that the government required them to pay back a loan they were legally required to repay, compared to others it later decided did not have to repay.[71] Former borrowers can point to no injury, only a benefit that others subsequently experienced. And as *Lujan* made clear, it is difficult to claim standing based on "unlawful regulation (or lack of regulation) of *someone else*."[72] In addition, even if loan cancellation could be conceived of as an injury to former borrowers, an injunction from the judiciary would do nothing to remedy that injury. Former borrowers still had to pay off their own loans whether or not loan forgiveness takes place under § 1082(a).

More broadly, allowing former borrowers standing to challenge cancellation of outstanding federal loans would create precedent providing standing whenever the government confers a benefit that did not apply at a previous point in time. Former borrowers would need to argue that the injury can be cured through some amount of compensation for loans paid off prior to the Executive's cancellation. But if a court considered this to be injury capable of supporting standing, then plaintiffs would have standing to challenge any policy that creates a new benefit—such as relief for first-time homebuyers, expansion of veterans' healthcare coverage, or reduced grazing fees. As noted above, however, conferral of a benefit or imposition of a restriction on others does not support standing, particularly outside the context of the Establishment Clause,[73] meaning that former borrowers would be unable to sustain a suit against loan forgiveness.

[71] Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992).
[72] Id. at 562.
[73] See Note, Nontaxpayer Standing, Religious Favoritism, and the Distribution of Government Benefits: The Outer Bounds of the Endorsement Test, 123 Harv. L. Rev. 1999 (2010) (discussing distribution of government benefits in ways that favor certain religions).

C. Congress

Some members or an entire house of Congress may also attempt to bring suit against the Executive to stop the federal government from abrogating federally owned loans, arguing that the Secretary of Education exceeded the powers it is granted in the HEA or engaged in unauthorized spending. However, the rationales under which a legislature may claim particularized injury are limited, including instances where votes are essentially nullified,[74] where a legislature intervenes to defend the constitutionality of legislation,[75] and where the legislature sues as an institution to defend its powers.[76] Most of these contexts implicate the operation of the legislature itself or the vindication of its own explicit powers. None of these cases has afforded a legislature standing to contest the Executive Branch's interpretation of a federal statute, and a federal court would likely determine that Congress's interest in a particular interpretation of a federal statute is no greater than that of the general population.

This hesitancy relies in large part on the separation of powers, a thread that has only become more pronounced in the Court's standing jurisprudence.[77] Lower courts within the U.S. Court of Appeals for the D.C. Circuit have also raised separation of powers issues when rejecting congressional challenges to executive branch action pursuant to statutory authority, describing the grievances as generalized and incapable of supporting standing.[78] This indicates that precedent in the jurisdiction where Congress would file suit already weighs heavily against success.

In addition, Congress could not assert that the Executive intruded on legislative power by spending federal funds without congressional appropriations.[79] For example, in a recent case, the U.S. House of Representatives sued the Trump administration alleging that diverting

[74] Coleman v. Miller, 307 U.S. 433, 438 (1939).

[75] Immigr. & Naturalization Serv. v. Chadha, 462 U.S. 919, 939–40 (1983).

[76] Ariz. State Legis. v. Ariz. Indep. Redistricting Comm'n, 135 S. Ct. 2652, 2659 (2015).

[77] See, e.g., Lujan v. Defs. of Wildlife, 504 U.S. 555, 576–77 (1992); Raines v. Byrd, 521 U.S. 811, 819–20 (1997).

[78] See, e.g., Chenoweth v. Clinton, 181 F.3d 112, 117 (D.C. Cir. 1999) (rejecting a challenge to creation of a program through executive order under a duly enacted federal statute); U.S. House of Representatives v. Burwell, 130 F. Supp. 3d 53, 58 (D.D.C. 2015) (determining that the House could sue based on constitutional claims, such as violations of the Appropriations Clause, but not for claims about the implementation of a statute).

[79] *Burwell*, 130 F. Supp. 3d at 58.

spending to fund the border wall violated the Appropriations Clause.[80] The D.C. Circuit determined that the House had no standing to assert injury based on a statutory violation,[81] although it could claim injury to its institutional powers as one of the two "keys" to the treasury.[82] This pathway to standing is inapposite here, however, as Congress duly appropriated funds for student loans,[83] and the Executive is responsible for the funding's disbursement. This means that any claim of standing due to institutional injury from compromising Congress's control of the federal purse would fail.

In total, this means that Congress would lack standing to bring a lawsuit against the Executive Branch claiming that the government exceeded the powers Congress defined in § 1082(a). The claim does not relate to the legislature's own powers or operations. Rather, Congress would be claiming an injury common to members of the public.

D. State Governments

Some state governments may also be interested in suing the federal government to halt broad federal loan cancellation, arguing that the Executive exceeded its powers and in doing so increased the federal debt.[84] State lawsuits against the federal government have become increasingly politicized and high-profile.[85] Yet state governments must also meet the constitutional requirements for standing. Pathways to state standing can be divided into three main categories, including proprietary interests, sovereign interests, and quasi-sovereign interests.[86] Federal loan

[80] U.S. House of Representatives v. Mnuchin, 976 F.3d 1, 4 (D.C. Cir. 2020) (vacated as moot).

[81] Id. at 15.

[82] Id. at 13.

[83] See text accompanying note 69.

[84] When Texas Governor Greg Abbott was the state's Attorney General, he reportedly described his job: "I go into the office, I sue Barack Obama, and then I go home." Rachel Weiner, Five things to know about Greg Abbott, Wash. Post (July 15, 2013), https://www.washingtonpost.com/news/the-fix/wp/2013/07/15/five-things-to-know-about-greg-abbott/ [https://perma.cc/JQ4U-5F9R].

[85] See, e.g., Texas v. United States, 809 F.3d 134, 146, 188 (5th Cir. 2015) (challenging the Obama Administration's Deferred Action for Parents of Americans and Lawful Permanent Residents ("DAPA") program); Katherine Mims Crocker, An Organizational Account of State Standing, 94 Notre Dame L. Rev. 2057, 2058 (2019) [hereinafter Crocker, Organizational Account] (discussing the ensuing consternation within legal academia).

[86] Crocker, Organizational Account, supra note 85, at 2061–67. See also Katherine Mims Crocker, Note, Securing Sovereign State Standing, 97 Va. L. Rev. 2051, 2056–68 (2011) (describing the evolution of jurisprudence regarding states' sovereign interests); Ann

forgiveness does not come close to offending any of these state interests, meaning that a state would lack standing to challenge cancellation.

States are unlikely to successfully argue that debt abrogation harms their common law proprietary interests, such as property or contract claims. Courts primarily review these cases under traditional Article III standing analysis, and until relatively recently these lawsuits represented the only claims state governments could bring against federal officials.[87] In Hawaii's recent case challenging the Trump administration over its 'Muslim ban,' for instance, the Ninth Circuit determined that the state had standing to sue because its university would lose tuition income, students, and faculty.[88] Yet there are no similar rationales for proprietary injury as a result of loan forgiveness. In fact, citizens who send less money to the federal treasury are more likely to spend that money locally on housing, education, and services that benefit state economies and tax revenues. This means that state treasuries would benefit from loan forgiveness rather than incur additional costs, frustrating claims of proprietary injury.

States will similarly be unable to assert that debt cancellation offends sovereign interests or quasi-sovereign interests. Sovereign interests typically implicate a state's effort to protect its capacity to exercise executive, legislative, and judicial power.[89] States have no plausible argument that federal debt cancellation would interfere with their own sovereign powers, given that neither the HEA nor loan distributions implicate state governments. When vindicating quasi-sovereign interests, in contrast, states cite the need to protect their citizens or citizens' benefits from the federal system.[90] The primary issue with the rationale for quasi-sovereign standing is that it flows from injuries—actual or imminent—to citizens themselves.[91] Yet federal debt cancellation does not injure a

Woolhandler & Michael G. Collins, State Standing, 81 Va. L. Rev. 387, 410–11 (1995) (describing states as plaintiffs).

[87] Woolhandler & Collins, supra note 86, at 392–93.

[88] Hawaii v. Trump, 859 F.3d 741, 764–65 (9th Cir. 2017). See also Texas v. United States, 809 F.3d 134, 152–53 (5th Cir. 2015) (finding standing to sue the Obama administration for DAPA); Massachusetts v. HHS, 923 F.3d 209, 222–23 (1st Cir. 2019) (finding standing because the Trump administration's attempt to limit access to contraceptives under the Affordable Care Act would increase use of state funded contraceptive services).

[89] Woolhandler & Collins, supra note 86, at 410–11.

[90] Crocker, Organizational Account, supra note 85, at 2064–65; Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez, 458 U.S. 592, 608 (1982).

[91] Missouri v. Illinois, 180 U.S. 208, 241 (1901) (holding that standing may be asserted when the "health and comfort" of a state's citizens are in jeopardy).

state's citizens, as established above. This means that there is no quasi-sovereign interest for a state to assert.

Barring a drastic expansion in the bases for state standing, state governments will be unable to sustain a lawsuit against broad federal loan forgiveness because states cannot point to an injury. Student loan cancellation would not harm a state's proprietary interests because federal debt forgiveness does not impose financial burdens on states. Cancellation also does not challenge a state's sovereignty and does not injure citizens such that a state may bring an action to protect its residents.

E. Loan Servicers

Student loan servicers represent the final class of litigants who might challenge broad federal loan forgiveness, although they may lack both Article III standing and prudential standing under the APA.[92] Servicers comprise nine federal contractors who receive a monthly fee from the Department of Education for each borrower the company services.[93] The organizations—some for-profit and others non-profit—currently receive a base fee of $1.05 per month while a student is in school and $2.85 per month while a loan is in repayment.[94] Eliminating millions of student loans would dramatically decrease the amount of money loan servicers receive under these contracts.

However, to acquire Article III standing, loan servicers would need to show that this decrease in payments under the federal contracts represents a concrete injury to a legally protected interest. The sufficiency of this injury would depend on a federal court's approach to the nature of the harm. There is little clear guidance on what constitutes a "legally protected interest," and the Supreme Court has not clarified the term's boundaries.[95] On the one hand, loan servicers' contracts are variable in nature, meaning that there may be no legally protected interest in retaining

[92] It is worth noting that if the decision to abrogate student loan debt is committed to agency discretion by law, then the APA does not in fact apply, meaning that the cause of action remains unavailable to all, including loan servicers. 5 U.S.C. § 701; Herrine, supra note 17, at 368–95.

[93] U.S. Dep't of Educ., Who's My Student Loan Servicer?, https://studentaid.gov/manage-loans/repayment/servicers [https://perma.cc/8D6Z-XFPQ].

[94] U.S. Dep't of Educ. & Great Lakes Educ. Loan Servs., Amendment of Solicitation/Modification of Contract, at 4 (effective Sept. 1, 2014), https://studentaid.gov/sites/default/files/ED-FSA-09-D-0012_MOD_0080_GreatLakes.pdf [https://perma.cc/ZR96-ZZ9N].

[95] Cottrell v. Alcon Lab'ys, 874 F.3d 154, 163 (3d Cir. 2017).

any specific number of loans under the contract. In addition, even if the servicers could assert a contract injury, the remedy would likely amount to monetary damages rather than an injunction under most states' theories of contract law. On the other hand, the Court appears to have taken a broad view of what sorts of concrete injuries qualify for standing, and loan servicers would be able to attach a dollar amount to claims of decreased income as a result of loan cancellation. It is quite possible—though still uncertain—that this financial injury would be sufficient to provide loan servicers Article III standing.

Even if the servicers had Article III standing, however, they would lack prudential standing. As noted in Part II.B., the APA introduces additional constraints beyond those imposed by generalized Article III standing requirements. To sustain a lawsuit under the APA, a litigant's interest must be "arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question."[96] This inquiry into the "zone of interests" is separate from the Article III "case or controversy" test,[97] and those who fall outside of the zone of interests are said to lack prudential standing.[98] Courts typically consider the zone of interests test to be a wide aperture, likely given that most litigants file suit based on statutes that clearly pertain to them.[99] Nonetheless, the test does have teeth. For example, the Court determined that the American Postal Workers Union was not within the zone of interests Congress contemplated when passing certain statutes creating a Postal Service monopoly on carriage of letters.[100] The Union therefore could not challenge the Postal Service's suspension of the monopoly for certain pieces of mail because it stood outside the statute's zone of interests.[101] The monopoly statute exists, the Court stated, to ensure the Postal

[96] Ass'n of Data Processing Serv. Orgs. v. Camp, 397 U.S. 150, 153 (1970). See also Caleb Nelson, "Standing" and Remedial Rights in Administrative Law, 105 Va. L. Rev. 703, 708 (2019) (describing the zone of interests test).

[97] *Data Processing*, 397 U.S. at 153.

[98] The Supreme Court has noted that "prudential standing" really reflects statutory interpretation and "whether a legislatively conferred cause of action encompasses a particular plaintiff's claim." Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 127 (2014). It is therefore markedly different from constitutional Article III standing and rests on the scope of the statute, not constitutional restrictions.

[99] Clarke v. Sec. Indus. Ass'n, 479 U.S. 388, 399 (1987) (noting that "[t]he test is not meant to be especially demanding").

[100] Air Courier Conf. of Am. v. Am. Postal Workers Union, AFL-CIO, 498 U.S. 517, 530 (1991).

[101] Id. at 519–20.

Service's stability, not to ensure employment for postal workers.[102] In another case, the Court concluded that a federal agency was not a "person adversely affected or aggrieved" within the meaning of a statute delineating the process for a worker's compensation claim, indicating that the agency head lacked prudential standing to seek review of an independent board decision denying a claimant's compensation.[103] In contrast, other cases have determined that companies do often lie within the zone of interests protected by statutes limiting the activity of their competitors.[104] In one such case, the Supreme Court looked to the Lanham Act's statement of purpose to determine that a chip manufacturer was within the zone of interests the statute protects because "lost sales and damage to [the plaintiff's] business reputation . . . are injuries to precisely the sorts of commercial interests the Act protects."[105]

This means that any plaintiff challenging cancellation of federal loans needs to not only show concrete injury for constitutional standing as articulated in *Lujan*, but also that they arguably lie within the range of interests the HEA protects.[106] In the context of federal debt cancellation, these requirements would be difficult to meet if the Executive acts through an adjudication rather than formal rulemaking.

First, given that the debt settlement provisions were present in the original version of the HEA, the Act's statement of purpose can guide the inquiry. The legislation describes the act as a measure "[t]o strengthen the educational resources of our colleges and universities and to provide financial assistance for students in postsecondary and higher education."[107] The Act's purpose does not include the Department of Education's relationship with its contractors, which is instead primarily

[102] Id. at 528.

[103] Dir., Off. of Workers' Comp. Programs v. Newport News Shipbuilding & Dry Dock Co., 514 U.S. 122, 130 (1995).

[104] See, e.g., Nat'l Credit Union Admin. v. 1st Nat. Bank & Tr. Co., 522 U.S. 479, 488 (1998); Ass'n of Data Processing Serv. Orgs. v. Camp, 397 U.S. 150, 157 (1970).

[105] Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 137 (2014)

[106] Professor Nelson argues that the Court's *Data Processing* decision should be read such that action lying arguably within the "zone of interests" is a necessary but not sufficient condition for judicial review. Nelson, supra note 96, at 710–11. Yet even under the more expansive view of prudential standing, where being within the arguable zone of interests ensures judicial review, plaintiffs' claims will fail.

[107] Higher Education Act of 1965, Pub. L. No. 89-329, 79 Stat. 1219, 1219 (codified as amended in scattered sections of 20 U.S.C.).

regulated by the complicated set of provisions in Title 41 of the U.S. Code.[108]

Second, the Supreme Court has clarified that the zone of interests test revolves primarily around the specific statutory provision rather than a broader statutory scheme.[109] Section 1082(a)(6) itself regulates the relationship between the Department of Education and specific claimants and debtors, not all parties with business before the agency. Debt compromise generally takes place to serve the best interests of the debtor and the creditor, where third party interests provide the parties little incentive to settle.[110] As demonstrated by the postal workers' case, it is not enough that a policy change has some de facto effect on a third party's economic interests.[111]

Third, Congress requires that the Department of Education consult a wide range of interests—including those of student loan servicers—when engaging in the process of "negotiated rulemaking."[112] However, no similar requirement applies to loan cancellation, which would likely comprise an adjudication and not a rulemaking. This shows that if Congress intended the Department of Education to consider servicers' interests when deciding whether to release claims against borrowers, it knew how to do so. Finally, it is quite possible that loan servicers' interests are antithetical to the purposes of the statute,[113] given that any compromise or settlement of student debt would necessarily result in reduced revenue under Department of Education contracts. The statute does not contain any requirement to consider effects on the debtor, let alone third parties relying on the debtor's existence. Even without the weight of precedent against them, servicers would battle uphill to argue that § 1082(a)(6) protects their interests in any meaningful way.

[108] See 20 U.S.C. § 1018a (providing for Department of Education contracting in compliance with federal procurement laws).

[109] Jonathan R. Siegel, Zone of Interests, 92 Geo. L.J. 317, 335–37 (2004).

[110] See IRS, An Offer in Compromise May Help Some Taxpayers Settle Their Tax Bill (May 3, 2021), https://www.irs.gov/newsroom/an-offer-in-compromise-may-help-some-taxpayers-settle-their-tax-bill [https://perma.cc/Z4UC-SVFU] ("The goal is a compromise that suits the best interest of both the taxpayer and the agency.").

[111] Air Courier Conf. of Am. v. Am. Postal Workers Union AFL-CIO, 498 U.S. 517, 530 (1991).

[112] 20 U.S.C. § 1098a.

[113] See Nat'l Fed'n of Fed. Emps. v. Cheney, 883 F.2d 1038, 1051 (D.C. Cir. 1989) (determining that in-house employees' interests were antithetical to those of the contractors, whose interests the statute in question sought to further).

Similar difficulties have led courts to hold that contractors and third parties who, like loan servicers, have a financial interest in the mechanism of a statutory regime's execution fall outside of its zone of interests. For instance, in *Lujan*, the Supreme Court noted that an agency's failure to hold "on the record" hearings as required by a provision of the APA

> would assuredly have an adverse effect upon the company that has the contract to record and transcribe the agency's proceedings; but since the provision was obviously enacted to protect the interests of the parties to the proceedings and not those of the reporters, that company would not be 'adversely affected within the meaning' of the statute.[114]

In another example, a Bureau of Prisons ("BOP") contractor challenged a regulatory change that decreased the number of prisoners housed in its facilities under a federal contract and caused the contractor to lose revenue.[115] The court determined that Congress passed the relevant statute to protect the managerial interests of the BOP and the health interests of federal prisoners, concluding that the statute concerned "administration of the prison system," not indirect effects on federal contractors.[116] The contractor therefore lacked prudential standing to challenge the BOP decision.[117]

Courts have reached comparable decisions when third parties employed by the agency experience financial loss as a result of agency action pursuant to statutory authority unrelated to the plaintiffs. For instance, civilian employees at a military base could not challenge the government's decision to outsource their jobs to a private contractor because they did not fall within the zone of interests of any relevant federal statute regulating procurement.[118] The court reasoned that none of the statutes were designed to protect federal employees' jobs.[119] Other courts have reached similar conclusions regarding third parties with a

[114] Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 883 (1990).

[115] Dismas Charities, Inc. v. DOJ, 287 F. Supp. 2d 741, 742–43 (W.D. Ky. 2003).

[116] Id. at 746.

[117] Id. at 748.

[118] Courtney v. Smith, 297 F.3d 455, 458 (6th Cir. 2002).

[119] Id. at 466. See also Am. Fed'n of Gov't Emps., Loc. 2119 v. Cohen, 171 F.3d 460, 471 (7th Cir. 1999) ("[T]he interests of federal employment, and the goal of private procurement are inconsistent."); Nat'l Fed'n of Fed. Emps. v. Cheney, 883 F.2d 1038, 1051 (D.C. Cir. 1989) (reasoning that the interests of federal employees are antithetical to those of federal contractors, and therefore inconsistent with the interests of a federal statute allowing for contracting).

financial stake in a regulation.[120] So, while a contractor might have standing to challenge issues arising from the government's contracting process,[121] a contractor would not have the prudential standing necessary to contest the interpretation of a law regulating a third party that would incidentally affect the company's government business.

This conclusion makes sense from a policy perspective as well. In fiscal year 2020, the U.S. government spent more than $655 billion on contracts spread across all government agencies.[122] If contractors were able to challenge the legality of government policy every time an agency made a decision that affected contractors' finances, then the effectiveness of the modern federal government would suffer immensely as federal contractors filed lawsuits to protect their fiefdoms from regulatory change. This would result in ossification of federal government structures and negate the main benefit that federal contracting provides—flexibility. Congress may have had just these sorts of lawsuits in mind when limiting the APA cause of action to those aggrieved "within the meaning of the relevant statute."

Student loan servicers represent the most likely plaintiffs in part because broad student loan cancellation would strike at their pocketbooks—fewer borrowers means reduced income from contracts with the federal government. This concern may or may not afford the loan servicers constitutional standing under Article III. However, the servicers would fail to establish the prudential standing necessary to bring an action under the APA if the claim arises from § 1082(a). If a loan services contractor brought a claim based on violation of a statute governing federal contracts, the issue would be different. Yet loan servicers would be unable to challenge broad forgiveness of student loans under the HEA.

[120] See, e.g., Immigr. & Naturalization Serv. v. Legalization Assistance Project of the Los Angeles Cnty. Fed'n of Lab., 510 U.S. 1301, 1305 (1993) (deciding that legal services organizations were not within the zone of interests an immigration statute sought to protect).

[121] See, e.g., Ne. Fla. Chapter of the Associated Gen. Contractors of Am. v. City of Jacksonville, 508 U.S. 656, 669 (1993) (finding standing to challenge ordinance according preferential treatment to minority-owned businesses).

[122] U.S. Gov't Accountability Off., A Snapshot of Government-Wide Contracting for FY 2020 (infographic) (June 22, 2021), https://www.gao.gov/blog/snapshot-government-wide-contracting-fy-2020-infographic [https://perma.cc/KA6Y-HUJS].

CONCLUSION

Regardless of political positions on the wisdom of general student loan forgiveness, the fact that the Executive could well modify $1.6 trillion in obligations to the United States government without judicial review presents policy concerns. Should federal standing doctrine block taxpayers and their elected representatives—both state and federal—from questioning the government's dramatic increase of the national debt? If so, perhaps Congress should revisit federal statutes that allow for action without effective judicial review. Yet it is hard to escape the impression that in cases like these, courts seek to evade a duty to oversee the scope of executive power.

Debate over the legality and sagacity of student loan forgiveness is unlikely to abate unless the Executive Branch decides to cancel debt or Congress legislates to solve the issue. Student debt will also continue to rise and the relevant statutory provisions will likely remain intact, only increasing pressure on the Executive to act. While many debate the legality of the action, all should remain cognizant that there may well exist no party with standing and a cause of action to oppose debt cancellation in federal court, meaning that the judiciary will have nothing to say about the issue. This means that any push or pull will come from either political pressure or the Executive's own interpretation of its powers, not a judicial declaration of law.