

III. *Save Student Loan Repayment Plan*

A. Introduction

In June of 2023, the United States Supreme Court declared the Biden Administration's efforts to provide widespread student debt forgiveness through the use of the Higher Education Relief Opportunities for Students Act (HEROES Act) unconstitutional in *Biden v. Nebraska*.¹ As a result, the White House promptly turned its efforts towards a new strategy entitled the Saving on a Valuable Education (SAVE) plan.² The SAVE plan seeks to institute a new income-driven repayment (IDR) option that allows borrowers to calculate their monthly payments based on their income and family size, rather than the traditional basis of their loan balance.³ In theory, this stance allows some borrowers to reduce their monthly payments to zero dollars while still qualifying for debt forgiveness after making a specified number of payments.⁴

This article intends to analyze how such a plan differs from previous repayment avenues, both in terms of its legal basis and its benefits to borrowers.⁵ However, before diving into the structures of such plans, the first step is to understand the history of student loans and, concurrently, the legal turmoil surrounding their forgiveness over recent

¹ See generally, *Biden v. Nebraska*, 143 S. Ct. 2355 (2023) (finding that national emergency under HEROES Act does not grant Secretary of Education ability to cancel student loans).

² See Hailey Konnath, *Biden Cancels \$9B In Student Debt After High Court Defeat*, <https://www-law360-com.ezproxy.bu.edu/articles/1729564/biden-cancels-9b-in-student-debt-after-high-court-defeat>, LAW360 (last visited Oct. 16, 2023) ("President Joe Biden on Wednesday unveiled plans to wipe away another \$9 billion in student debt for roughly 125,000 individuals, his latest attempt at canceling at least some debt for borrowers after the U.S. Supreme Court struck down his broader plan in June.").

³ See *An Income-Driven Repayment Plan Could Save You Money*, FEDERALSTUDENTAID (last visited Oct. 16, 2023), <https://studentaid.gov/articles/idr-plan-could-save-money/> ("On an income-driven repayment (IDR) plan, your monthly payment is based on your income and family size.").

⁴ See *id.* ("the Saving on a Valuable Education (SAVE) Plan, has unique benefits that can lower payments for many borrowers.").

⁵ *Biden v. Nebraska*, 143 S. Ct. 2355 (2023), *supra* note 1 (finding that national emergency under HEROES Act does not grant Secretary of Education ability to cancel student loans).

decades.⁶ Thus, this article will begin with a recount of the history of student loan related legislation, with specific focus on the National Defense Education Act of 1958⁷, the Higher Education Act of 1965 (HEA)⁸, and the Higher Education Relief Opportunities For Students (HEROES) Act of 2003.⁹ Additionally, to truly understand the legal fate of the SAVE plan, the Supreme Court’s ruling in *Biden v. Nebraska*, as well as the dissenting opinion, will also be discussed alongside this legislation.¹⁰ Next, the article remarks on past and present repayment plans to provide readers with a thorough discussion of how such plans work, before diving into how the goals and structure of the SAVE plan differ from previous plans.¹¹ Finally, the article will discuss the legal basis for the SAVE plan, and what this might mean for potential legal challenges.¹² In its conclusion, this article finds that the SAVE plan serves as yet another amendment to a long history of student loan repayment plans, rather than a potential overreach of power granted to

⁶ SUZANNE METTLER, *The Politics of Higher Education Policy in an Era of Conservative Governance*, in PROMOTING INEQUALITY 197, 197-98 (“Throughout American history, governmental efforts to expand opportunities for college attendance has represented a key means by which the nation has provided channels for upward mobility . . . Today, however, such policies are no longer continued to expand access to college as they did in the 1950s through the 1970s . . .”).

⁷ National Defense Education Act of 1958, Pub. L. No. 85-864, 72 Stat. 1580 (“An Act [t]o strengthen the national defense and to encourage and assist in the expansion and improvement of educational programs to meet critical national needs; and for other purposes.”).

⁸ Higher Education Act of 1965, Pub. L. No. 89-329, 79 Stat. 1219 (“An Act to strengthen the educational resources of our colleges and universities and to provide financial assistance for students in post-secondary and higher education.”).

⁹ Higher Education Relief Opportunities For Students Act of 2003, Pub. L. 108-76, 117 Stat. 904 (“An Act [t]o provide the Secretary of Education with specific waiver authority to respond to a war or other military operation or national emergency.”).

¹⁰ *Biden v. Nebraska*, 143 S. Ct. 2355 (2023), *supra* note 1 (finding that national emergency under HEROES Act does not grant Secretary of Education ability to cancel student loans).

¹¹ *Id.*

¹² See Keith Speights, *Is Biden’s SAVE Plan in Trouble? 3 Things to Know About the GOP’s Most Recent Efforts to Overturn the Repayment Plan*, NASDAQ (last visited Oct. 16, 2023), <https://www.nasdaq.com/articles/is-bidens-save-plan-in-trouble-3-things-to-know-about-the-gops-most-recent-efforts-to> (discussing the potential overturning of SAVE).

the Department of Education in times of an emergency. Although not entirely clear, one might expect that this difference might be what allows the SAVE plan to persevere in the face of its challengers.

B. History of Student Loans

1. History of Legislation

The history of student loan use in the United States remains a relatively modern invention, arising in the 1950s with the National Defense Education Act of 1958.¹³ This legislation hoped to encourage students to attain a post-secondary education via more short-term loans and fellowships that would help to further science, math, and foreign language programs, as well as high school guidance counseling.¹⁴[ES: Edited for clarity.] Less than a decade later, the HEA was passed by Congress to expand on President Lyndon B. Johnson’s War on Poverty by vesting more money into creating vast research institutions with immense resources and sophisticated instructors.¹⁵ Specifically, the fourth title of the act addressed student assistance by establishing federal student loans, as well as some general forgiveness policies for public servants, borrowers who have passed or become disabled, or bankrupt borrowers.¹⁶ Over the following decades, as the cost of education increased, so did the federal borrowing amount, saddling individuals with higher levels of debt.¹⁷

¹³ Elizabeth Tandy Shermer, *Indentured Studenthood: The Higher Education Act and the Burden of Student Debt*, 24 *NEW LAB. F.* 76, 79 (2015) (“Congress spent a year crafting the 1958 National Defense Education Act (NDEA), which not only earmarked funds to improve instruction in science, math, and foreign languages, but also encouraged students to pursue a college degree, both through high school counseling and direct assistance”).

¹⁴ *Id.* (“earmarked funds to improve instruction in science, math, and foreign languages”).

¹⁵ *Id.* (“HEA was considered an extension of Johnson’s War on Poverty”).

¹⁶ *Biden v. Nebraska*, 143 S. Ct. 2355 (2023) (majority opinion), *supra* note 1, at 2362-63 (discussing the forgiveness policies of the Act for various groups).

¹⁷ SUZANNE METTLER, *The Politics of Higher Education Policy in an Era of Conservative Governance*, in *PROMOTING INEQUALITY 197*, *supra* note 6, at 198 (“As a result, students who attend college now borrow more than ever in student loans, and this approach likely deters less advantaged young people from pursuing further education. Moreover, those who must borrow substantially to attain higher education put themselves at the risk of personal

As prospects of higher debt continued into the new millennium, the HEROES Act amended the HEA in 2003 to grant the executive branch more power to waive or relieve borrowers in the event of a national emergency.¹⁸ The HEROES Act served as the basis for the student loan payment pause enacted in 2020 during the COVID-19 pandemic.¹⁹ The act was also utilized by President Biden in his effort to provide student loan forgiveness, but the attempt proved fruitless as the United States Supreme Court ruled in June of 2023 in *Biden v. Nebraska* that the use of the act was an overreach by the Secretary of Education.²⁰ This will be discussed in more detail in the following section.

2. *Legal Challenges: Biden v. Nebraska*

In August of 2022, the Department of Education under President Joe Biden introduced its forgiveness plan to waive and modify loan payments under the HEROES Act, citing the COVID-19 pandemic as the relevant national emergency.²¹ These modifications allowed for a waiver of up to \$10,000 in student loans for borrowers earning an annual

financial crisis, a route that can lead to downward rather than upward mobility.”).

¹⁸ Diego Briones, et al., *Student Loan Payment Pause Benefits High-Income Households the Most: With Forgiveness Uncertain, Struggling Borrowers Are Unprotected From Risk*, 23 EDUC. NEXT 40 (2023) (“These actions cited the Higher Education Relief Opportunities for Students Act of 2003, known as the HEROES Act, which amended the Higher Education Act of 1965 to provide executive authority to “grant waivers or relief” to recipients of federal financial aid in connection with “a war or other military operation or national emergency.”).

¹⁹ *Id.* (“The use of the HEROES Act to pause student loan payments in 2020 went unchallenged.”).

²⁰ *Biden v. Nebraska*, 143 S. Ct. 2355 (2023) (majority opinion), *supra* note 1, at 2362 (“Last year, the Secretary of Education established the first comprehensive student loan forgiveness program, invoking the *Higher Education Relief Opportunities for Students Act of 2003 (HEROES Act)* for authority to do so Six States sued, arguing that the HEROES Act does not authorize the loan cancellation plan. We agree.”).

²¹ *Id.* at 2364 (“But the Secretary took more significant action in response to the COVID-19 pandemic.”).

amount of less than \$125,000 during 2020 or 2021.²² With the expectation of reaching 43 million borrowers, the plan was estimated to cancel around \$430 billion in debt in total.²³

However, this effort by the Biden administration did not go unnoticed, or unchallenged. Multiple suits were brought against the plan, moving for a preliminary injunction to stop the forgiveness.²⁴ Although the District Court dismissed the suits, an appeal in the Eighth Circuit saw the preliminary injunction through, and the latter court found that questions on the merits remained in a suit by “the Missouri Higher Education Loan Authority (MOHELA . . .), a public corporation that holds and services student loans.”²⁵ The case was then brought before the Supreme Court at the request of the Secretary of Education, who hoped for an end to the injunction or a final decision in favor of the plan.²⁶

Ultimately, the Supreme Court found that the HEROES Act did not grant the Secretary of Education the power to cancel \$430 billion in student debt because it constituted a “rewrite” of the existing statutes regulating student loans, rather than a waiver or modification of such statutes as the HEROES Act allows.²⁷ A key part of their decision was the utilization of the major questions doctrine, which is the tool utilized by the Court to challenge decisions by executive agencies in their interpretation of statutes when such interpretations implicate issues of “major national significance” and require “clear statutory authorization.”²⁸

²² *Id.* (“For borrowers with an adjusted gross income below \$125,000 in either 2020 or 2021 who have eligible federal loans, the Department of Education will discharge the balance of those loans in an amount up to \$10,000 per borrower.”).

²³ *Id.* at 2365 (“The Department of Education estimates that about 43 million borrowers qualify for relief, and the Congressional Budget Office estimates that the plan will cancel about \$430 billion in debt.”).

²⁴ *Id.* (“Six States moved for a preliminary injunction, claiming that the plan exceeded the Secretary’s statutory authority.”).

²⁵ *Id.*

²⁶ *Id.* (“With the plan on pause, the Secretary asked this Court to vacate the injunction or to grant certiorari . . .”).

²⁷ *Id.* at 2368 (“We hold today that the Act allows the Secretary to ‘waive or modify’ existing statutory or regulatory provisions applicable to financial assistance programs under the Education Act, not to rewrite that statute from the ground up.”).

²⁸ CONG. RSCH. SERV., LSB10745, THE SUPREME COURT’S “MAJOR QUESTIONS” DOCTRINE: BACKGROUND AND RECENT DEVELOPMENTS 1 (2022) <https://crsreports.congress.gov/product/pdf/LSB/LSB10745> (“[T]he Supreme

Here, the Court found that the changes made by the Secretary amounted to “‘basic and fundamental changes in the scheme’ designed by Congress,”²⁹ while the HEROES Act should only be interpreted to allow for moderate or minor changes.³⁰

In the dissenting opinion, Justice Kagan references that the statute expressly grants such power to the Secretary, deeming he may “act ‘as [he] deems necessary’ in connection with any military operation or ‘national emergency.’”³¹ Through the majority’s decision, Justice Kagan argues, the HEROES Act is rendered “inconsequential” as the Secretary no longer has the authority to make the necessary changes in the face of national emergencies, when Congress cannot act itself.³² In this vein, the power of the Secretary of Education to act pursuant to federal loan forgiveness and student debt took a hit, and the next question is whether or not this will impact his authority to implement the SAVE plan as well.

C. IDR Repayment: Pre-SAVE Plan Options

When students finally finish their education programs, and the bills for loan payments begin to arrive each month, borrowers must decide which type of repayment plan will one day bring them out of student debt again.³³ In this article, the focus is specifically on IDR plans, as that is the categorization of the SAVE plan.³⁴ But what are IDR

Court has declared that if an agency seeks to decide an issue of major national significance, a general delegation of authority may not be enough; instead, the agency’s action must be supported by clear statutory authorization.”).

²⁹ Biden v. Nebraska, 143 S. Ct. 2355 (2023) (majority opinion) (quoting MCI Telecomm. Corp. v. Am. Tel. & Tel. Co., 512 U.S. 218, 225 (1994)), *supra* note 1, at 2368.

³⁰ Biden v. Nebraska, 143 S. Ct. 2355 (2023) (majority opinion), *supra* note 1, at 2368.

³¹ Biden v. Nebraska, 143 S. Ct. 2355 (2023) (dissenting opinion), *supra* note 1, at 2392.

³² *Id.* at 2395 (“The majority’s opposing construction makes the Act inconsequential.”).

³³ See *An Income-Driven Repayment Plan Could Save You Money*, FEDERALSTUDENTAID (last visited Oct. 16, 2023), <https://studentaid.gov/articles/idr-plan-could-save-money/>, *supra* note 3 (explaining different types of IDR plans borrowers could apply for).

³⁴ Dori Zinn, *Saving on a Valuable Education (SAVE) Plan: What to Know*, INVESTOPEDIA (last visited Oct. 21, 2023), <https://www.investopedia.com/sav>

plans, and how are they meant to assist borrowers navigate their student loans?

The goal of IDR plans is to provide borrowers with a repayment plan that recognizes their income status and family size in its calculation of their monthly payments, with the additional consideration of the federal poverty line, to ensure the payments do not exceed a certain cap.³⁵ Thus, before the SAVE plan was introduced, the Department of Education already had a roster of repayment options through which borrowers could incrementally pay back their student loans.³⁶ Overall, these IDR plans can be understood in terms of income-contingent repayment (ICR) plans and income-based repayment (IBR) plans.³⁷

The first of these plans was instituted in 1995 as a means of the Secretary of Education upholding the requirements of the HEA to offer a variety of student loan repayment plans under HEA Sections 455(d)(1)(D) and 455(e).³⁸ The 1995 ICR option limits a borrower's monthly payment to either one-twelfth of twenty percent of their discretionary income or a separate amount based on a twelve-year loan calculation that is then multiplied by a percentage of their income as determined by their AGI and tax filing status, whichever of the two is lower.³⁹

After the ICR, the Department of Education decided to introduce the IBR in 2007 under HEA Section 493C, which differed from the ICR because it took "partial financial hardship" of the borrower into account to lower monthly payments to one-twelfth of fifteen percent of their discretionary income, rather than twenty percent, and considered discretionary income by whether the AGI was in excess of 150% of the federal poverty line instead of 100%.⁴⁰ The maximum repayment on this

ing-on-a-valuable-education-plan-7559022 (discussing SAVE as income-driven plan).

³⁵ CONG. RSCH. SERV., R47418, THE DEPARTMENT OF EDUCATION'S NOTICE OF PROPOSED RULEMAKING ON IMPROVING INCOME-DRIVEN REPAYMENT FOR THE DIRECT LOAN PROGRAM: FREQUENTLY ASKED QUESTIONS 2-3 (2023) <https://crsreports.congress.gov/product/pdf/R/R47418> (discussing the goal of IDR plans).

³⁶ *Id.* (discussing the repayment options).

³⁷ *Id.* (discussing the types of plans).

³⁸ *Id.* at 3 ("Ultimately, in 1995, ED promulgated regulations for an income-contingent repayment (ICR plan) that have changed only minimally since first being established.").

³⁹ *Id.* (discussing how the ICR plan works).

⁴⁰ *Id.* ("About 12 years later in 2007 . . . Congress authorized another type of IDR plan.").

IBR plan was twenty-five years.⁴¹ Next, a new IBR plan was created in 2010 specifically catering to those who would have qualified for the previous IBR plan, but took loans on or after July 1, 2014.⁴² Although similar in many respects, this new plan again shifted the monthly borrowing amount to be lower once more to one-twelfth of ten percent of their discretionary income, and shifted the maximum repayment period back five years to twenty instead of twenty-five years.⁴³

In 2012, the Department of Education shifted gears again and brought forward a new ICR plan, known as the Pay As You Earn (PAYE) repayment plan, which essentially contained the same requirements as the latest IBR plan, but was able to reach a greater amount of borrowers beyond those accounted for in Section 493C.⁴⁴ However, only three years later, the Department sought to institute a new plan entitled the Revised Pay As You Earn (REPAYE) repayment plan under HEA Section 455.⁴⁵ This plan extends to borrowers who are not afflicted by a partial financial hardship, with undergraduate debt borrowers maintaining the plan maximum of twenty years and capping graduate program borrowers at twenty-five years.⁴⁶

On a final note, the above plans include the additional feature of accounting for when a borrower's monthly payment for their subsidized loan is calculated to be less than the cost of the interest that would accrue over that month.⁴⁷ In these cases, "100% of the unpaid accrued interest is not charged for a period of up to three years from the date the borrower first began repaying according to the plan."⁴⁸ However, the REPAYE plan continues to distinguish itself from the other plans by providing borrowers of unsubsidized loans with the opportunity to reduce the charge on the unpaid accrued interest to fifty percent.⁴⁹ Evidently, the main differences between these plans include

⁴¹ *Id.* (providing the twenty-five year maximum repayment period).

⁴² *Id.* (describing the inception of the 2010 IBR plan).

⁴³ *Id.* at 3-4 (describing the new aspects of the 2010 plan).

⁴⁴ *Id.* at 4 (describing the Pay As You Earn repayment plan).

⁴⁵ *Id.* ("In 2015, ED again promulgated regulations for a third type of income-contingent repayment plan under HEA Section 455, known as the Revised Pay As You Earn (REPAYE) repayment plan . . .").

⁴⁶ *Id.* (describing the REPAYE plan).

⁴⁷ *Id.* (describing the additional feature when a borrower's required monthly payment is insufficient to pay all of the monthly interest accrued).

⁴⁸ *Id.*

⁴⁹ *Id.* (highlighting one difference between REPAYE and other plans).

the limit on a borrower's monthly payment, the length of the repayment period, who qualifies, and under which HEA Section was it brought.⁵⁰

D. The SAVE Plan

1. What is the SAVE Plan?

Eight years after the last repayment plan was introduced, the Biden administration instituted the SAVE plan as a new IDR option that would allow some borrowers to reduce their monthly payments, depending on their income and family size, while still qualifying for debt forgiveness after making a specified number of payments.⁵¹ The Biden Administration's true goal is to use SAVE to phase out the use of the REPAYE plan in such a way that all borrowers under the former version would remain eligible for the new plan, and most borrowers would have the opportunity for lower monthly payments (i.e., PLUS Loans taken by parents or Direct Consolidation Loans repaying parent PLUS Loans are not eligible).⁵²

In comparison to the rules laid out above, SAVE differs from REPAYE largely in how it calculates monthly payments, which can happen in one of two ways: (1) increasing the protected income, or (2) lowering discretionary income.⁵³ In the first case, a borrower's protected income (i.e., the portion of their income that is not considered as available for debt repayment) will include 225% of the federal poverty line, meaning that the monthly payment would be lower as there is less possible discretionary income. In the second case, percentage of discretionary income is directly lowered when calculating monthly payments to five percent of their annual discretionary income, unless the borrowers took the loans for graduate/professional programs, which would mean ten percent.⁵⁴ In this case, the percentage of the

⁵⁰ *Id.* (describing the differences between the plans).

⁵¹ Dori Zinn, *Saving on a Valuable Education (SAVE) Plan: What to Know*, INVESTOPEDIA (last visited Oct. 21, 2023), <https://www.investopedia.com/saving-on-a-valuable-education-plan-7559022>, *supra* note 34 (discussing the introduction of the SAVE plan).

⁵² CONG. RSCH. SERV., R47418, THE DEPARTMENT OF EDUCATION'S NOTICE OF PROPOSED RULEMAKING ON IMPROVING INCOME-DRIVEN REPAYMENT FOR THE DIRECT LOAN PROGRAM: FREQUENTLY ASKED QUESTIONS 1 (2023) <https://crsreports.congress.gov/product/pdf/R/R47418>, *supra* note 35, at 5 (describing the goal of SAVE).

⁵³ *Id.* at 6 (describing how SAVE differs from REPAYE).

⁵⁴ *Id.* at 6 (describing the first case of how SAVE calculates monthly payments).

discretionary income was cut in half for undergraduate loans, and remains the same for graduate loans, as opposed to the calculations under the REPAYE plan.⁵⁵ Additionally, as under the REPAYE plan, the maximum repayment remains at twenty years for undergraduate loans and twenty-five years for graduate loans. Overall, the plan estimates that for one million low-income borrowers, their monthly payments would be as low as zero dollars.

2. *Legal Standing*

As mentioned above, IDR plans find their statutory authority in the HEA, with REPAYE specifically based in HEA §§455(d)(1)(D) and 455(e) under the William D. Ford Federal Direct Loan Program.⁵⁶ However, when the Department of Education switched gears to the SAVE plan, an amendment was made to these statutes to account for the new plan.⁵⁷

To make these changes, the Department utilized its rulemaking power under the Administrative Procedure Act (APA)⁵⁸ and first introduced the proposed SAVE plan to the public through the federal register.⁵⁹ This process often includes submitting a notice of proposed rulemaking, allowing the President to review the proposed rule, opening the proposed rule up for public comments, potentially holding a public hearing, then assessing comments for changes.⁶⁰ Once these steps have been taken, the final rule is published in the *Federal Register*, and then later published in the Code of Federal Regulations.⁶¹

However, this process does allow for Congressional oversight under the Congressional Review Act (CRA), which allows both houses

⁵⁵ *Id.* (describing the second case of how SAVE calculates monthly payments).

⁵⁶ 34 C.F.R. §§ 685.208, 685.209 (2015).

⁵⁷ William D. Ford Federal Direct Loan Program, 88 Fed. Reg. 43900 (July 10, 2023).

⁵⁸ Administrative Procedure Act of 1946, 5 U.S.C. § 551.

⁵⁹ CONG. RSCH. SERV., R47418, THE DEPARTMENT OF EDUCATION'S NOTICE OF PROPOSED RULEMAKING ON IMPROVING INCOME-DRIVEN REPAYMENT FOR THE DIRECT LOAN PROGRAM: FREQUENTLY ASKED QUESTIONS 1 (2023) <https://crsreports.congress.gov/product/pdf/R/R47418>, *supra* note 35, at 2.

⁶⁰ *See generally*, *A Guide to the Rulemaking Process*, Office of the Federal Registrar, https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf (last visited Nov. 11, 2023) (describing the rule making process).

⁶¹ *Id.* at 9 (describing how final rules are integrated into the Code of Federal Regulations).

of Congress to inspect the rule before it may take effect and, at their discretion, pass a resolution of disapproval.⁶² If both houses pass this resolution and the president signs it, or Congress can override with a veto, then the rule is struck down. Congressional members who find the SAVE plan disagreeable have already sought this strategy out.⁶³ Various Republican U.S. Senators and Representatives have brought forward resolutions under the CRA to overturn the new forgiveness strategy.⁶⁴ The core of the GOP's opposition stems from an argument of unfairness: why should a population of those who do not have student loans have to foot the bill for those who do?⁶⁵

Nevertheless, these challenges are distinguishable from *Biden v. Nebraska*, as the student loan forgiveness in that context was decided by the Supreme Court to be an overreach of power based on the national emergency power granted to the Department of Education in the HEROES Act.⁶⁶ By contrast, the SAVE plan is the latest change in a series of amendments to federal loan plans which have been undergoing changes since 2007, and its fate has yet to be decided by Congress.⁶⁷

⁶² *Id.* at 10 (describing Congress' involvement).

⁶³ See Keith Speights, *Is Biden's SAVE Plan in Trouble? 3 Things to Know About the GOP's Most Recent Efforts to Overturn the Repayment Plan*, NASDAQ (last visited Oct. 16, 2023), <https://www.nasdaq.com/articles/is-bidens-save-plan-in-trouble-3-things-to-know-about-the-gops-most-recent-efforts-to>, *supra* note 12 (describing opposition to SAVE).

⁶⁴ *Id.* (describing efforts to overturn SAVE via the Congressional Review Act).

⁶⁵ *Id.* (describing the GOP's argument that the plan unfairly shifts the financial burden from those who borrowed to go to college to those that did not).

⁶⁶ See generally, *Biden v. Nebraska*, 143 S. Ct. 2355 (2023), *supra* note 1.

⁶⁷ Speights, *supra* note 12.

E. Conclusion

To summarize, although the SAVE plan was introduced to serve as a new strategy for student loan forgiveness after the decision in *Biden v. Nebraska*, the Biden administration's decision to take the well-beaten path of amending its current IDR plans might protect them from legal action. First, the new rule must face the Congressional challenges under the Congressional Review Act. Will the resolutions pass? Will the President sign it? Will both houses be capable of overriding the veto? All of these questions could very well hinge on the outcome of the next election. Thus, we may have to wait and see what happens next.

Emma Bowler⁶⁸

⁶⁸ Student, Boston University School of Law (J.D. 2025)