No. 22-506

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.

On Writ of Certiorari Before Judgment to the United States Court of Appeals for the Eighth Circuit

Brief of *Amici Curiae* States of Utah, Ohio, and 15 Other States in Support of Respondents

DAVE YOST
Ohio Attorney General
BENJAMIN M. FLOWERS
Ohio Solicitor General
SYLVIA MAY MAILMAN
Deputy Solicitor General
30 E. Broad St., 17th Fl.
Columbus, Ohio 43215
Telephone: (614) 466-8980
Email:
benjamin.flowers@ohio-ago.gov

SEAN D. REYES
Utah Attorney General
MELISSA HOLYOAK
Utah Solicitor General
Counsel of Record
350 N. State Street, Suite 230
P.O. Box 142320
Salt Lake City, UT 84114
Telephone: (801) 538-9600
Email:
melissaholyoak@agutah.gov

Counsel for *Amici Curiae*

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Federal Cases

Federal Statutes

State Statutes

Other Authorities

INTEREST OF AMICI CURIAE

Amici curiae, the States of Utah, Ohio, Alabama, Alaska, Florida, Georgia, Idaho, Indiana, Louisiana, Mississippi, Montana, New Hampshire, Oklahoma, Tennessee, Texas, West Virginia, and Wyoming, respectfully submit this brief in support of Respondents.

The political branches have repeatedly tried, and failed, to pass legislation canceling or reducing student-loan debt. The Executive Branch sidestepped these failures by claiming that it has long had the power to cancel debt under the HEROES Act of 2003—post-September-11 legislation providing debt relief for the brave men and women fighting the war on terror. *See* Pub. Law No. 108-76, 117 Stat. 904. The Secretary of Education's mass loan cancellation—$400 billion of the $1.6 trillion outstanding federal student loan debt—is among the most egregious examples of unauthorized executive action in American history. Its impact reaches all Americans, not least because the Secretary's *ultra vires* maneuver adds astronomical costs to the federal deficit. Further, *Amici* States have compelling interests in vindicating this grave violation of the Constitution's separation of powers.

Finally, when the federal government takes *ultra vires* action like this and directly injures sovereign States, those States have Article III standing to seek redress of their injuries in federal court. Article III cannot tolerate a theory of standing that makes it more difficult for States to sue than for any other plaintiff to do the same.

For these reasons, *Amici* States are filing this brief.

SUMMARY OF ARGUMENT

Respondent States have raised four theories of standing. *Amici* States believe each theory is sufficient to establish standing. But this brief will focus specifically on how this Court's precedents support one particular theory of standing; *Amici* States wish to emphasize that Missouri has standing to sue because the loan-forgiveness program will injure MOHELA, which is an arm of the State of Missouri. (*Amici* States submitted an amicus brief in the companion case, *Department of Education v. Brown*, Case No. 22-535, that addresses why the loan-forgiveness program is not authorized by statute.)

I. Article III protects the separation of powers by empowering federal courts to decide only "Cases" and "Controversies." This cases-or-controversies requirement "serves to prevent the judicial process from being used to usurp the powers of the political branches." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013). It does so by ensuring that courts review the legality of state and federal policies only when presented with a dispute where one party suffers real harm from the policy in question. *Id.* at 409.

This is one such case. Respondent States will suffer real, imminent, and particularized Article III injuries if the Secretary's program goes into effect. That is especially obvious with respect to Missouri, since the program will inflict financial harm on MOHELA—a non-profit governmental entity created by Missouri statute to achieve "essential" government objectives. MOHELA is part of the State of Missouri. The State created MOHELA as "a public instrumentality." Mo. Rev. Stat. § 173.360. It tasked MOHELA with, among other things: ensuring that "all eligible postsecondary

education students have access to student loans;" supporting "the efforts of public colleges and universities to create and fund capital projects;" and supporting the "Missouri technology corporation's ability to work with colleges and universities in identifying opportunities for commercializing technologies." *Id.* MOHELA's board consists of Governor-appointed and Senate-confirmed directors, all of whom can be removed by the Governor for cause and who serve term limits defined by Missouri law. *Id.* And *all* of MOHELA's powers and duties are prescribed by statute. *See* Mo. Rev. Stat. §§ 173.350–173.450.

All this makes MOHELA part of the State of Missouri for constitutional purposes. That follows from this Court's cases, which have repeatedly recognized that government corporations *are* the government for constitutional purposes when they are "created by the Government, … controlled by the Government, and operate[d] for the Government's benefit." *Dep't of Transp. v. Ass'n of Am. R.Rs.*, 575 U.S. 43, 53-54 (2015); *see also Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 399 (1995); *Arkansas v. Texas*, 346 U.S. 368, 371 (1953); *Erickson v. United States*, 264 U.S. 246, 248–49 (1924). Because MOHELA is part of the State of Missouri, and because the challenged program will injure MOHELA financially, Missouri has standing to sue.

Even if MOHELA were—in some ill-defined way—distinct from Missouri, Missouri would still be injured by the program and thus would still have standing to sue. Missouri relies on MOHELA to contribute money to its Lewis and Clark Discovery Fund. From the Fund, Missouri finances capital projects at its state colleges and universities. The cancellation will eat into MOHELA's revenue and thus impede its ability

to meet its Fund obligations. That, too, constitutes an injury with respect to which Missouri can sue.

II. In hopes of proving an absence of standing, the Department of Education (which is how *Amici* States will refer to the Petitioners collectively), along with several of its supporting *amici* invert bedrock Article III principles in a way that would make it much *more difficult* for States, as opposed to individual plaintiffs, to challenge unconstitutional federal policies. While this is an understandable tactical move given the federal government's penchant for governing by executive fiat, *see, e.g. NFIB v. OSHA*, 142 S. Ct. 661 (2022) (per curiam), the strategy finds no support in precedent. This Court has said that States get "special solicitude in [the] standing analysis." *Massachusetts v. E.P.A.*, 549 U.S. 497, 520 (2007). No case suggests that States are owed special hostility, so that injuries (like monetary loss) that would suffice to establish standing for a private plaintiff are insufficient to do the same for States.

The Department expresses concern that this Court will too often become the venue for constitutional struggles between the States and the federal government. *See* Pet. Br. 24. But any increase in statewide suits stems from an increase in unlawful conduct by the executive branch—accompanied by an increase in the judiciary's commitment to fulfilling its constitutional role by insisting that, just as the People "must turn square corners when they deal with the government," the government must "turn square corners when it deals with them." *Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1486 (2021).

ARGUMENT

Missouri, at least, has standing to challenge the debt-forgiveness program because the program will harm MOHELA, which is an arm of the State of Missouri. Neither the Department nor the *amici* that support it raises a convincing argument to the contrary.

I. Harms to MOHELA are harms to Missouri.

The Department hardly disputes that the loan cancellation will cause MOHELA to lose revenue. *See* Pet. Br. 28–29. Nor does it deny that lost revenue constitutes an injury. Instead, relying on the unsupported "bedrock principle of corporate separateness," it argues that MOHELA is a distinct legal entity from Missouri and that an injury to MOHELA is not an injury to Missouri. *Id.* The Department's attempt to distance MOHELA from Missouri overlooks the nature of government-created corporations, this Court's precedents, and Missouri law.

1. The "law generally treats a corporation and its sole owner as distinct persons, regardless of the closeness of the link between the two." Pet. Br. 30. But government-created corporations are different. Government-created corporations are not a "particularly unusual[] phenomenon." *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 386 (1995). The 19th and 20th centuries contain a "long history of corporations created and participated in by the" government "for the achievement of governmental objectives." *Id.*

In *Lebron*, this Court explained that "Government-created and -controlled corporations are (for many purposes at least) part of the government itself," based on "past practice and understanding" and on "reason itself." *Id.* at 397. "[W]here … the Government creates a corporation by special law, for the furtherance of

governmental objectives, and retains for itself permanent authority to appoint a majority of the directors of that corporation, the corporation is part of the Government for purposes of the First Amendment." *Id.* at 399.

More recently, this Court expanded on *Lebron* and identified specific criteria for determining whether a government-created corporate entity is, for constitutional purposes, part of "the Government." *See Dep't of Transp. v. Ass'n of Am. R.Rs.*, 575 U.S. 43 (2015). *Lebron*, this Court said, "teaches" that, when determining whether a government-created corporation is "a federal actor or instrumentality under the Constitution, the practical reality of federal control and supervision prevails over [statutory] disclaimer of [the corporation's] governmental status." *Id.* at 55. The Court analyzed the "practical reality" by looking to three factors.

First, the Court looked to the "ownership and corporate structure" of the corporation at issue, Amtrak. *Id.* at 51. Among other things, this Court thought it significant that:

- "Amtrak's Board of Directors is composed of nine members, one of whom is the Secretary of Transportation" and "Seven other Board members [who] are appointed by the President and confirmed by the Senate;"
- Congress set salary limits and statutory qualifications for board members;
- Appointed board members are removable by the President without cause; and
- The President consults with leaders from both parties in both houses of Congress to

> ensure board members represent "the major geographic regions of the United States served by Amtrak."

Id. at 51-52.

Next, the Court assessed the government's degree of control over Amtrak's "priorities and operations." *Id.* at 52, and noted that:

- Amtrak must submit many annual reports to Congress and the President about its performance;
- FOIA applies to Amtrak in any year in which it receives a federal subsidy;
- The Inspector General Act applies to Amtrak and requires Amtrak to maintain its own inspector general;
- Congress conducts oversight hearings into Amtrak's budget, routes, and prices;
- Congress requires Amtrak to pursue "numerous, additional goals defined by statute" rather than "advancing its own private economic interests;" and
- Congress "has mandated certain aspects of Amtrak's day-to-day operations," such as requiring Amtrak to maintain a route between Louisiana and Florida and requiring Amtrak to purchase certain materials from American suppliers.

Id. at 52-53 (citations omitted throughout).

Third, the Court noted that Amtrak depended on federal financial support. *Id.* at 53.

The Court ultimately determined that, because "Amtrak was created by the Government, is controlled by the Government, and operates for the Government's benefit," it is part of the Government. *Id.*

2. MOHELA was "created by [Missouri], is controlled by [Missouri], and operates for [Missouri's] benefit." *Id.* And so, perhaps not surprisingly, much of what this Court said about Amtrak's relationship to the United States applies fully to MOHELA and Missouri.

First, MOHELA's "ownership and corporate structure" shows a close relationship to its governmental parent. MOHELA is "a public instrumentality" of the State of Missouri. Mo. Rev. Stat. § 173.360. Just as Amtrak's board is composed of presidential appointees—with the advice and consent of the Senate—MOHELA's board is composed of public officials and individuals appointed by the Missouri Governor with the consent of the Missouri Senate. *Id.* One board member is the Missouri "commissioner of higher education." *Id.* Missouri also prescribes the term limits for MOHELA's board members. *Id.* And, just as the President can remove Amtrak's board members, Missouri's governor can remove any board member "for misfeasance, malfeasance, willful neglect of duty, or other cause after notice and a public hearing." *Id.* True, Missouri permits the Governor to remove a board member only for cause, while the President may remove an Amtrak Board Member without cause. But that is irrelevant to the question whether MOHELA is an arm of the State of Missouri; that Missouri law provides for a method of removal simply reflects a State's policy choice about a state entity that state law created.

Second, just as Congress does with Amtrak, Missouri exercises a significant degree of control over MOHELA's "priorities and operations." *Ass'n of Am. R.Rs.*, 575 U.S. at 52. Missouri law provides that MOHELA's exercise of its statutorily conferred power "shall be deemed to be the performance of an *essential public function*." Mo. Rev. Stat. § 173.360 (emphasis added). It charges MOHELA with various "essential public function[s]," including: of ensuring that "all eligible postsecondary education students have access to student loans;" supporting "the efforts of public colleges and universities to create and fund capital projects;" and supporting the "Missouri technology corporation's ability to work with colleges and universities in identifying opportunities for commercializing technologies." *Id.* Missouri law dictates the quorum and affirmative-vote requirements for MOHELA board meetings and requires that all meetings be open to the public. Mo. Rev. Stat. § 173.365, *id.* § 173.370. All "proceedings and actions" of MOHELA must comply "with all statutory requirements respecting the conduct of *public business by a public agency*." Mo. Rev. Stat. § 173.365 (emphasis added). Board members must execute surety bonds of $50,000 to be conditioned upon the faithful performance of their duties. Mo. Rev. Stat. § 173.375. Significantly, Missouri law also requires MOHELA to make contributions to the State's "Lewis and Clark discovery fund." Mo. Rev. Stat. §§ 173.385(9); 173.392.

Further, all of MOHELA's powers and duties are prescribed by statute. *See* Mo. Rev. Stat. §§ 173.350–173.450. And MOHELA is "assigned to" the State's Department of Higher Education, with whom MOHELA must "annually file … a report of its previous year's income, expenditures and bonds or other forms

of indebtedness issued and outstanding." Mo. Rev. Stat. § 173.445.

Other precedents from this Court reinforce Missouri's standing to sue to protect its interests in a public corporation that it created to perform "essential public functions" and that it controls. In *Erickson v. United States*, for example, this Court recognized that the United States had standing to sue to recover damages for a breach of contract between a private party and "the Spruce Production Corporation," a Washington Corporation that the government created "as an instrumentality for carrying out" World War I. 264 U.S. 246, 248–49 (1924); *see also Hopkins Fed. Sav. & Loan Ass'n v. Cleary*, 296 U.S. 315, 340 (1935) (finding Wisconsin had standing to challenge "the assault upon the quasi public institutions that are the product and embodiment of its statutes and its policy").

Or take *Arkansas v. Texas*, 346 U.S. 368 (1953). There, Arkansas had standing to sue to protect the University of Arkansas from certain legal actions by the State of Texas. Much as the Department does here, Texas argued that "the injured party is the University of Arkansas, which does not stand in the shoes of the State." *Id.* at 370. And much as this Court would later articulate in *Lebron* and *Association of American Railroads*, the *Arkansas* Court said courts must "look behind and beyond the legal form in which the claim of the State is pressed" to "determine whether in substance … the State is indeed the real party in interest." *Id.* at 371. The Court noted that Arkansas law made the Board of University Trustees "'a body politic and corporate' with power to issue bonds which do not pledge to the credit of the State." *Id.* at 370. Even so, Arkansas law created the University, Arkansas's governor appointed the Board of Trustees with consent of

the state senate, and the Board had to report expenditures to the state legislature—much like Missouri's arrangement with MOHELA. *Id.* Thus, Arkansas could sue to protect its interests in the University. *Id.* at 371.

The clear through-line of these cases is that a State may sue to protect interests in an instrumentality it created and over which it exercises control. Missouri relies on MOHELA to ensure that its students have access to student loans and to contribute $350 million to its Lewis and Clark Discovery Fund. J.A. 61-62. It surely has standing to protect its interests in MOHELA's ability to perform the "essential public functions" it created MOHELA to perform.

3. The Department's contrary arguments all fall short. It analogizes this case to dicta from *First National City Bank v. Banco Para el Comercio Exterior de Cuba*, 462 U.S. 611 (1983) (*Bancec*), which stated that "government instrumentalities established as juridical entities distinct and independent from their sovereign should normally be treated as such." *Id.* at 626–27. *Bancec* is readily distinguishable. For starters, the case involved a foreign-created bank and a foreign country. Indeed, the Court noted that none of the cases in which the Court had considered the legal status of government-created corporations *in the United States* were relevant to its analysis of Bancec's status. *See id.* at 623 n.12. Further, *Bancec* distinguished foreign, government-created corporations like Bancec from federal government agencies. *Id.* at 624. Later decisions by this Court in *Lebron* and *American Railroads* make clear that government-created corporations over which the government exercises significant control are, effectively, the government.

The Department's other attempts to separate MOHELA from Missouri are unconvincing. The Department observes that Missouri law declares MOHELA to be a "body corporate" with "perpetual succession" and the right to "sue and be sued." Pet Br. 29–30 (quoting Mo. Rev. Stat. §§ 173.360, 173.385(1) and (3)). *Association of American Railroads* and *Lebron* make clear that superficial labels affixed to a government-created corporation do not determine that corporation's status. Rather, this Court looks to the nature of the entity, focusing on how much control the government really has over its operations and goals. Just as Congress's express statement that Amtrak is not an "agency or establishment of the United States Government" was not dispositive in *Lebron*, 513 U.S. at 391 (citation omitted), neither is a perfunctory line in MOHELA's enabling statute about MOHELA's being "a body corporate" with "perpetual succession" dispositive here. The real test—at least under this Court's precedents—is whether Missouri created MOHELA and controls MOHELA's structure and goals. Unquestionably, it did and does.

Next, the Department notes that MOHELA was not involved in the decision to bring this lawsuit. *See* Pet. Br. 29–30. But Missouri law authorizes the Missouri Attorney General to sue "in the name of and on the behalf of the state … to protect" its "interests" in MOHELA's performance of its essential public functions. Mo. Rev. Stat. § 27.060. MOHELA cannot opt out of the suit. That puts MOHELA in the same position as federal agencies represented in litigation by the Department of Justice, which, at least before this case, had long taken the view that the U.S. Attorney General has plenary authority to take positions in litigation on behalf of government agencies even over

their objection. *See, e.g.*, *League of Women Voters v. Newby*, 838 F.3d 1, 6 (D.C. Cir. 2016) (noting that the Department of Justice declined to defend the constitutionality of a decision by the Executive Director of the Election Assistance Commission to add a proof-of-citizenship requirement to a federal voting form); *The Attorney General's Role as Chief Litigator for the United States*, 6 Op. O.L.C. 47, 48 (1982) (noting that the Attorney General "has full plenary authority over all litigation" consistent with "common law and tradition"). The Department also points to MOHELA's public comment that its only communication with Missouri's Attorney General about this lawsuit came through a public records request under the State's "sunshine laws." Pet. Br. 30. The Department's argument is telling: that MOHELA is bound by the State's "sunshine laws" further shows that MOHELA is part of the State of Missouri, not some independent, non-governmental entity. *See* Mo. Rev. Stat. § 610.010(4) (defining the "public governmental bod[ies]" subject to Missouri's sunshine laws).

II. The Department and its supporting *amici* distort the nature of Article III's standing inquiry.

To dispute the States' theories of standing, the government and its *amici* distort well-established and critically important standing principles.

First, this Court's precedents give State Respondents "special solicitude in [the] standing analysis." *Massachusetts v. E.P.A.*, 549 U.S. 497, 520 (2007). This Court has reasoned that special solicitude is appropriate because, in our federal system, States "are not relegated to the role of mere provinces or political corporations, but retain the dignity, though not full

authority, of sovereignty." *Alden v. Maine*, 527 U.S. 706, 715 (1999).

Despite surrendering some authority when entering into the Union, States retain—and have standing to vindicate—their quasi-sovereign interests. States have a quasi-sovereign interest in protecting the economic wellbeing of their residents. *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 607 (1982). Missouri is entitled to vindicate its right to ensure that "students and universities have adequate funding for education." Resp. Br. 22.

"[I]f nothing else," special solicitude "means imminence and redressability are easier to establish here than usual." *Texas v. Biden*, 20 F.4th 928, 970 (5th Cir. 2021), *rev'd on other grounds* 142 S. Ct. 2528 (2022). Yet the Department and its *amici* would invert that principle and have this Court view the States' theories of standing with special *skepticism*. *See, e.g.* Pet. Br. 24; Br. for Samuel L. Bray and William Baude as Amici Curiae 4–25. Under the normal standing rules, financial injuries of any amount are usually enough to confer Article III standing. *See, e.g.*, *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2204 (2021) ("[C]ertain harms readily qualify as concrete injuries under Article III. The most obvious are traditional tangible harms, such as physical harms and monetary harms. If a defendant has caused physical or monetary injury to the plaintiff, the plaintiff has suffered a concrete injury in fact under Article III."). The Department says, however, that federal policies that inflict financial harms on States should be immune from judicial review. *See, e.g.*, Pet. Br. 24 ("Virtually all federal actions … have some incidental effects on state finances. If such incidental effects suffice for standing, every State would have standing to

challenge almost any federal policy."); *see also* Br. for Samuel L. Bray and William Baude as Amici Curiae 4–25. While every administration would like to avoid judicial review of illegal executive actions, that desire cannot justify making it *harder* for States to sue in federal court than for a private plaintiff to do the same.

Second, the Department feigns concern that this Court will too often become the forum for Homeric constitutional showdowns between the federal government and the States. *See* Pet. Br. 24. But any increase in multistate lawsuits reflects not—as the government and certain *amici* suggest—a sudden relaxation of this Court's standing doctrine or a danger that this Court will assert "general legal oversight" over the political branches. *TransUnion*, 141 S.Ct. at 2203. Rather, it reflects the executive branch's frequent inattention to the text and structure of the Constitution—along with its tendency to regulate by administrative diktat and its penchant for finding "elephants" in legislative "mouseholes." *Whitman v. Am. Trucking Ass'ns, Inc.*, 531 U.S. 457, 468 (2001); *NFIB v. OSHA*, 142 S.Ct. 661 (2022).

While the government understandably seeks to evade judicial review of its unprecedented, repeated, and unconstitutional attempts to rule by executive dictate, it is still, "emphatically[,] the province and duty" of this Court "to say what the law is" and what the Constitution allows. *Marbury v. Madison*, 1 Cranch 137, 177 (1803). If the government continues to venture far beyond the borders of its constitutional power, it should come as little surprise that this Court must continually rein it back in. And it would be passing strange to say that the *increase* in unlawful federal

action counsels in favor of *narrowing* standing so as to prevent challenges to those illegal acts.

Third, certain *amici* would like this Court to consider a policy's net effect on a State before determining whether that policy causes injury-in-fact. They contend that the States will economically benefit from this massive cancellation in ways that will offset any injury the States will suffer now. *See, e.g.*, Br. of Amici *Curiae* Local Gov'ts. at 9–19 (arguing that any financial harm caused by the cancellation should be offset against the cancellation's purported "countervailing benefits").

The idea of "net effect" injury has also come up in oral argument recently. During argument for one case during the October 2022 term, members of this Court expressed concern that States can challenge a policy simply by alleging "a dollar's worth of costs" without accounting for "the benefits on the other side." *See* Tr. of Oral Argument in *United States v. Texas*, No. 22-58, at 88:24–89:25, (Nov. 29, 2022) at https://www.supremecourt.gov/oral_arguments/argument_transcripts/2022/22-58_4fc4.pdf. Another question expressed a justice's concern that States might claim standing to challenge a federal policy by "saying … we have some costs associated with this [policy] and we're not going to look at the benefits" or "show that [the State's] … gross costs are going to rise, let alone [its] net costs." *Id.* at 92:24-93:10.

A net-cost approach would seriously distort what this Court has said about Article III injury. A party does not have to show a lifetime, aggregate injury to have Article III standing. Courts measure injury-in-fact at or near the time of the suit's initiation. *See, e.g. Lujan v. Defs. of Wildlife*, 504 U.S. 555, 563–65 (1992)

(applying the imminence requirement for an injury in fact); *see also Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) ("[a] threatened injury must be *certainly* impending to constitute injury in fact") (citation omitted). It follows that the federal government cannot defeat a State's theory of standing by pointing to ostensible future "offsetting benefits" that will inure to the States from a challenged federal policy. *See Peters v. Aetna Inc.*, 2 F.4th 199, 218 & n.10 (4th Cir. 2021) (collecting cases). Standing is not "an ingenious academic exercise in the conceivable." *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 688 (1973). And Article III does not require federal courts to become actuaries and predict the future net effect of a policy by offsetting the policy's hypothetical future benefits against its hypothetical future harms. Forcing courts to weigh the likely net costs and benefits of government policies would mean inserting courts into the other branches' policy decisions—exactly what the standing doctrine is supposed to prevent. *TransUnion LLC*, 141 S. Ct. at 2203.

The implications of a "net effect" injury-in-fact requirement are also troubling. A First Amendment plaintiff does not have to show that his entire life would have been better off if his government had not arrested him for protesting. An environmental plaintiff does not have to show that the net aesthetic enjoyment of her life will be worse off due to a challenged permitting decision. Nor should a State have to show that it suffers a "net" injury over some undefined period of time to have Article III standing. Perhaps the federal government would respond that States must satisfy a different standard than these hypothetical individual plaintiffs. But, again, this Court has made

clear that sovereign States cannot be subjected to a higher bar than other plaintiffs for standing.

CONCLUSION

The Court should affirm the Eighth Circuit's injunction and reverse the district court's judgment.

DATED this 3rd day of February, 2023.

Respectfully submitted,

/s/ Melissa A. Holyoak

DAVE YOST
Ohio Attorney General
BENJAMIN M. FLOWERS
Ohio Solicitor General
SYLVIA MAY MAILMAN
Deputy Solicitor General
30 E. Broad St., 17th Fl.
Columbus, Ohio 43215
Telephone: (614) 466-8980
Email:
benjamin.flowers@ohio-ago.gov

SEAN D. REYES
Utah Attorney General
MELISSA HOLYOAK
Utah Solicitor General
Counsel of Record
350 N. State Street, Suite 230
P.O. Box 142320
Salt Lake City, UT 84114
Telephone: (801) 538-9600
Email:
melissaholyoak@agutah.gov

Counsel for *Amici Curiae*

ADDITIONAL COUNSEL

Counsel for Amici *States*

STEVE MARSHALL
Attorney General
State of Alabama

TREG R. TAYLOR
Attorney General
State of Alaska

ASHLEY MOODY
Attorney General
State of Florida

CHRISTOPHER M. CARR
Attorney General
State of Georgia

RAÚL LABRADOR
Attorney General
State of Idaho

THEODORE E. ROKITA
Attorney General
State of Indiana

JEFF LANDRY
Attorney General
State of Louisiana

LYNN FITCH
Attorney General
State of Mississippi

AUSTIN KNUDSEN
Attorney General
State of Montana

JOHN M. FORMELLA
Attorney General
State of
New Hampshire

GENTNER DRUMMOND
Attorney General
State of Oklahoma

JONATHAN SKRMETTI
Attorney General
State of Tennessee

KEN PAXTON
Attorney General
State of Texas

PATRICK MORRISEY
Attorney General
State of West Virginia

BRIDGET HILL
Attorney General
State of Wyoming