Questions my essay will address

1) **What is the effect of the new U.S. Supreme decision in *Loper Bright Enterprises?* Has administrative agency discretion been indirectly weakened? Does Loper potentially again make the decision as to whether there was "undue hardship" allowing for student loan debt discharge in bankruptcy, one that needs to involves judicial discretion?**
2) **Do we now need more specific legislation enacted by Congress to guide us better as to the approach to 11 U.S. 523(8)?**
3) **In light of *Loper Bright Enterprises* can you propose a plan for Student loan debt forgiveness generally? For those filing bankruptcy?**

The issue of student loan forgiveness has become one of the most significant economic and legal problems facing America today. Since the federal government first became involved in funding higher education through the GI Bill in 1944[1], the amount of student loan debt in America has reached 1.75 trillion[2]. Despite such a high amount in debt, Congress has made it increasingly difficult for borrowers to discharge student loans in bankruptcy. This is a result of the creation of the "undue hardship" test in determining whether student loans are dischargeable or not. Historically, bankruptcy courts, when applying the "undue hardship" test, have relied upon administrative agencies such as the Department of Justice (DOJ) and the Department of Education (DOE) for guidance when determining whether a debtor's debt qualified as dischargeable due to "undue hardship." However, recently in June 2024, the United States Supreme Court's decision in Loper Bright Enterprises v. Raimondo[3] has reshaped the relationship amongst the courts and administrative agencies. The ruling has now forced judges to independently navigate ambiguous laws such as 11 U.S.C. §523(a)(8)[4] without any deference to administrative agencies, thus making student loan discharges harder to predict because there is no longer a standard across all judges to determine "undue hardship." Rather, now it is a court-by-court decision. This essay will explore the historical background of student loan discharging policy in America and will argue how the Supreme Court's recent decision in Loper Bright will subsequently shift the landscape for borrowers. I will also propose a legislative reform to modernize the Brunner test that will increase uniformity in bankruptcy proceedings.

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[1] **Servicemen's Readjustment Act of 1944**, Pub. L. No. 78-346, 58 Stat. 284 (1944).

[2] **Education Data Initiative**, Student Loan Debt Statistics, https://educationdata.org/student-loan-debt-statistics (last visited May 21, 2025).

[3] *Loper Bright Enters. v. Raimondo*, 602 U.S. (2024)

[4] 11 U.S.C. § 523(a)(8).

To fully understand the impact of how Loper Bright will reshape student loan discharge, it is important to trace how the legal treatment of student debt has evolved through the years. In 1944, the GI Bill was introduced to give WWII veterans access to free or subsidized education, putting the federal government's initial foot in the door for higher education financing. The United States during this time period, as we do today, strongly valued how having educated citizens was vital to a country's success. Thus, the GI Bill was followed up in 1958 with the National Defense Education Act. The National Defense Education Act was created with the thought of national security in mind. This act created the first federal student loan program for non-veterans, with the primary purpose of encouraging science and math education during the Cold War. Expanding further in 1965, the Higher Education Act was passed, which established the guarantee of the student loan system, making loans widely accessible for both middle- and low-income students.

At the time these first three acts were passed, student loans were treated as any other unsecured debt and were dischargeable if an individual were to file for bankruptcy. Although, by the early 1970s, policymakers began to see how problematic this was due to how borrowers would be able to escape paying back their student loans by filing for bankruptcy upon graduation. As a solution, Congress amended the Higher Education Act in 1976, prohibiting borrowers from discharging federal student loans during the first five years of their payments unless they could show proof of "undue hardship." This marked the first use of the term "undue hardship" in regard to student loan discharge and initiated the beginning of more stringent policies that were to follow in the decades to come.

The first of these more stringent policies was in 1990, when Congress extended upon the Higher Education Act five-year rule with the passing of the Crime Control Act. The Crime and

Control Act increased the amount of time until one could discharge to 7 years. The government justified this increase from 5 to 7 years by stating they wanted to better protect federal investments into higher education by preventing borrowers from abusing the bankruptcy system. But despite the time period to discharge being extended to 7 years, the government kept in place the "undue hardship" clause.

1998 signified the year when all discharge time restrictions were eliminated. Congress amended the Higher Education Act, making it so that the only way to discharge federal student debt in bankruptcy was to prove "undue hardship." But to prove "undue hardship" is tremendously difficult because there is no legal standard of "undue hardship," and it is a case-by-case basis, giving the court significant discretion when ruling on debtor's lives. The legislative shift in 1998 was a reflection of a much broader policy trend to combat the growing national debt. The result of putting the definition of "undue hardship" squarely into the power of the courts ultimately led to the practice of two different tests: the Brunner test, which was first established in 1987 by the Second Circuit, and the more forgiving Totality of the Circumstances test, which is commonly used in the 1st and 8th circuit.

The Brunner Test was established in [5]Brunner v. New York State Higher Education Services Corp. It is a three-criteria part test that could be used to help determine if a debtor was indeed experiencing "undue hardship." Part one (1) of this test was that if the debtor was forced to repay their loans, they would be unable to maintain a minimal standard of living, (2) their financial situation is likely to persist throughout their repayment period, and (3) they have demonstrated a good faith effort to repay their loans. This test was originally created to maintain a standard; however, in practice it imposes an extremely high bar because debtors have to satisfy

[5] *Brunner v. N.Y. State Higher Educ. Servs. Corp.*, 831 F.2d 395 (2d Cir. 1987)

each requirement. To illustrate how hard discharges were under the Brunner test, in the Fifth Circuit, one Texas bankruptcy court had noted that in 15 years it had never discharged a single student loan. [6]

This high bar paved the way for the totality of circumstances test, a more borrower-friendly standard. In the Eighth Circuit case where the test was officially adopted, [7]Long v. Educational Credit Management Corp., it was established that a debtor's circumstances should be viewed more holistically and not through a rigid three-prong test as in Brunner. This means that a debtor's past, present, and future financial circumstances are weighed along with other surrounding factors, such as their physical condition and the structure of their loan. The court then makes a decision based on the aggregate of these factors, as opposed to Brunner, where one must meet all three conditions of the test without exception.

An example in the contrast of the two tests is a young debtor with a low-paying job but high loans would likely fail the second prong of the Brunner test for failing to show that their hardship would be permanent. But, under the totality of circumstances test, the debtor's loans could possibly be discharged if it is shown that they would be unlikely to make loan payments while covering basic living expenses. Thus, under the totality of circumstances test, debtors are not required to demonstrate extraordinary hopelessness as they must under Brunner.

However, as a result of the differences between the two tests, a geographic disparity in relief has emerged, where a borrower's ability to discharge their debt relies largely on where they

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[6] 1 *Amicus Brief for the National Consumer Law Center et al. at 6, McCoy v. United States, No. 20-886 (U.S. Jan. 29, 2021), https://www.supremecourt.gov/DocketPDF/20/20-886/167680/20210129153141886_20-886%20Amicus%20Brief.pdf.*

[7] *Long v. Educational Credit Mgmt. Corp.*, 322 F.3d 549 (8th Cir. 2003)

live. To address this issue, agencies like the Department of Education and the Department of Justice began alleviating the burden on courts by offering guidance to judges in evaluating what constitutes "undue hardship." This resulted in more standardization and, overall, more borrower-friendly decisions.

Loper Bright Enterprises v. Raimondo disrupted this relationship between the agencies and the bankruptcy courts. Loper Bright overturned the longstanding [8]Chevron deference doctrine. Chevron allowed courts to defer interpretations of vague statutes to administrative agencies. However, with Chevron overturned, courts now must interpret vague statutory language independently. This will mark a shift back towards fragmentation. Individual bankruptcy judges will once again be forming their own opinions on if a debtor is experiencing "undue hardship." This result will put emphasis on location once again, when there should instead be uniformity in the law.

Ambiguity in student loan discharge is far from an ideal situation, but I believe the solution to such a problem is clear. What has made the United States so strong and has allowed us to have a lasting influence in the years post-WWII is because of our willingness to invest in our citizens' education. So, I believe the federal government should maintain its position in higher education financing but with better outlined guidelines regarding the discharge of federal loans in bankruptcy. A way this can best be achieved is through the passing of congressional legislation that modernizes the Brunner Test. Currently, the Brunner test is flawed, but the thought of having a test to determine whether a discharge should be applied is well-intentioned. The way I see that the Brunner test can be amended that makes it more equitable for borrowers is through the modernization of all three prongs. The first prong, "The standard of living test,"

[8] *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837 (1984)

should be amended to have a clear definition of what a "minimal standard of living" is. This can be done through having a specific income threshold. For instance, a standard could be 150% of the federal poverty line.

The second prong focuses on the persistence of hardship, referring that it be a "significant portion of the repayment period." Most borrowers who take out higher education loans are in their twenties and can be crippled by never being able to pass this prong because it is hard to determine how long one's hardship will continue and if that will cover a significant enough portion of the repayment period to classify "undue hardship." Thus, I propose this prong be amended to be more similar to how Public Student Loan Forgiveness (PSLF) is structured. PSLF requires borrowers to make 120 qualifying (usually income driven) payments to have their loans forgiven by the government. This can be mirrored in this situation by setting a number on the amount of payments that should be considered a significant portion of the loan. However, if this threshold is met, borrowers should further be evaluated holistically because, unlike PSLF, their loans should not be automatically forgiven, because in doing so would result in an abuse of the bankruptcy system.

Lastly, the third prong, which evaluates if a borrower is acting in good faith, is complicated for a judge to determine. Frequently, judges, to help them to determine this, often force borrowers to enroll in an income-driven repayment plan (IDR). I believe this is a reasonable policy but rigid. If this were to be uniformly adopted, it would negatively affect borrowers whose situations would not be suitable for enrolling in an IDR. Therefore, I advocate enrolling in an IDR should only be viewed as a plus factor, but by not enrolling, it should not be looked at as a minus or a disqualifying factor. However, if one chooses not to enroll in an IDR, it should be required that they be able to produce evidence that they're acting in good faith. This

could be done through evidence of solid communication, making partial payments, or proof of efforts to avoid any unnecessary debt accumulation.

In closing, with the overturning of the Chevron doctrine in Loper Bright v. Raimondo, borrowers are in the most ambiguous situation they have been in since before Chevron, and the determinant on if their loans will be dischargeable when filing for bankruptcy will once again be based largely on where they live and which judge is presiding over their case. This should not be how the law is applied; it should be interpreted clearly and applied equally. Thus, for the ongoing future, one should be very considerate when taking out student loans.