JUDICIAL INTERPRETATION BY BANKRUPTCY COURTS AND THE DEPARTMENT OF EDUCATION REGARDING THE APPLICATION OF THE UNDUE HARDSHIP ("BRUNNER") STANDARD TO STUDENT LOAN DISCHARGES

Anda Totoreanu[*]

TABLE OF CONTENTS

[*] Anda Totoreanu is the Online and Submissions Editor for Volume 29 of the Cardozo Journal of Equal Rights and Social Justice. She wishes to thank her family for their support in drafting her note, especially her partner James. A special thank you to Professor Pamela Foohey for her bankruptcy expertise, essential edits, and diligence spent reading Anda's note. Heartfelt thanks also to Judge Elizabeth S. Stong of the U.S. Bankruptcy Court, Eastern District of New York, whose work inspired Anda to further explore bankruptcy and whose commitment to social justice formed the backbone of this note.

I. INTRODUCTION

As of September 19, 2022, Americans owe a startling $1.75 trillion in student loan debt.[1] Many of these student loans are not in active repayment—in 2020, only sixty percent were in active repayment, and critics note that "more than one million students default on almost $20 billion worth of federal student loans each year."[2] Student loan debt surpasses both credit card and automobile debt and "has serious consequences for the student debtor," including forcing "40% of student debtors to delay major purchases, such as a house or car, and caus[ing] more than a quarter to move back in with their parents or family members."[3]

In the January 2022 case *In re Wolfson*, the United States Bankruptcy Court for the District of Delaware found in favor of discharging student loans for Ryan K. Wolfson, a thirty-four-year-old with a neurological condition.[4] Analysts reported that this ruling "energized consumer bankruptcy attorneys who say [*In re Wolfson*] pulls a harshly interpreted standard for 'undue hardship' back to its origins and could pave the way for wider student debt relief."[5] The judge presiding over the case "rejected the 'onerous' and 'overly strict' standards that have evolved for discharging student debt as 'unmoored from the original test and the plain language of 'undue burden'" and thus eliminated the debtor's near $100,000 student loan debt.[6]

Unfortunately, for some student debtors, the overall financial benefit of higher education has not offset the costs, and those debtors have suffered notable financial distress.[7] One avenue that student debtors take to relieve this debt is discharging their student loans through Chapter 7 or Chapter 13 bankruptcy proceedings.[8] The Bankruptcy Act of 1898 created the idea of

---

[1] Alicia Hahn, *2023 Student Loan Debt Statistics: Average Student Loan Debt,* FORBES (Feb. 22, 2023, 2:26 PM), https://www.forbes.com/advisor/student-loans/average-student-loan-statistics/.

[2] Matthew A. Bruckner, Brook Gotberg, Dalié Jiménez, & Chrystin D. Ondersma, *A No-Contest Discharge for Uncollectible Student Loans*, 91 U. COLO. L. REV. 183, 189 (2020).

[3] Terry Ha, *Back to Bankruptcy's Equitable Roots: Recalibrate the Dischargeability of Student Loans through a Modified Eighth Circuit Approach*, 98 WASH. U. L. REV. 1517 (2021).

[4] Leslie Pappas, *Del. Bankruptcy Ruling Sparks Rethink on Student Loan Debt*, LAW360 (Jan. 26, 2022, 7:50 PM), https://www.law360.com/articles/1459075/del-bankruptcy-ruling-sparks-rethink-on-student-loan-debt; *see also In re* Wolfson, 2022 WL 5055468 (Bankr. D. Del. Jan. 14, 2022).

[5] Pappas, *supra* note 4.

[6] *Id.*

[7] Rafael I. Pardo & Michelle R. Lacey, *Undue Hardship in the Bankruptcy Courts: An Empirical Assessment of the Discharge of Educational Debt*, 74 U. CIN. L. REV. 405, 407 (2005).

[8] Pamela Foohey, Robert M. Lawless, & Deborah Thorne, *Portraits of Bankruptcy Filers*, 56 GA. L. REV. 573, 591 (2021) (remarking that "[h]istorically, nationwide, about two-thirds of consumer debtors file chapter 7 and one-third of file chapter 13.").

the fresh financial start principle, which experts note "underlies modern bankruptcy law . . . [and] warrants relieving debtors of their debt so that they can carry forward in their lives debt-free."[9] With regard to student loans, however, a bankruptcy discharge is a challenging and rarely successful process.[10] Out of nearly 250,000 student loan debtors who file for bankruptcy, only about three hundred manage to discharge their educational debt—0.1% of student loan filers.[11]

One of the main reasons for this meager percentage is that, statutorily, bankruptcy courts will not discharge student loans "unless excepting such debt from discharge . . . would impose an undue hardship on the debtor and the debtor's dependents."[12] This standard is purportedly rigorous to safeguard the student loan system from abuses by student debtors.[13] Given that Congress has not defined what undue hardship means within the Bankruptcy Code, the judiciary has been forced interpret the phrase," which brings challenges.[14]

Most circuit courts have followed the *Brunner* standard,[15] as set out in the Second Circuit case *Brunner v. N.Y. State Higher Educ. Servs. Corp.*, requiring a debtor to meet three elements in order to be awarded discharge: (1) a minimal standard of living, (2) that the debtor's state of affairs will

---

[9] Ha, *supra* note 3 (also discussing two further policies of the Fresh Financial Start Principle, "alleviation of debtor hardship and encouragement of participation in the economy"); *see also* Pardo & Lacey, *supra* note 7 (discussing two main principles of bankruptcy law);

> (1) a fresh start for the debtor (the fresh start principle) and (2) equal treatment of similarly situated creditors (the equality principle). The fresh start principle captures the notion that substantive relief should be afforded in the form of forgiveness of existing debt, with relinquishment by the debtor of either existing nonexempt assets or a portion of future income, in order to restore the debtor to economic productivity. The equality principle, on the other hand, accords procedural relief to creditors in the form of an orderly, collective process that administers the assets of a debtor to its creditors as a response to the common pool problem that arises when a debtor has insufficient assets to repay his or her debts.

Id.

[10] Debra Cassens Weiss, *Bipartisan Bill Would Make it Easier to Discharge Federal Student Loans in Bankruptcy After Waiting Period*, A.B.A. J. (Aug. 5, 2021, 11:13 AM), https://www.abajournal.com/news/article/bipartisan-bill-would-make-it-easier-to-discharge-federal-student-loans-in-bankruptcy-after-a-wait.

[11] Jason Iuliano, *An Empirical Assessment of Student Loan Discharges and the Undue Hardship Standard*, 86 AM. BANKR. L.J. 495, 499 (Sept. 12, 2012).

[12] 11 U.S.C. § 523; s*ee also* Matthew S. Farina, *Schoolbooks and Shackles: The Undue Hardship Standard and Treatment of Student Debt at Bankruptcy*, 62 B.C. L. REV. 1626 (2021) (discussing that a court will allow discharge of student loans "when a debtor can demonstrate that the debt imposes an undue hardship").

[13] Farina, *supra* note 12.

[14] Jason Iuliano, *The Student Loan Bankruptcy Gap*, 70 DUKE L. J. 102, 107 (Dec. 2020); *see also* Ha, *supra* note 3 ("Because Congress has not provided a definition of 'undue hardship,' the judiciary has been tasked with creating judicial standards to delineate the Undue Hardship Exception").

[15] Bruckner, Gotberg, Jiménez, & Ondersma, *supra* note 2, at 195.

persist for a significant portion of the repayment period, and (3) that the debtor has made good faith efforts to repay the loan.[16] Alternatively, the First and Eighth Circuit Courts of Appeals have adopted the "totality-of-the-circumstances" test from *In re Long*.[17] According to scholars, although the *Long* test has a different name and "purport[s] to undertake a more holistic analysis of the debtor's situation, the *Long* test yields outcomes that mirror those in the *Brunner* Circuits."[18]

The Department of Education (the "DOE" or the "ED") has made the already difficult process of discharging student loans even more cumbersome by advancing an "overly rigid" interpretation of the undue hardship standard under *Brunner*.[19] The DOE is often the adversary in student discharge proceedings, representing the government, while the court adjudicates whether the student deserves discharge.[20]

In April 2021, the DOE asserted that "*Brunner* requires a debtor to establish a certainty of hopelessness to show undue hardship."[21] This is an incredibly high standard and effectively creates a bar to relief from education debt for those debtors who need it most, especially communities of color and women, who disproportionately suffer from the increase in student loan debt and default.[22] Advocates and scholars have criticized both "the law itself, for granting educational debt conditionally dischargeable status in the first instance, and its application, arguing that the standard has been interpreted too narrowly by courts."[23]

This Note will discuss the history of, and significant issues with, the undue hardship standard, including how the standard makes it incredibly difficult for most applicants to qualify for discharge of their loans and the effects of this burden on minorities.[24] Part II(a) will explain the legal

16 Brunner v. N.Y. State Higher Educ. Servs. Corp., 831 F.2d 395, 396 (2d Cir. 1987); *see also* Catherine Pastrikos Kelly, *What You Should Know About The Implied Duty of Good Faith and Fair Dealing*, A.B.A. (July 26, 2016), https://www.americanbar.org/groups/litigation/committees/business-torts-unfair-competition/practice/2016/duty-of-good-faith-fair-dealing/ (describing that "'[g]ood faith' has generally been defined as honesty in a person's conduct during the agreement.").

17 See Bruckner, Gotberg, Jiménez, & Ondersma, *supra* note 2, at 195; *see also In re* Long, 322 F.3d 549, 553-54 (8th Cir. 2003) (holding that the totality-of-the-circumstances test requires courts to consider: "(1) the debtor's past, present, and reasonably reliable future financial resources; (2) a calculation of the debtor's and her dependent's reasonable necessary living expenses; and (3) any other relevant facts and circumstances surrounding each particular bankruptcy case").

18 Iuliano, *supra* note 14, at 107.

19 Pamela Foohey, Aaron S. Ament, & Daniel A. Zibel, *Changing the Student Loan Dischargeability Framework: How the Department of Education Can Ease the Path for Borrowers in Bankruptcy*, 106 MINN. L. REV. HEADNOTES 1, 3 (July 17, 2021).

20 *Id.*

21 *Id.* at 4.

22 *Id.* at 8-9.

23 Pardo & Lacey, *supra* note 7.

24 *See* Foohey, Ament, & Zibel, *supra* note 19, at 8-9; Iuliano, *supra* note 14.

requirements for a student loan discharge under the United States Bankruptcy Code. Part II(b) will examine the various interpretations of the undue hardship standard as applied by bankruptcy courts, focusing on the *Long* and *Brunner* standards. Part II(c) will then discuss the history of the *Brunner* standard as applied by the DOE and the problems with that application. Part II(d) will analyze certain undue hardship cases from bankruptcy courts in 2021, specifically discussing when the courts agree with DOE interpretations and when they do not. Finally, Part II(d) will discuss the issue with the *Brunner* interpretation as applied to minorities and as a civil rights issue.

Given the courts' continued application of the *Brunner* standard and the lack of foreseeable guidance or change from the Supreme Court, this Note will focus on solutions that can be found within the procedural process as discussed in Part III. Part III will first propose that the DOE should relax its interpretation of the *Brunner* standard and adopt "no-contest" categories, as proposed by consumer advocates.[25] Introducing these categories could reduce or remove the major barriers to student loan discharge for adversely affected communities.[26] Second, Part III will discuss the availability of discretionary measures available to judges to forgive student loan debt, such as in the case of Mr. Wolfson discussed above. This Note will address the enormous burden of student loan debt in the United States, particularly for minority groups, and provide solutions to help overcome this crisis.

II. THE UNDUE HARDSHIP STANDARD TO STUDENT LOAN DISCHARGES

a. Legal Requirements for Student Loan Discharge

The consumer bankruptcy system has two chapters within the Bankruptcy Code[27] under which individuals generally file—Chapter 7 and Chapter 13.[28] A bankruptcy case begins when a petitioner (either a debtor or their creditor) files a petition with their corresponding bankruptcy court.[29] This creates a bankruptcy estate which is defined as including "[a]ll legal or equitable interests of the debtor in property at the time of the bankruptcy filing" and incorporates any and all property "in which the debtor has an interest, even if it is owned or held by another person."[30] A bankruptcy

---

[25] Bruckner, Gotberg, Jiménez, & Ondersma, *supra* note 2.

[26] *Id.*

[27] Farina, *supra* note 12, at 1627 (noting that the Bankruptcy Code is found within Chapter 11 of the U.S. Code).

[28] Foohey, Lawless, & Thorne, *supra* note 8, at 591 (remarking that "[h]istorically, nationwide, about two-thirds of consumer debtors file chapter 7 and one-third of file chapter 13.").

[29] *Id.*

[30] *Bankruptcy Basics Glossary,* U.S. CTS., https://www.uscourts.gov/educational-resources/educational-activities/bankruptcy-basics-glossary#top (last visited Mar. 12, 2023).

petition also activates an automatic stay, which is effectively an injunction that "automatically stops lawsuits, foreclosures, garnishments, and all collection activity against the debtor the moment a bankruptcy petition is filed."[31]

When petitioners file for Chapter 7 bankruptcy, they are seeking a "liquidation" or "general discharge of unsecured debt, such as credit card debt."[32] On the other hand, petitioners who file for bankruptcy under Chapter 13 are not liquidating their debt, but instead reorganizing it.[33] Chapter 13 bankruptcy gives debtors "the chance to keep [their] property (including secured assets like your home and car) if [they] successfully complete a court-mandated repayment plan that lasts between three and five years."[34] Student loans are presumptively non-dischargeable in both chapters.[35] Debtors can bring potential discharges before the court through adversary proceedings.[36]

One significant difference between the two chapters is that, in a Chapter 7 case, the debtor must immediately bring an adversary proceeding when filing the case, whereas, in a Chapter 13 case, debtors bring the adversary proceeding near the end of the bankruptcy case after fulfilling the requirements of their three-to-five-year plan.[37] Many Chapter 13 cases fail due to the stringent requirements of the debtors' plans[38] or do not receive a

---

[31] *Id.*

[32] Hillary Back, *What is the Difference Between Chapter 7 and Chapter 13 Bankruptcy?*, EXPERIAN (Apr. 7. 2021), https://www.experian.com/blogs/ask-experian/bankruptcy-chapter-7-vs-chapter-13/.

[33] *Id.*

[34] *Id.*

[35] Foohey, Ament, & Zibel, *supra* note 19, at 2-3; *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, 179 (2020) (discussing that "student debtors do not face the same path to relief available to others in bankruptcy. The only category of consumer debt that is not automatically discharged in bankruptcy is student loans").

[36] Foohey, Ament, & Zibel, *supra* note 19, at 2-3.

[37] Foohey, Lawless, & Thorne, *supra* note 8, at 16-17.

[38] See *Chapter 13 – Bankruptcy Basics*, U.S. CTS., https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-13-bankruptcy-basics (last visited Mar. 12, 2023) (outlining requirements which include "filing a repayment plan with the petition or 14 days after the petition is filed." The repayment plan "must provide for payments of fixed amounts to the trustee on a regular basis, typically biweekly or monthly.");

> [In addition,] the debtor must make regular payments to the trustee either directly or through payroll deduction, which will require adjustment to living on a fixed budget for a prolonged period. Furthermore, while confirmation of the plan entitles the debtor to retain property as long as payments are made, the debtor may not incur new debt without consulting the trustee, because additional debt may compromise the debtor's ability to complete the plan.

Id.

discharge of unsecured debts.[39] Because of this, fewer debtors bring adversary proceedings to discharge their student loans in this manner.[40] Therefore, most case law and academic discussion center around Chapter 7 because of the automatic or immediate discharge of debts at the end of the bankruptcy case.[41]

To receive discharge on their student loans, a debtor must show "undue hardship" relevant to their capacity to pay off their loans.[42] Debtors can argue for an undue hardship discharge in both Chapter 7 and Chapter 13 proceedings. As discussed in the introduction, the relevant bankruptcy code sections referring to undue hardship do not define the phrase,[43] so its meaning has since been defined by case law from the circuit courts and bankruptcy courts.[44] When the undue hardship standard was introduced in 1976,[45] it was intended "to accompany a narrow window of non-dischargeability."[46] Congress has since made changes to the standard that make student loan discharge even more difficult to obtain, "amending the Code to expand the types of student loans presumptively not dischargeable and to increase the time during which student loans were not dischargeable after first coming

---

[39] *See Bankruptcy Basics Glossary*, *supra* note 30 (defining an "unsecured claim" as "[a] claim or debt for which a creditor holds no special assurance of payment, such as a mortgage or lien; a debt for which credit was extended based solely upon the creditor's assessment of the debtor's future ability to pay.").

[40] Foohey, Lawless, & Thorne, *supra* note 8 (finding that "[h]istorically, only one-third of chapter 13 cases end with the discharge. The remaining two-thirds of chapter 13 cases are dismissed or converted to chapter 7.").

[41] *Id.* (finding that "[h]istorically, more than 95% of people who file chapter 7 receive a discharge.").

[42] *Id.*

[43] *See* 11 U.S.C. § 523(a)(8).

[44] Bruckner, Gotberg, Jiménez, & Ondersma, *supra* note 2, at 195.

[45] See Jiménez & Glater, *supra* note 35, at 180 (explaining that "[s]tudent loans were treated like other consumer debts before 1976 — that is, freely dischargeable so long as the debtor did not obtain them through fraud").

[46] Foohey, Ament, & Zibel, *supra* note 19, at 6 (stating that "[w]hen added to the Code by Congress in 1976, the phrase 'undue hardship' was part of a non-dischargeability standard that only applied to certain student loans within the first five years of the loans coming due."):

> This history means that *Brunner* was decided when the Code allowed for the discharge of student loans provided that the debt first came due more than seven years before the bankruptcy filing. The undue hardship standard only applied to debtors who asked to discharge student loans that were in repayment for less than seven years. In other words, the undue hardship standard was meant to accompany a narrow window of non-dischargeability.

due."[47] Congress wants to "catch more fish in its non-dischargeability net, but . . . [also] to keep the fish from escaping."[48]

There is a specific policy behind Congress's treatment of educational debt, which is notably "based on anecdotal evidence rather than empirical data."[49] Congress aims to "(1) preserv[e] the financial solvency of the student aid system and (2) prevent[] abuse of the bankruptcy system."[50] In a study that drew from "information reported in 261 undue hardship opinions issued by bankruptcy courts within the ten-year period beginning on October 7, 1993 and ending on October 6, 2003," researchers found that "while the abusive discharge of educational debt would impact to some extent the financial solvency of the student loan program, threats to the program's viability exist independently and are of concern outside of bankruptcy."[51] It also found that "the data indicate that the debtors looked to the bankruptcy courts for educational debt relief only as a last resort . . . [and] persuade us that the debtors in this study legitimately needed a fresh start."[52] Given these findings, it is evident that Congress's underlying concerns about educational debt drive its policy regarding student discharge within the bankruptcy, and that those underlying concerns do not have a strong foundation in the available data.

Advocates argue that "it is imperative for Congress to provide a definition of 'undue hardship,'"[53] in part because,

> [i]f the meaning of undue hardship ultimately rests on the particularized ideals held by the judge, legislative enactment becomes permeated with an impermissible judicial gloss. Worse yet, problems of uncertainty and unequal treatment of debtors inevitably abound, as our data have shown.[54]

---

[47] *Id.* at 6; *see also* Alan M. Ahart, *How the Courts Have Gone Astray in Refusing to Discharge Student Loans: The Folly of Brunner, of Rewriting Repayment Terms, of Issuing Partial Discharges and of Considering Income-Based Repayment Plans*, 95 AM. BANKR. L.J. 53, 55 (Jan. 2021);

> The legislative history does not address the reasoning behind these changes, but it seems clear Congress intended to broaden the scope of what constitutes undue hardship. Instead of simply focusing upon whether repayment of the loan from future income or other wealth *will* impose an undue hardship on the debtor, the inquiry was expanded to encompass whether the loan *will* impose an undue hardship on the debtor and the debtor's dependents.

Id.

[48] Ahart, *supra* note 47, at 56.

[49] Pardo & Lacey, *supra* note 7, at 428-29.

[50] *Id.*

[51] *Id.* at 410, 429, & 477.

[52] *Id.*

[53] Ha, *supra* note 3.

[54] Pardo & Lacey, *supra* note 7, at 419:

> It may be reasonable to conclude that a court *should* have the discretion to dispense particularized justice on a case-by-case basis where Congress has spoken with broad, general pronouncement rather than highly specific language. But notwithstanding the

The reality is that the meaning of undue hardship and the interpretation of the standard is solely left up to judges.[55]

b. Various Interpretations of the Undue Hardship Standard as Applied by Bankruptcy Courts: The Long and Brunner Standards

Courts disagree on the appropriate way to apply the undue hardship standard—some courts apply the *Brunner* standard,[56] and others apply the *Long* "totality of the circumstances" test.[57] In *Brunner*, the debtor filed for discharge of her student loans "only ten months" after her graduation and was not elderly, disabled, nor had any dependents.[58] The debtor also did not request deferment of her loans before attempting to discharge them.[59] The district court developed a three-part test that the Second Circuit accepted on appeal.[60] Now, under *Brunner*, debtors bear the burden of satisfying all three of the following elements:[61]

> (1) that the debtor cannot, based on current income and expenses, maintain a 'minimal' standard of living for himself or herself and his or her dependents if forced to repay the loans, (2) that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans, and (3) that the debtor has made good faith efforts to repay the loans.[62]

In *Brunner*, the court held that the debtor did not satisfy the second and third elements, therefore, the debtor was denied discharge.[63]

Long is effectively the same test as *Brunner*, with the added element that the bankruptcy court can consider "any other relevant facts and circumstances."[64] Under *Long's* totality of the circumstances test, a court evaluates "(1) the debtor's past, present, and reasonably reliable future

---

guideposts left for judges to figure out the proper path of undue hardship, many have gotten it wrong. Discretion has thus come to undermine the integrity of the system by producing haphazard results that have compromised the fresh start principle.

[55] *See* Iuliano, *supra* note 11.

[56] *See* Brunner v. New York State Higher Educ. Servs. Corp., 831 F.2d 395, 396 (2d Cir. 1987).

[57] Long v. Educ. Credit Mgmt. Corp., 322 F.3d 549, 554-55 (8th Cir. 2003).

[58] *See In re Brunner*, 831 F.2d at 396.

[59] *Id.* at 397.

[60] *Id.*

[61] Stevenson v. Educ. Credit Mgmt. Corp. (In re Stevenson), No. 19-12869-t7, 2020 WL 6122749 (Bankr. D. N.M. 2020) ("The debtor bears the burden of satisfying all three elements. Failure to satisfy any element renders the debt nondischargeable.").

[62] Ahart, *supra* note 47, at 58.

[63] *In re Brunner*, 831 F.2d at 395.

[64] Ahart, *supra* note 47, at 74.

financial resources; (2) a calculation of the debtor's and their dependent's reasonably necessary living expenses; and (3) any other relevant facts and circumstances surrounding each particular bankruptcy case."[65] Studies have shown that "[i]dentical debtors filing in a *Brunner* circuit and a [*Long*] circuit [can] expect similar outcomes."[66] Although there are not varied outcomes between the *Brunner* and *Long* tests, a court in one circuit may apply the *Brunner* (or *Long*) test differently than a court in another circuit.[67] For example, when interpreting the first prong of the *Brunner* test on the debtor's financial resources, some courts hold that "the 'minimal standard of living' should be based on the debtor's reasonable monthly expenses as set by the Code's means test" whereas other courts rely on poverty guidelines to determine what "minimum" monthly expenses are.[68]

The overly rigid application of the *Brunner* and *Long* undue hardship standard by the DOE and its varied outcomes when interpreted by the courts have led some scholars to argue that the test is obsolete and should not be employed by the courts when deciding whether to issue a student loan discharge.[69] Nonetheless, bankruptcy courts continue to apply the *Brunner*

---

[65] Bruckner, Gotberg, Jiménez, & Ondersma, *supra* note 2, at 195.

[66] Iuliano, *supra* note 11, at 497; *see also* Bryant v. Educ. Credit Mgmt. Corp. (In re Bryant), No. 19-00292-ELG, 2021 BL 349515 (Bankr. D.D.C. Sept. 15, 2021) (discussing that the *Long* test is a "separate, but similar" test, and that the court did not see the need to discuss the best or most "appropriate" test because the result would be the same under both).

[67] Matthew A. Bruckner, Pamela Foohey, Brook Gotberg, Dalié Jiménez, & Chrystin D. Ondersma, *Comments of Academics to Department of Education's RFI Regarding Evaluating Undue Hardship Claims in Adversary Actions Seeking Student Loan Discharge in Bankruptcy Proceedings (Docket No. Ed-2017-Ope-0085*), IND. U. MAURER LEGAL STUD. RSCH. PAPER NO. 404 (Nov. 8, 2018);

> Courts apply these tests in differing and inconsistent ways, resulting in a wide variation of access to justice across the country. For example, in interpreting the first prong of the *Brunner* test, some courts hold that 'minimal standard of living' should be based on the debtor's reasonable monthly expenses as set by the Code's means test. Although this interpretation is consistent with the text of § 523(a)(8), in contrast, other courts require debtors to minimize monthly expenses. Some of these courts rely on poverty guidelines to determine 'minimum' monthly expenses. Other courts engage in a case-by-case examination of the debtors' circumstances, specifying which individual expenses are not reasonable. Similarly, courts apply different standards for determining when additional circumstances indicate that the debtors' state of affairs will persist (prong 2). Some courts require a 'certainty of hopelessness.' Other courts do not require such desperate circumstances and have criticized the conversion of the 'undue hardship' standard into one requiring a 'certainty of hopelessness.'

Id.

[68] *Id.*

[69] *See* Ahart, supra note 47, at 65:

> In summary, the rationale for the three part Brunner test is suspect. The first part is preliminarily correct by beginning with the debtor's current financial situation, but never proceeds to evaluate the debtor's likely future financial situation. The second part relies upon earlier cases that invented the 'certainty of hopelessness' test, or claimed that unique, exceptional or extraordinary circumstances must be shown to be discharged from an

or *Long* undue hardship standard.[70] There has been clear pushback from previous presidential administrations on whether review of the standard is warranted.[71] The previous Solicitor General, Noel Francisco, advocated that the Supreme Court not take a stand on the undue hardship discharge standard, arguing that review was not warranted "[b]ecause the Department [of Education] continues to study this issue, and may revise its regulations and related policies in the future."[72]

c. The History of the Brunner Standard as Interpreted by the Department of Education

When debtors attempt to discharge their student debts in bankruptcy court, the loan holder can contest the discharge request.[73] For federal loans, such as Direct Loans and many Federal Family Education Loans (FFEL), the loan holder is the Department of Education, and so the DOE becomes the adversary for the student discharge proceeding.[74] The DOE has minimal guidance on undue hardship, and the existing formal guidance requires the DOE to "evaluate claims and concede an undue hardship in very limited circumstances."[75] According to scholars, there is a lack of structure and oversight over how the DOE applies this guidance,[76] and in many cases, "[t]hose who [] seek to discharge their student loan debt often face overly aggressive litigation tactics by the ED and its agents. Even when debtors clearly face undue hardship, they risk opposition in court and could face years of appeals before obtaining relief."[77] In addition, it is extremely difficult for many debtors to expend the time and resources needed to attend court appearances (and sometimes must even forego work or childcare responsibilities).[78]

Advocates have proposed a newly structured standard of review of undue hardship for the DOE, where the DOE would take a presumptive

---

educational loan. There is no specific authority for the third part, a good faith effort to repay, as noted by Brunner itself, and Brunner miscited Johnson and repeatedly misread the Commission Report in fashioning this last part of the test.

[70] Iuliano, *supra* note 11, at 496.

[71] Foohey, Ament, & Zibel, *supra* note 19, at 9.

[72] *Id.*

[73] *Id.* at 3.

[74] *Id.*

[75] *Id.* at 9.

[76] *Id.* at 13.

[77] Bruckner, Gotberg, Jiménez, & Ondersma, *supra* note 2, at 188; *see also* Iuliano, *supra* note 14, at 126 (noting that "[i]t appears that the student loan creditors are both aggressively litigating cases that they believe they will win and quickly settling cases that may yield adverse precedent.").

[78] Foohey, Lawless, & Thorne, *supra* note 8, at 628.

position of "no-contest" for a few categories of debtors.[79] These categories would be "clear" as well as "non-controversial categories of undue hardship."[80] The DOE would not oppose discharge if students fall within one of the designated categories.[81] Examples of these categories include: four years of poverty, social security disability, and military-service-connected disability.[82] In addition to making the process more effective and efficient for student debtors seeking discharge in bankruptcy courts, advocates also reason that these changes would minimize spending of taxpayer dollars, arguing that, "when dealing with undue hardship claims, the Department ought to 'avoid inefficient use of taxpayer resources through protracted or unnecessary litigation.'"[83]

The following discussion of the application of the undue hardship standard by the bankruptcy courts in 2021 and the DOE's role in those proceedings demonstrates the need for the DOE to implement changes to their application of the undue hardship standard for the debtor and the government.

d. The Undue Hardship Standard as Applied by Bankruptcy Courts in 2021 and the Role of the DOE

i. When the Bankruptcy Courts Have Agreed with DOE Arguments and Denied Discharge

In most cases where the bankruptcy courts applied the undue hardship standard in 2021, discharge was at least partially denied.[84] As the following

---

[79] Bruckner, Gotberg, Jiménez, & Ondersma, *supra* note 2, at 188; *see also* Foohey, Ament, & Zibel, *supra* note 19, at 11-17.

[80] Bruckner, Gotberg, Jiménez, & Ondersma, *supra* note 2, at 206.

[81] *Id.* at 209.

[82] *Id.* at 216; *see also infra* Section III, for more discussion on the different "no-contest" categories.

[83] Bruckner, Foohey, Gotberg, Jiménez, & Ondersma, *supra* note 67, at 5.

[84] Fifteen out of the twenty-two cases researched. Complete denials include: Bryant v. Educ. Credit Mgmt. Corp. (*In re* Bryant), No. 19-00292-ELG (Bankr. D.D.C. Sept. 15, 2021); Eady v. United States *ex rel.* Dep't of Educ. and Pennsylvania State Univ. (*In re* Eady), Ch. 7 No. 20-40208, 2021 WL 3148951 (Bankr. E.D. Tex. 2021); Epperson v. Educ. Credit Mgmt. Corp. (*In re* Epperson), Ch. 7 No. 17-42001, 2021 BL 65432 (Bankr. E.D. Tex. 2021); Hock v. Dep't of Educ. (*In re* Hock), Bankr. No. 18-31795 (Bankr. W.D.N.C. Mar. 17, 2021); Hull v. United States Dep't of Educ. (*In re* Hull), Ch. 7 No. 18-32076, 2021 BL 150910 (Bankr. W.D. Ky. 2021); Lederman v. United States Dep't of Educ. (*In re* Lederman), Ch. 7 No. 6:18-bk-06410-LVV, 2021 WL 1511637 (Bankr. M.D. Fla. 2021); Lewis v. Johnson & Wales Univ. (*In re* Lewis), Ch. 13 No. 16-61478, 2021 BL 366769 (Bankr. N.D. Oh. 2021); Mullin v. The Univ. of Mississippi (*In re* Mullin), No. 19-12579-JDW (Bankr. N.D. Miss. Aug. 26, 2021); Promisco v. United States Dep't of Educ. (*In re* Promisco), 625 B.R. 715 (Bankr. N.D. Ill. 2021); *In re* Stevenson, 2020 WL 6122749 (Bankr. D. N.M. 2020); Zopfi v. Educ. Credit Mgmt. Corp. (*In re* Zopfi), No. 1:18-bk-2556-HWV, 2020 BL 460512 (Bankr. M.D. Pa. 2020). Partial denials include: Koeut v. United States Dep't of Educ. (*In re* Koeut), 622 B.R. 72 (Bankr. S.D. Cal. 2020); Mendenhall v. Navient Corp. (*In re*

analyses of cases will show, bankruptcy courts tend to agree with the DOE in their undue hardship analysis, and to deny discharge, for a few main reasons. This is exemplified *In re Parvizi*,[85] where a fifty-one-year-old unemployed debtor applied for discharge of her student loans after receiving loans for each of her four degrees.[86] The DOE emphasized:

> [The] [d]ebtor's multiple advanced degrees, her lack of any physical or mental impediments to employment, and her failure to maximize her income in order to repay the loans. In addition, the DOE argues that the Debtor has demonstrated an ability to maintain more than a minimal standard of living and has a history of discretionary monthly income that is more than sufficient to make payments under the REPAYE program. With regard to the Debtor's inability to become licensed to practice medicine, the DOE contends that it was the Debtor's choice to use student loans to fund her education and in doing so she voluntarily assumed additional student loan debt.[87]

An important consideration for this court was the DOE's focus on three critical elements: (1) whether or not the debtor had maximized their income, (2) whether or not the debtor had the money for payments under the DOE repayment programs (ex. IBR, REPAYE),[88] and (3) whether or not the debtor could find employment in the area that they got their degree.[89] The court found that, where the debtor is highly educated and suffers from no physical or mental conditions to impede their work, discharge is not appropriate.[90] In addition, the court also considered if the debtor has money for payments under the DOE repayment programs, which can weigh heavily against the debtor's argument for undue hardship.[91] Moreover, the bankruptcy courts

---

Mendenhall), 621 B.R. 472 (Bankr. D. Idaho 2020); Randall v. Navient Sols. (*In re* Randall), 628 B.R. 772 (Bankr. D. Md. 2021).

[85] Parvizi v. United States Dep't of Educ. (*In re* Parvizi), Case No. 18-30578-EDK (Bankr. D. Mass. May. 12, 2021).

[86] *Id.*

[87] *Id.*

[88] *See If your Federal Student Loan Payments are High Compared to your Income, You May Want to Repay Your Loans Under an Income-Driven Repayment Plan*, FED. STUDENT AID, https://studentaid.gov/manage-loans/repayment/plans/income-driven (last visited Mar. 12, 2023) (outlining different income-driven repayment programs (IBR) such as the Revised Pay As You Earn Repayment Plan (REPAYE)).

[89] *In re Parvizi*, Case No. 18-30578-EDK.

[90] *Id.*; *see also* Lederman v. United States Dep't of Educ. (*In re* Lederman), Case No. 6:18-bk-06410-LW (Bankr. M.D. Fla. Mar. 30, 2021) (denying discharge to a debtor who lived with his parents and relied on unemployment. The Debtor argued that his lack of ability to pay his loans would persist for a significant amount of time due to the "sheer magnitude" of his debt. The court denied discharge, disagreeing with the debtor's argument and stating that the debtor is "highly educated and has other prospects for the future.").

[91] *In re Parvizi*, Case No. 18-30578-EDK (finding that "the focus of the Court in determining whether a debtor has established undue hardship under § 523(a)(8) is not on whether the debtor's student-loan funded education yields any particular result the debtor anticipated or hoped for. 'All bargains contain risks, and it is for each borrower to determine 'whether the risks of future hardship outweigh the potential benefits of a deferred-payment education.'").

have consistently denied any undue hardship claim based the debtor's ability to find employment in the industry of their degree.[92]

The bankruptcy court also barred discharge per the DOE's arguments in *In re Hull* for two of the above reasons: because the debtor had high income—three times the poverty line—and because the debtor did not take the income-driven repayment option from the DOE.[93] The debtor in *In re Hull* also had not made any attempts to reduce her expenses, nor any good faith efforts to repay her loans, which are two other factors that the DOE argues for and the court considers when deciding whether or not to award discharge.[94]

There are a number of other cases in which the bankruptcy courts have found that a debtor's high income or high expenses bar them from discharge of their student loans.[95] The debtor in *In re Bryant* faced a similar issue in that his income was eight times the federal poverty guideline and his expenses were considered excessive.[96] In addition to these concerns, the Educational Credit Management Corp ("ECMC," a subsidiary of the DOE) also argued that "the Debtor's reliance on his prior criminal conviction in support of discharge of the loan is not in good faith."[97] The court applied both the *Brunner* and *Long* tests and found that the debtor did not satisfy either.[98] The court acknowledged that "[a] split exists amongst bankruptcy

---

[92] *Id.*

[93] Hull v. United States Dep't of Educ. (*In re* Hull), Case No. 18-32076 (Bankr. W.D. Ky. Apr. 23, 2021).

[94] *Id.*

[95] *See* Eady v. United States *ex rel.* Dep't of Educ. and Pennsylvania State Univ. (*In re* Eady), Ch. 7 No. 20-40208, 2021 WL 3148951 (Bankr. E.D. Tex. 2021) (denying discharge to a debtor whose "income exceeds the amount listed for a family of three under the federal poverty guidelines" and whose expenses were not minimized (the 401(k) contribution was not necessary, nor contribution to children's educational funds, nor security system, nor home warranty system)); *see also* Epperson v. Educ. Credit Mgmt. Corp. (*In re* Epperson), Ch. 7 No. 17-42001, 2021 BL 65432 (Bankr. E.D. Tex. 2021) (denying discharge to a fifty-four-year-old engineer with an annual gross salary $86K and household gross income of $106K. Although the debtor argued that his mental health issues (bipolar disorder, suicidal ideation, impaired concentration) kept him from paying his student loans, the court found a lack of sufficient evidence to prove this, as the debtor did not provide testimony from doctors or medical sources regarding his future medical prognosis. The court found that "absent a compelling reason, a debtor's decision to send a child to a private school reveals a discretionary use of income that reflects a conscious decision by a debtor to ignore the mandated repayment of his student loan obligation." Due to the debtor's failure to pass the first Brunner prong, the court did not reach the second and third prong, and he was denied discharge.); *see also* Mullin v. The Univ. of Mississippi (*In re* Mullin), No. 19-12579-JDW (Bankr. N.D. Miss. Aug. 26, 2021) (holding that the debtor failed to show that they met the Brunner standard for undue burden due to failing the first Brunner prong. The debtor and his wife had a combined annual gross income of $94K and expenses of $9.3K. The debtor argued that his wife should not be considered in the income calculations and the court disagreed, finding that "the code requires bankruptcy courts to consider the income of a non-debtor spouse" for an undue hardship consideration. The court held that the debtor's household income was "more than sufficient.").

[96] Bryant v. Educ. Credit Mgmt. Corp. (*In re* Bryant), No. 19-00292-ELG (Bankr. D.D.C. Sept. 15, 2021).

[97] *Id.*

[98] *Id.*

courts as to whether a debtor's conviction precludes a finding of good faith in an undue hardship analysis," but did not reach this issue because it found that the other facts were sufficient to find a lack of good faith.[99] The court concluded that "the evidence does not support a finding of current or future financial instability" and that the debtors expenses (which included buying a pure-bred Labrador dog and new Ford Mustang) were excessive.[100] The court denied the plaintiff discharge.[101]

The court in *In re Promisco* also considered whether or not the debtor's criminal conduct precluded a finding of good faith, as the DOE argued it should.[102] The debtor met the first *Brunner* prong, as the court disagreed with the DOE and found that the debtor's contributions to his 401(K) were not presumptively unnecessary.[103] The criminal convictions were important for the second and third *Brunner* prong: one of the debtor's main arguments was that his current criminal convictions and sex offender status kept him from finding jobs and better pay.[104] The DOE argued that "the lack of a single payment on the debt, the attempt to discharge the debt within merely two years after expulsion from school, and Plaintiff's criminal conduct preclude a finding of good faith."[105] The court found that the record did not support the debtor's argument that his criminal convictions kept him from improving his financial circumstances, positing that if his conviction was overturned, he could find better employment.[106] In the event that the conviction was not overturned, his job history demonstrated that he could find employment, as he was young and healthy with a degree in finance.[107] The bankruptcy court thus considered whether or not the man's criminal convictions kept him from passing the third *Brunner* prong, disagreeing with

> [The DOE's] adoption of a *per se* rule holding that criminal convictions are a categorical bar to a finding of good faith. Indeed, in *Roberson*, where the *Brunner* test was first adopted by this Circuit, the Seventh Circuit did not hold that the debtor's two drunk driving convictions automatically precluded a finding of good faith. Hence, instead of a bright-line rule, determinations of good faith ought to be made on a case-by-case basis.[108]

---

[99] *Id.*

[100] *Id.*

[101] *Id.*

[102] Promisco v. United States Dep't of Educ. (*In re* Promisco), 625 B.R. 715 (Bankr. N.D. Ill. 2021).

[103] *Id.* (using instead, the test from Hebbring v. United States Trustee No. 04-16539 (9th Cir. 2006) to determine whether a retirement contribution is reasonably necessary, the court found that in the Debtor's case, although the contribution was not reasonably necessary, the Debtor still passed the first prong).

[104] *Id.*

[105] *Id.*

[106] *Id.* (noting that the case for the debtor's conviction was on appeal at the time).

[107] *Id.*

[108] *Id.*

The court found that the convictions weighed against a finding of good faith and that there were many factors that pointed towards bad faith.[109] These considerations included (1) the fact that the debtor, although enrolled in income-based repayment plan, had not made a single payment, and (2) the fact that the debtor filed bankruptcy within a year and a half of graduating.[110] The court denied discharge of the debtor's student loans because the debtor did not fulfill *Brunner* prongs two and three.[111]

Courts have still denied discharge per the DOE's arguments even when the applicant is permanently disabled and elderly.[112] In the *In re Hock* case, a seventy-year-old woman who suffered from cancer and whose entire income came from social security and disability payments was denied discharge.[113] The DOE argued, and the court agreed, that Hock misrepresented her income (she included her husband's expenses but not his income), that her income went well beyond the minimum standard (with which she purchased an expensive house and cars), that she was now cancer-free, and that she did not make a good faith attempt to pay her loans.[114] Notably, the court found that per the DOE's arguments, (1) age alone was not enough to obtain a discharge and (2) she could continue to receive her benefits from the state despite her age or work ability.[115] In addition, the court found that misrepresentation of income, as well as her inability to apply for total and permanent disability discharge, made Hock suspect, and the court was unwilling to issue a discharge.[116]

There are additional cases where bankruptcy courts denied discharge due to failure to adequately disclose, represent, or calculate income and expenses.[117] In *In re Lewis*, the debtor was a single mother of a fourteen-year-old autistic child, worked as an assistant manager for Burger King (making $32,000 per year), and owed around $200,000 in loans.[118] The debtor applied for student loan discharge during her Chapter 13 case, and the DOE moved for summary judgment, arguing that (1) the debtor could not prove that she was unable to maintain a minimal standard of living and (2) the debtor failed the good faith prong because her discretionary expenses could

---

[109] *Id.*

[110] *Id.*

[111] *Id.*

[112] Hock v. Dep't of Educ. (*In re* Hock), Bankr. No. 18-31795 (Bankr. W.D.N.C. Mar. 17, 2021).

[113] *Id.* This debtor would qualify for a no-contest category, *see infra* discussion in Section III.

[114] *Id.*

[115] *Id.*

[116] *Id.*

[117] *See* Lewis v. Johnson & Wales Univ. (*In re* Lewis), No. 16-61478 (Bankr. N.D. Ohio Oct. 19, 2021); *see also* Zopfi v. Educ. Credit Mgmt. Corp. (*In re* Zopfi), Nos. 1:18-bk-2556-HWV (Bankr. M.D. Pa. 2020).

[118] *In re* Lewis, No. 16-61478.

have been applied to her loans—the DOE's analysis was based on one of the debtor's bank statements.[119] The court agreed with the DOE that the debtor did not pass the first *Brunner* prong, finding that, although the debtor's itemized expenses were not unreasonable, the expenses did not include clothing and vehicle operational expenses and instead included a payment for a car loan that should already have been paid in full.[120] The court disagreed with the DOE on the second argument, however, finding that a single month is not probative of the debtor's lifestyle and that the debtor was not living lavishly, nor were her expenses unreasonable.[121] However, despite this finding, the court held that the debtor's calculations for the future were not reasonable,[122] concluding that if the debtor returned to work her financial situation would "improve, not deteriorate."[123] The debtor's failure to meet the first and second prongs was in part due to miscalculation of expenses and misrepresentation of future income, and so the debtor was denied discharge.[124]

Following this thorough analyses of the bankruptcy case discharges from 2021, there is a pattern of bankruptcy courts agreeing with the DOE and generally denying discharge in the following main categories: (1) when the debtor is highly educated and suffers no mental or physical conditions; (2) when the debtor does not make any attempts to reduce expenses and has a high income; (3) when the debtor does not make a good faith effort to repay loans; and (4) when the debtor misrepresents and fails to disclose income or expenses. While these categories of debtor circumstances commonly lead to a denial, these categories are not fully determinative, and the court makes its own decisions based on the context of each case.

ii. When the Bankruptcy Courts Have Disagreed with DOE Arguments and Awarded Discharge

Although the number of cases where the courts have not awarded discharge due to DOE arguments is high, there are a few cases where the courts have disagreed with DOE arguments and have awarded discharge or

---

[119] *Id.*

[120] *Id.*

[121] *Id.*

[122] *Id.*

[123] *Id.*

[124] *Id.*; *see also* Zopfi v. Educ. Credit Mgmt. Corp. (*In re* Zopfi), Nos. 1:18-bk-2556-HWV (Bankr. M.D. Pa. 2020) (denying discharge to a Chapter 7 debtor who was court-ordered to pay child support payments of $2,606 and instead paid $8,500 to his ex-wife each month. The court stated that the debtor did not adequately explain why he pays his ex-wife so much more money than his court order requires. The court did not discuss the *Brunner* test in depth, finding instead that the debtor had not given enough evidence of minimal standard of living. The debtor was denied discharge on those grounds, and the court entered summary judgment in favor of ECMC.).

at least partial discharge.[125] In most of these cases, bankruptcy courts awarded a discharge of student loans based on the *Long* standard.[126]

The *In re Acosta-Coniff* case exemplifies which standards the courts apply and how they define certain aspects of the *Brunner* test.[127] The court in *In re Acosta-Coniff* defined "minimal standard of living" as a "measure of comfort, supported by a level of income, sufficient to pay the costs of specific items recognized by both subjective and objective criteria as basic necessities."[128] It defined the "reasonableness of expenses" as an instance where "courts rely on common sense, knowledge gained from ordinary observations in daily life, and general experience."[129] In applying these standards to the debtor in *In re Acosta-Coniff*, the court found that the debtor qualified for discharge of her loans.[130] Regarding the first *Brunner* prong (minimal standard of living), the ECMC argued that a deduction for the voluntary pension plan payment that she had was unnecessary and the court agreed.[131] However, the court disagreed with ECMC on a number of other matters, finding that (1) the expenses the debtor budgeted for were lower than what her family needed, (2) having a cell phone and a landline were not duplicitous, (3) the debtor was allowed to have a gym membership to take care of her health, (4) charitable contributions of fifty dollars per month are reasonable, and (5) life insurance policies are reasonable.[132] The court also

---

[125] Acosta-Conniff v. ECMC (*In re* Acosta-Conniff), Ch. 7 No. 12-31448, 2021 BL 396135 (Bankr. M.D. Ala. 2021); Bell v. Dep't of Educ. (*In re* Bell), 633 B.R. 165 (Bankr. W.D. Va. 2021); Clark v. Wells Fargo Bank (*In re* Clark), N.A. No. 16-41906-BEM, 2021 BL 454730 (Bankr. N.D. Ga. 2021); Marchus v. Student Loans (*In re* Marchus), 630 B.R. 91 (Bankr. D. N.D. 2021); Mudd v. United States (*In re* Mudd), 624 B.R. 676 (Bankr. D. Neb. 2020). Partial discharges include: Koeut v. United States Dep't of Educ. (*In re* Koeut), 622 B.R. 72 (Bankr. S.D. Cal. 2020); *In re* Mendenhall, 621 B.R. 472 (Bankr. D. Idaho 2020); *In re* Randall, 628 B.R. 772 (Bankr. D. Md. 2021); Zilisch v. Fedloan Servicing (*In re* Zilisch), 633 B.R. 588 (Bankr. S.D. Iowa 2021).

[126] See *supra* Section II(a) on the *Brunner* and *Long* undue hardship standards in bankruptcy cases.

[127] *In re Acosta-Coniff*, Ch. 7 No. 12-31448, 2021 BL 396135.

[128] *Id.*

[129]

> In addition to housing, utilities, food, water, and hygiene products, courts have recognized the following as reasonable expenses: (1) People need vehicles to go to work, to go to stores, and to go to doctors. They must have insurance for and the ability to buy tags for those vehicles. They must pay for gasoline. They must have the ability to pay for routine maintenance such as oil changes and tire replacements and they must be able to pay for unexpected repairs. (2) People must have health insurance or have the ability to pay for medical and dental expenses when they arise. People must have at least small amounts of life insurance or other financial savings for burials and other final expenses. (3) People must have the ability to pay for some small diversion or source of recreation, even if it is just watching television or keeping a pet.

Id.

[130] *Id.*

[131] *Id.*

[132] *Id.*

did not require the debtor to apply for an income-based repayment plan ("IBRP") against the ECMC's argument, finding that even if the debtor was to apply for an IBRP she still would not afford the payments.[133]

Regarding the second *Brunner* prong, ECMC argued that the debtor could increase her income if she moved to a different county.[134] The court disagreed, countering that the expenses would be higher as well, which ECMC failed to calculate.[135] In addition, ECMC failed to include the fact that she had obtained tenure at the school she worked at, which she would lose if she relocated, and that she would have to leave her family behind.[136] For the third *Brunner* prong, the court found that because the debtor applied for partial loan forgiveness, maximized her income, and minimized her living expenses, she acted in good faith even though she did not apply for an IBRP.[137] Given that the debtor met all three of the *Brunner* prongs, the court in *In re Acosta-Conniff* awarded the debtor a complete student loan discharge.[138]

In the specific circumstance of senior debtors asking for student loan discharge, the courts often disagree with the DOE and allow discharge.[139] In the *In re Ashline* case, for instance, the DOE insisted that the fifty-year-old debtor should not be allowed discharge because they did not apply for an IBRP for which they could afford payments without causing undue hardship.[140] The court disagreed, finding that the debtor was not required to take the IBRP because the typical IBRP required payment of twenty to twenty-five years, and the court was concerned that, as soon as the debtor paid that bill, they would be taxed heavily in their old age, which "would effectively disregard the overarching policy of the Bankruptcy Code to provide debtors with a 'fresh start.'"[141]

In another case, *In re Bell*, the court disagreed with the DOE and found that the debtor's student loans were dischargeable.[142] The debtor in the case was sixty-seven years old[143] with insufficient income to cover loan payments

---

[133] *Id.*

[134] *Id.*

[135] *Id.*

[136] *Id.*

[137] *Id.*

[138] *Id.*

[139] *See* Ashline v. United States Dep't of Educ. (*In re* Ashline), 634 B.R. 799 (Bankr. N.D. Iowa 2021); Bell v. Dep't of Educ. (*In re* Bell), 633 B.R. 165 (Bankr. W.D. Va. 2021); Koeut v. United States Dep't of Educ. (*In re* Koeut), 622 B.R. 72 (Bankr. S.D. Cal. 2020).

[140] *In re Ashline*, 634 B.R. at 799.

[141] *Id.*; *see also In re* Koeut, 622 B.R. at 72 (Bankr. S.D. Cal. 2020) (finding that the debtor was not required to take an IBR plan, even when the DOE insisted, because doing so would result in undue hardship for the debtor).

[142] *In re Bell*, 633 B.R. at 165.

[143] This debtor would qualify for a no-contest category, *see infra* discussion in Section III.

and living expenses ($1,000 every two weeks), resulting in the debtor consistently applying for forbearance.[144] The debtor was eventually placed in a Pay As You Earn plan ("PAYE"), where his monthly payment was zero dollars.[145] The DOE argued that Bell did not meet the *Brunner* standard because he did not make any payments on his loans and considered the zero-dollar payment plan as forbearance.[146] The court disagreed with the DOE, instead finding that the debtor was already participating in a payment plan and that his zero-dollar contribution was reasonable unless he got a higher-paying job, which the court determined he could not get.[147] Other plans were found to be unavailable because the court found that they were unfair.[148] The court also found the DOE's arguments about forbearance unreasonable: the "DOE cannot reasonably argue that Mr. Bell has intentionally caused his circumstances rendering him unable to make payments on the loans."[149] According to the court,

> Section 523(a)(8) should not be rendered meaningless when the debtor is offered a repayment plan at zero dollars per month. This Court considers Mr. Bell's ability to repay the loan, which is not the same as deferring repayment by characterizing current "payments" as zero. Mr. Bell's student loan debt is increasing day-by-day as interest continues to accrue while he participates in this income-based repayment plan at zero dollars per month.[150]

These cases show that in multiple instances the courts have disagreed with the severity of the DOE's application of the undue hardship standard. Some common patterns where the bankruptcy courts provided debt relief include: (1) when the debtor maximized their income and minimized their living expenses,[151] (2) when the debtor acted in good faith (even when they do not apply for an IBR plan), and (3) when the debtor is elderly or heavily disabled. These factors do not guarantee discharge, but weigh heavily on the court's decision, especially the third factor.[152]

---

[144] *In re Bell*, 633 B.R. at 165.

[145] *Id.*

[146] *Id.*

[147] *Id.*

[148] *Id.*

[149] *Id.*

[150] *Id.*

[151] See Acosta-Conniff v. ECMC (*In re* Acosta-Conniff), Ch. 7 No. 12-31448, 2021 BL 396135 (Bankr. M.D. Ala. 2021) (finding that having a phone service or gym membership, making charitable contributions, and subscribing to life insurance do not necessarily exceed the minimal standard of living).

[152] In some of these cases (e.g., Ashline v. United States Dep't of Educ. (*In re* Ashline), 634 B.R. 799 (Bankr. N.D. Iowa 2021); *In re* Bell, 633 B.R. 165)), the DOE could have avoided the cost and time of lengthy litigation by adopting a clear "no-contest" category, which would also have benefited the debtor.

e. The Implications of the Brunner Standard – Student Loan Discharge as a Civil Rights Issue

As discussed in previous sections, student loan debt is a significant problem for the general American population.[153] However, this problem is further amplified for underrepresented or minority demographic groups.[154] According to Professor Jason Iuliano, "the most important factor in predicting whether residents of a zip code will struggle with student debt is not household income, but race."[155] Advocates call the student loan debt problem a "crisis for African American borrowers"[156] and argue that "[s]tudent debt plays an increasingly significant role in perpetuating the subordination of Black and Latinx people in the United States."[157]

"[D]ebt burden . . . acutely affect(s) students of color," according to the Consumer Financial Protection Bureau.[158] During the Great Recession from 2007 to 2009, Black and Latino communities were hit "the hardest, with many families seeing their net worth nearly cut in half."[159] The economic hardships of the Great Recession, the "size of the racial wealth and wage gaps in the United States," and the rise in tuition and fees at universities have created a crisis where "more Black students and families must borrow, and borrow more, to pay for higher education."[160] Black students are "more likely

---

[153] Abigail Johnson Hess, *The U.S. Has a Record-Breaking $1.73 Trillion in Student Debt – Borrowers From These States Owe the Most on Average*, CNBC MAKE IT (Sept. 9, 2021, 1:03 PM), https://www.cnbc.com/2021/09/09/america-has-1point73-trillion-in-student-debtborrowers-from-these-states-owe-the-most.html.

[154] Iuliano, *supra* note 14, at 134.

[155] *Id.* at 135.

[156] Bruckner, Foohey, Gotberg, Jiménez, & Ondersma, *supra* note 67, at 12.

[157] Jiménez & Glater, *supra* note 35, at 132-35.

[158] Aissa Canchola & Seth Frotman, *The Significant Impact of Student Debt on Communities of Color*, CONSUMER FIN. PROT. BUREAU (Sept. 15, 2016), https://www.consumerfinance.gov/about-us/blog/significant-impact-student-debt-communities-color.

[159]

> African-American and Latino households were significantly impacted by the financial crisis. Even as the economy has recovered, research shows that the wealth gaps between African-American, Latino, and white households have steadily increased since the end of the Great Recession. These economic barriers continue to make it hard for these African-American and Latino families to save and pay for college without having to take on large sums of debt.

Id.

[160] Jiménez & Glater, *supra* note 35, at 136 (also remarking that "this problem has worsened in the last few decades, as tuition and fees have increased, and neither grant aid nor family incomes have kept pace."); *see also id.* (commenting that the "rising cost of tuition and fees at public colleges and universities, and the large numbers of students of color enrolled in for-profit schools, has made a big impact on the amount of debt . . . taken on to finance their higher education." The authors also note that "[r]ecent research [] further underscores the disproportionate impact of student debt on communities of color."); *see also* Jillian Berman, *How Race Affects Student Debt*, MARKETWATCH (Dec. 27, 2017, 7:59 PM), https://www.marketwatch.com/story/how-race-affects-student-debt-2017-10-16 (noting that "[t]he gap in

to fund their education with loans [and to] take out more money than other borrowers"[161] in addition to being more likely to "take out student loans to attend for-profit schools with worse career outcomes . . . than their white peers."[162] The Brookings Institute reported that "four years after graduation, the average Black college graduate owes $52,726, compared to $28,006 for the average white college graduate."[163]

Black and Latinx students are less likely to finish their course of study than their white peers, which is a major setback in their ability to repay their student loans.[164] This is compounded by the fact that "[u]nscrupulous for-profit institutions disproportionately target these communities of color—historically excluded from higher education opportunities—and scoop up an outsized share of federal student aid dollars."[165] In addition, the DOE's tax oversight has had further negative consequences for racial minority debtors:

> [The DOE's tax oversight] has enabled wrongful conduct by for-profit colleges that deceptively target poor communities and communities of color, offering them educational services of poor quality in exchange for federal dollars that students borrow and then must repay. Student loans may not be directly predatory, but they enable predation.166

Even if the federal government does not intend to unfairly burden racial minorities when imposing the obligation to repay student loans, advocates argue that the "result is the same as if racist animus had been the motive of outright exclusion."[167] The statistics on race and student loan debt post-graduation are bleak:

> 90 percent of Black students and 72 percent of Latino students leave school with student loan debt, compared with only 66 percent of white students. The racial gap gets even worse down the road. Ten years after graduation,

---

wealth between black and white families means that black students are more likely to have to rely on debt to pay for college and, when they do, they tend to borrow more." This article further expounds that "black graduates may face discrimination in the job market that can make it more difficult to earn enough money to pay back the debt").

[161] Foohey, Ament, & Zibel, *supra* note 19, at 2; *see also* Ben Miller, *New Federal Data Show a Student Loan Crisis for African American Borrowers*, CTR. FOR AM. PROGRESS (Oct. 16, 2017), https://www.americanprogress.org/article/new-federal-data-show-student-loan-crisis-african-american-borrowers/ ("Regardless of the type of institution first attended, African American students were more likely to borrow than their peers").

[162] Jiménez & Glater, *supra* note 35, at 133.

[163] Andre M. Perry, Marshall Steinbaum, & Carl Romer, *Student Loans, The Racial Wealth Divide, and Why We Need Full Student Loan Debt cancellation,* BROOKINGS (June 23, 2021), https://www.brookings.edu/research/student-loans-the-racial-wealth-divide-and-why-we-need-full-student-debt-cancellation/.

[164] Jiménez & Glater, *supra* note 35, at 134.

[165] *Id.* at 133.

[166] *Id.* at 142.

[167] *Id.* at 135.

> white borrowers have paid down 30 percent of their loan balances, but Black borrowers owe 113 percent of the amount they originally took on.[168]

Not only do underrepresented groups owe more student loans after graduation, but they also "default at higher rates."[169] Moreover, there are several challenges that Black and Latinx students face when repaying their student loans: (1) they are less likely to complete their education, (2) less likely to be " placed in an income-driven repayment plan," (3) they face "pernicious labor market discrimination and reduced income" upon graduation, and (4) when they have trouble repaying, they generally have less wealth from which to draw upon to lessen the impact of the labor and wage discrimination.[170]

The disparities between white and underrepresented populations in the repayment of student loans create an even broader effect on the racial wealth gap.[171] Student loan debt has been said to have a "financial domino effect" on the personal finances of borrowers of color that can impede their economic mobility and restrict their investments in their financial futures.[172] Black and Latinx students, who "already earn less," are "the most heavily indebted students" and therefore "suffer more."[173]

The bankruptcy system also has detrimental racial ramifications. First, there are general barriers to entry which make it difficult for any filer to

---

[168] Iuliano, *supra* note 14, at 134; *see also* Canchola & Frotman, *supra* note 158 (reiterating the same statistics and adding that this is to be compared with "[sixty-six] percent of white students and [fifty-one] percent of Asian-American students" who leave college with student debt) (alterations in original)); *see also* Miller, *supra* note 161 (noting that "the typical African American borrower made no progress paying down their loans" and that "[e]ven African American students who completed a bachelor's degree still struggle to repay their loans"); *see also* Berman, *supa* note 160 (finding that "Black borrowers who began school during the 2003-2004 academic year owed 113% of what they originally borrowed 12 years later . [. . .] That's compared to 65% for white borrowers and 83% for Hispanic or Latino borrowers") (alteration in original)).

[169] Iuliano, *supra* note 14, at 135; *see also* Foohey, Ament, & Zibel, *supra* note 19, at 8-9 (discussing how Black students are "more likely to be in default on their loans" and how "Latinx borrowers likewise pay down less of their loan balances over time as compared to white borrowers."); *see also* Bruckner, Foohey, Gotberg, Jiménez, & Ondersma, *supra* note 67, at 12-13 (finding that "nearly one half of African American Borrowers default on their student loans as compared to only twenty-nine percent of borrowers overall"); *see also* Canchola & Frotman, *supra* note 158 (finding that "[b]orrowers of color are more likely to experience delinquency or default" and noting that "[f]or borrowers of color, who are more likely to attend for-profit colleges and face unique obstacles while completing a degree, these breakdowns may be even more troubling. Some research suggests higher rates of student loan defaults and delinquencies in ZIP codes populated primarily by minorities with higher income levels"); *see also* Miller, *supra* note 161 (positing that "[o]ne of the reasons African American borrowers may carry debt burdens higher than their original loans is that they are highly likely to default on their loans. As Table 4 shows, [forty-nine] percent of African American students who borrowed for their undergraduate education defaulted on a federal student loan") (alterations in original)).

[170] Jiménez & Glater, *supra* note 35, at 149.

[171] Iuliano, *supra* note 14, at 135.

[172] Canchola & Frotman, *supra* note 158.

[173] Jiménez & Glater, *supra* note 35, at 136.

succeed in their bankruptcy.[174] For instance, filing for bankruptcy can be expensive and difficult to navigate *pro se*.[175] There are further complications if the debtor wants to file for a Chapter 13 instead of a Chapter 7.[176] Chapter 13 requires the debtor to complete several steps in a complicated process that includes providing financial information for income schedules, and attending credit counseling and a financial management course.[177]

In addition to these general barriers to entry, racial minorities have their own obstacles to surmount within the bankruptcy system. Black households are demonstrably "significantly over-represented in the consumer bankruptcy system relative to their share of the population."[178] Black households "file bankruptcy at more than twice the rate they appear in the general population."[179] These disparities within the student loan and bankruptcy systems intersect with expansive economic and social issues,[180] including those impacting Black women who earn less income than men and are more likely to experience employment instability.[181]

Education has long been considered a "means of enhancing democracy and protecting desirable characteristics of the polity."[182] The Supreme Court has recognized that education is special, even though the Court has stopped short of recognizing education as a fundamental right.[183] According to advocates, equal access to this "special" right is a "civil right," and "[u]nequal access to this critical path to empowerment, in politics, culture,

---

[174] Foohey, Lawless, & Thorne, *supra* note 8, at 588 (commenting that the consequences of filing *pro se* can be detrimental because cases are dismissed at higher rates and less likely to receive a discharge of their debt.).

[175] *Id.*

[176] *Id.* at 589.

[177] *Id.*at 589-90.

[178] *Id.* at 625.

[179] Foohey, Ament, & Zibel, *supra* note 19, at 8; *see also* Bruckner, Foohey, Gotberg, Jiménez, & Ondersma, *supra* note 67, at 12-13 (noting that Black borrowers borrow more money for college and Black borrowers' student loans are far more likely to negatively amortize than white or Hispanic/Latino borrowers); *see also id.* at 579 (discussing that "Black households file bankruptcy at more than twice the rate they appear in the general population" and that "Black single women, in particular, constitute a grouping of filers. These two findings of racial disparity highlight bankruptcy's intersection with larger economic and social issues").

[180] Foohey, Ament, & Zibel, *supra* note 19, at 8.

[181] Foohey, Lawless, & Thorne, *supra* note 8, at 628 (noting that Black women "lose their jobs or have their working hours cut more frequently than other workers. They face more obstacles to finding affordable and reliable childcare, although all women in the workforce report persistent problems with childcare." The authors also note that "pertaining to taking care of their children, if they have been awarded child support, Black women, particularly those with lower incomes, are less likely to collect that child support. This all places single Black women in financially precarious situations.").

[182] Jiménez & Glater, *supra* note 35, at 160.

[183] *Id.*

business, or other leadership positions in our society violates civil rights of the disfavored group, denying them the equal protection of the laws."[184]

The economic barriers that racial minorities face when endeavoring to pay for higher education "underscore the importance of . . . ongoing efforts to make the student loan market work better for borrowers."[185] Advocates argue that one way to ensure "equity in higher education access" is to reform the bankruptcy system by "automatically placing borrowers on flexible repayment plans and easing the path to cancellation of repayment obligations in bankruptcy."[186] These reforms "aim to erase the burden of repayment for those suffering the most."[187]

III. PROPOSED SOLUTION

The DOE must relax the *Brunner* standard and adopt no-contest categories to remove the significant barriers to discharging student loans that adversely affect minority student borrowers.[188] Allowing these barriers to persist will continue to cause detrimental harm to minority communities and society at-large.

The DOE, as the creditor for $1.6 trillion in federal student loans, must maintain the purported "fiscal integrity of the lending program," at times through its right to contest bankruptcy discharges, and it "routinely does so."[189] In addition to this right, however, consumer groups argue that the DOE also has "an obligation to help destitute borrowers."[190] The DOE "no-contest" categories, as discussed in Part I, represent instances where the DOE could settle with debtors to (1) avoid procedural hassle and (2) alleviate disproportionate harm.[191] The categories proposed by advocates include:

> (1) the debtor's household income has been at or below the federal poverty level for the last four years; (2) the debtor receives disability benefits under the Social Security Act; (3) the debtor receives disability benefits because of military service; (4) the debtor's income is derived solely from retirement

---

[184] *Id.* at 161 (also remarking that "[i]n concluding that education is less than a fundamental right and thus accepting inequality in all these dimensions of life, the Supreme Court committed a grave error.").

[185] Canchola & Frotman, *supra* note 158.

[186] Jiménez & Glater, *supra* note 35, at 178.

[187] *See id.*

[188] *Id.* at 32-35; *see also* Danielle Douglas-Gabriel, *Education, Justice Depts. Reconsidering Stance on Fighting Student Loan Borrowers in Bankruptcy*, WASH. POST (Oct. 27, 2021), https://www.washingtonpost.com/education/2021/10/27/student-loan-bankruptcy-education-department/ (discussing how "consumer advocates have been critical of the Biden administration [specifically the EOD] for continuing what many say is a restrictive policy and for what they call unreasonable demands on distressed borrowers to repay their debts").

[189] Douglas-Gabriel, *supra* note 188.

[190] *Id.*

[191] Bruckner, Gotberg, Jiménez, & Ondersma, *supra* note 2, at 240.

> benefits; (5) the debtor is a caregiver of an adult or child as defined in the Lifetime Respite Care Act; (6) the debtor is a family caregiver of an eligible veteran; (7) the debtor did not receive a degree from the institution, or the institution closed; (8) the debtor's student loan balance is less than $5,000; (9) the debtor made at least three hundred monthly payments (twenty-five years' worth) towards their student loans, regardless of whether those payments were made continuously; or (10) the debtor is over the age of sixty-seven.[192]

If the DOE adopted the "no-contest" categories, the debtor would still have to prove undue hardship, but not against DOE evidence.[193] The judge would still have the discretion to decide whether to allow discharge, but it would be easier for the judge to award the discharge when parties agree. The DOE cannot create common law, but it can decide not to raise arguments against the debtor.

Even if the DOE does "set thresholds for [] bankruptcy discharge," some advocates argue that "a monumental shift in the treatment of student loans in bankruptcy would require congressional action."[194] According to the DOE, this is the "best way to fix the system" by "undo[ing] the special treatment of student loans in bankruptcy through legislation."[195] In August 2021, the House of Delegates passed a resolution "urging Congress to amend the U.S. Bankruptcy Code to allow borrowers to discharge student loans without proving that repayment of the debt imposes an 'undue hardship' on them or their dependents."[196] Several legislators, including Senator Dick Durbin (D-IL) and Representative Jerrold Nadler (D-NY 12th District), have taken on the issue over the years, introducing bills such as the Student Borrower Bankruptcy Relief Act of 2019 and the Discharge Student Loans in Bankruptcy Act of 2019, but neither of these bills passed.[197]

A new bipartisan bill, aptly named "FRESH START Through Bankruptcy Act of 2021," would allow federal student loans to be discharged without an undue hardship showing once borrowers have been in repayment for at least ten years."[198] One controversial part of the bill is the provision stating that "colleges with high default rates and low repayment rates would have to partly reimburse the government if a federal student loan is

---

[192] *Id.* at 191.

[193] *Id.* at 209.

[194] Douglas-Gabriel, *supra* note 188.

[195] Jiménez & Glater, *supra* note 35, at 185.

[196] Amanda Robert, *'Undue Hardship' is Too Strict a Standard to Discharge Student Loans in Bankruptcy, ABA argues,* A.B.A. J. (Aug. 10, 2021, 1:44 PM), https://www.abajournal.com/news/article/resolution-512-aba-house-advocates-for-discharge-of-student-loans-in-bankruptcy.

[197] *Id.*

[198] *Id.*

discharged in bankruptcy."[199] This would apply to colleges where "more than one-third of their students receive federal student loans."[200] This provision was opposed by the United Negro College Fund, which argues that "[t]he repayment provision disproportionately affects historically Black colleges and universities because they have a high proportion of students who must borrow to attend college."[201] The last action was on August 4, 2021, when the bill was read twice and referred to the Committee on the Judiciary.[202]

If Congress does not pass the FRESH START Through Bankruptcy Act allowing student loan discharges without a showing of undue hardship, it could alternatively "clarify the meaning of 'undue hardship,'" with a new legislative definition, giving courts guidance to apply the standard more uniformly.[203] However, as a 2021 Washington University Law Review article emphasizes, "[g]iven that Congress has not provided a definition for more than four decades, a legislative definition that would bring uniformity and consistency seems unlikely."[204]

Even without Congressional action, advocates argue that judges already have tools at their disposal to improve the current system.[205] Indeed, some judges have begun using their discretion to forgive student loan debt.[206] Consumer advocates propose two ways that judges can make it easier for students, especially students of color, to discharge their loans.[207]

The first proposal is that judges "consider[] the value of the education the student receive[s] . . . if the person can show that their future prospects are not improved as a result of the education received, a court should take that into account."[208] In applying the current test, where "courts evaluate whether a debtor's current inability to repay their loans will continue in the future," courts do not often consider the value of the education received by the student.[209] According to consumer advocates, "[t]his is inconsistent with the original legislative purpose underlying the exceptional treatment of student debt under the Bankruptcy Code."[210] Bankruptcy judges must weigh factors such as labor market discrimination against Black and Latinx

---

[199] Weiss, *supra* note 10.

[200] *Id.*

[201] *Id.*

[202] Robert, *supra* note 196; *see also* FRESH START Through Bankruptcy Act, S.2598, 117th Cong. (2021-2022).

[203] Ha, *supra* note 3, at 1537.

[204] *Id.*

[205] Jiménez & Glater, *supra* note 35, at 180.

[206] Farina, *supra* note 12, at 1654.

[207] Jiménez & Glater, *supra* note 35, at 180.

[208] *Id.* at 60, 66-67.

[209] *Id.* at 60.

[210] *Id.*

borrowers "in hiring and wages, leading to decreased earning potential," when "deciding whether the borrower's current financial situation is likely to improve in the future to enable repayment" and must "guard against falling victim to the same cognitive flaws that lead debtors to underestimate risks."[211]

The second proposal is that judges who apply the totality of the circumstances test "appropriately consider the possibility of exploitative misconduct by the servicer or by the institution attended as among the 'other relevant facts and circumstances surrounding each particular bankruptcy case.'"[212] Consumer advocates note that "[a] few courts have considered these factors," including bankruptcy courts in the Southern District of Florida and the Western District of Pennsylvania.[213] However, according to advocates, "as an argument it has not received a lot of traction."[214]

IV. CONCLUSION

Student loans adversely affect millions of people, causing financial distress to debtors and leaving them with few options for relief. Indeed, the undue hardship standard for student loan bankruptcy discharge has significant issues—from its lack of definition in the bankruptcy code to the lack of uniformity in its application in the courts.

These issues monumentally impact racial minorities, who rely on student loans more than white students and are disadvantaged by the intersection of student loans and the racial wealth gap. Congress is uniquely positioned to provide avenues of relief for distressed student debtors. Congress can remove the undue hardship standard altogether or redefine it, providing more straightforward guidelines for interpretation by the courts. However, without congressional action, there are still several remaining avenues of relief. The DOE can adopt no contest categories to help expand the pool of debtors who receive discharge for their student loans.

If Congress and the DOE do not act on this issue, then it will be left to judges to continue to interpret the standard in their own ways. Judges may use their discretion to ensure that more students receive discharges, especially in instances where debtors experience severe financial distress, particularly within minority communities. Regardless, action on the student loan crisis must be taken to ensure the financial stability and prosperity of this generation and the next.

---

[211] *Id.* at 66-67.
[212] *Id.* at 67.
[213] *Id.*
[214] *Id.*

Education is a civil right, and its equal access is incredibly important. As the Supreme Court stated in the 1982 case of *Plyler v. Doe*, "education has a fundamental role in maintaining the fabric of our society" and "provides the basic tools by which individuals might lead economically productive lives to the benefit of us all."[215]

[215] Plyler v. Doe, 457 U.S. 202, 221 (1982).