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Biden’s Plan to Cancel Student Debt Undermines Nonprofits, Argues NCLA in Cato Institute Lawsuit

Cato Institute v. U.S. Department of Education, Miguel Cardona, Richard Cordray and Joseph Biden

Washington, DC (October 18, 2022) – Today, the New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed a [lawsuit](#) on behalf of its client, the Cato Institute, urging the U.S. District Court for the District of Kansas to stop the Biden Administration’s [student-loan-debt-cancellation plan](#). NCLA’s complaint argues the unilateral plan issued by the U.S. Department of Education to cancel student loan debt is supported by no legitimate claim of statutory authority and effectively strips away a significant competitive advantage to recruit and retain talented borrower-employees from nonprofits, thereby frustrating the primary purpose of the pre-existing Public Service Loan Forgiveness (PSLF) program.

The Cato Institute is a nonprofit organization that promotes individual liberty, limited government, free markets, and peaceful international relations. Like other nonprofits, including the ACLU and NCLA, it attracts and retains talented employees who have student loans with incentives enacted by Congress through the PSLF program. Among other things, the PSLF program allows student loan borrowers to have their outstanding balances forgiven after they work for at least ten years at a qualifying nonprofit organization. The careful and stringent criteria for debt cancellation obtainable under the PSLF program erodes any claim that Congress authorized the Secretary of Education to arbitrarily forgive debt without requiring borrowers to satisfy such stringent criteria.

The government attempts to justify debt cancellation under the Higher Education Relief Opportunities for Students (HEROES) Act of 2003, which was passed following the September 11 terrorist attacks to help soldiers who must respond to national security threats. That Act in no way authorizes blanket cancellation of student debt. Even the government’s own lawyers at the Office of Legal Counsel in the U.S. Department of Justice [concede](#) that any debt relief under the HEROES Act must be “necessary to ensure” that individuals affected by a national emergency, here the Covid-19 pandemic, “are not placed in a worse financial position in relation to [their student loans] *because of* their status as affected individual.” But that condition is impossible to satisfy because—due to having their payments and interests suspended during the pandemic—borrowers’ financial positions in relation to their loans have not worsened but rather improved as a result of the Covid-19 pandemic. The Department of Education has no authority to cancel some half a trillion dollars owed to the U.S. Treasury. Such cancellation entails an appropriation, which the Constitution makes clear only Congress may authorize.

NCLA released the following statements:

“The Constitution gives Congress and only Congress the power to legislate. The Biden administration’s effort to cancel massive amounts of student loan debt, an exercise of legislative power, is as illegal as it is irresponsible.”
— **Mark Chenoweth, President and General Counsel, NCLA**

“The Constitution makes crystal clear that only Congress may appropriate funds. That requirement is not a technicality but rather exists to prevent precisely what the President is attempting: using taxpayer funds to

purchase political support. The court must halt this unconstitutional giveaway, which imposes tangible financial hardship on nonprofits.”

— **Sheng Li, Litigation Counsel, NCLA**

“This lawless raid on public assets hurts not just hard-working taxpayers but also nonprofit groups like Cato. With the wave of an unelected bureaucrat’s magic wand, taxpayers who depleted their savings to pay for college, or responsibly repaid their educational loans, or never went to college are now stuck paying the bills of a politically favored class of debtors. This half-trillion-dollar scheme also undermines financial incentives passed by strong bipartisan majorities in both the House and Senate in 2007, which have helped nonprofit organizations like Cato and NCLA compete for talent.”

— **Russ Ryan, Senior Litigation Counsel, NCLA**

For more information visit the case page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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