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**NCLA *Amicus* Brief Argues States Have Standing to Challenge Student Loan Debt Cancellation Plan**

*Joseph R. Biden, Jr., et al. v. State of Nebraska, State of Missouri, State of Arkansas, State of Iowa, State of Kansas, and State of South Carolina; Department of Education, et al. v. Myra Brown, et al.*

**Washington, DC (February 3, 2023)** – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed an [amicus curiae brief](#) in the U.S. Supreme Court today supporting two cases challenging the Biden Administration’s unlawful [student loan debt cancellation plan](#). *Biden v. Nebraska* and *Department of Education v. Brown* contest the government’s invocation of the HEROES Act to rewrite statutory provisions and cancel some half a trillion dollars owed to the Treasury, which violates both the Vesting and Appropriations Clauses of Article I of the Constitution. NCLA has also challenged the Loan Cancellation Program in an original lawsuit on behalf of the Cato Institute in a separate [case](#) pending in the United States District Court for the District of Kansas.

NCLA’s brief offers the Court an alternative basis to find standing for the states, which has been a sticking point thus far in lawsuits against the Loan Cancellation Plan. Arkansas, Iowa, Kansas, Missouri, Nebraska, and South Carolina would suffer concrete injuries from the government’s unlawful debt cancellation plan because it undermines the Public Service Loan Forgiveness (PSLF) program. Congress established the PSLF program in 2007 to encourage individuals who owe student-loan debt to seek employment with public-service employers, including state governments. Under the PSLF, borrowers can have their entire debt forgiven if they make 120 payments and work for 10 years at a covered employer. By cancelling their debt now, the Loan Cancellation Program reduces or removes the PSLF deferred-compensation incentive, thereby directly harming states’ ability to recruit and retain college-educated employees.

Aside from standing, NCLA also argues that the HEROES Act would be unconstitutional if it really empowered an executive agency to rewrite statutes and appropriate funds. The Department of Education contends that the HEROES Act authorizes the Secretary of Education to wipe out a half-trillion dollars in debt owed to the United States by over 40 million borrowers. This flawed interpretation of the HEROES Act would trample on the Constitution’s prohibition against executive agencies exercising Congress’s exclusive powers to enact laws and appropriate funds.

Finally, NCLA’s brief rebuts the Department’s false contention that debt cancellation is lawful because it allegedly relies on the same HEROES Act interpretation used to support the pause on student-loan payments and accrual of interest since March 2020. There are two problems with this line of thinking: First, it was Congress—not the Department—that paused payments and interest in March 2020 by enacting the CARES Act, but that authority expired in September 2020. Second, although the Department later invoked the HEROES Act

to extend the pause on payments and accrual of interest, those actions were also unlawful. An agency cannot extend the congressionally enacted end date of a debt-relief program by administrative fiat.

Oral arguments are set for February 28.

**NCLA released the following statements:**

“As NCLA’s *amicus* brief shows, the states have standing to oppose this extravagant abuse of administrative power because the Loan Cancellation Program interferes with them as employers who hire employees eligible for the Congressionally created Public Service Loan Forgiveness program. The HEROES Act does not empower the Department of Education to cancel student loan debt unilaterally, and the Supreme Court will see right through this unlawful scheme.”

— **Mark Chenoweth, President and General Counsel, NCLA**

“This half-trillion-dollar giveaway is the latest attempt by the Biden Administration to twist a narrow delegation of authority—here a post-9/11 law meant to assist actual heroes while they fight for our country—into breathtakingly broad power to reshape an entire industry. The Supreme Court has rejected the Administration’s prior attempts to pull an elephant out a mousehole in the eviction moratorium, vaccine mandate, and clean power plan cases. It should do the same here.”

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

**For more information about this issue visit [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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