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NCLA and Mackinac Center Challenge Unlawful Extensions of Federal Student Loan Deferments

Mackinac Center for Public Policy v. U.S. Department of Education, Miguel Cardona, and Richard Cordray

Washington, DC (April 6, 2023) – Today, the New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed a [lawsuit](#) to stop the U.S. Department of Education’s unlawful pause on student loan payments. The lawsuit, *Mackinac Center for Public Policy v. U.S. Department of Education, Miguel Cardona, and Richard Cordray*, was filed on behalf of the Center in the U.S. District Court for the Eastern District of Michigan.

In response to the Covid-19 pandemic, Congress lawfully suspended monthly payment obligations and interest accrual on federally held student loans for a period limited to six months. When that statutory deferment period expired in September 2020, however, the department unilaterally extended it without congressional appropriation. The complaint challenges the legality of extending the suspension 30 months past the statutory expiration date, which has cost taxpayers over \$150 billion from lost interest.

Congress enacted the Public Service Loan Forgiveness Program (PSLF) in 2007 to help 501(c)(3) nonprofit organizations like the Mackinac Center attract employees with a debt-relief incentive keyed to working ten years for nonprofits. The Department of Education’s suspending of repayment obligations is an unlawful form of debt relief that substantially reduces the incentives PSLF provides and thus undermines Congress’s goals in enacting that program. As NCLA has [argued previously](#), reducing that incentive directly harms nonprofit employers.

So far, the Department of Education has issued eight separate extensions—most recently in November 2022—with ever-shifting legal excuses. The department first relied on economic hardship provisions of the Higher Education Act of 1965; then pivoted to the HEROES Act of 2003; then ceased citing legal authorities and stopped publishing new extensions in the Federal Register. It most recently falsely claimed that it had been relying on the HEROES Act all along. None of these purported justifications holds water.

Only Congress can categorically suspend repayment obligations for all student-loan borrowers nationwide, and only Congress can cancel the accrual of interest on student loan debt owed to the United States. The department initially issued a short extension to give Congress more time to extend the suspension legislatively, but electorally accountable lawmakers in Congress declined to extend the suspension of payment obligations and interest accrual any further, even as they repeatedly legislated other forms of Covid-19 relief. The department’s subsequent decisions to extend the deferments by administrative fiat thus ignored the law.

NCLA and the Mackinac Center released the following statements:

“We know that only Congress may suspend student-loan repayment obligations and cancel interest accrued because it took an Act of Congress to provide such debt relief at the outset of the pandemic. Congress also enacted a clear six-month deadline for that debt-relief program. The Administrative State lacks the power to extend a debt-relief program beyond its statutory deadline, especially when doing so costs taxpayers over \$150 billion.”

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

“Perpetual deferment of federal student loans is bad policy because it shifts the burden from those who took out student loans to those who did not. More importantly, it is illegal, as it strips congressional powers and unilaterally hands them to executive bureaucrats. We have a proud history of making sure that the executive branch acts within their constitutional authority, even during a national emergency.”

— **Patrick J. Wright, Vice President for Legal Affairs, Mackinac Center**

“Our client has standing to sue the Department for the same reason the state plaintiffs do in *Biden v. Nebraska*, which is pending at the U.S. Supreme Court. Just as the PSLF program benefits the states suing over the unlawful half-trillion in student loan debt cancellation, so too the Mackinac Center benefits as an employer from PSLF. When the Department of Education administratively undercuts Congress’s enacted program—either with permanent debt forgiveness or by extending deferments—PSLF employers have standing to sue to stop it.”

— **Mark Chenoweth, President and General 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.

ABOUT MACKINAC CENTER

The Mackinac Center for Public Policy is a nonpartisan research and educational institute dedicated to improving the quality of life for all Michigan residents by promoting sound solutions to state and local economic policy questions. As a free-market think tank, the Mackinac Center is guided by its belief in free markets, individual liberty, limited government and the rule of law. Founded in 1987, it is headquartered in Midland, Michigan. For more information, visit www.mackinac.org.

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