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NCLA Notches Amicus Win Against Biden's Student Loan Debt Handout

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

Washington, DC (June 30, 2023) – The New Civil Liberties Alliance applauds today’s Supreme Court decision blocking the Biden Administration’s plan to cancel nearly a half-trillion dollars in outstanding student loans owed to the U.S. Treasury. As NCLA urged in an *amicus curiae* [brief](#) it filed in the case of *Biden v. Nebraska*, the court [ruled](#) that Executive Branch administrators lack any legitimate power to make such sweeping changes to the law absent authorization from our elected representatives in Congress.

Citing the Covid-19 pandemic, the Administration had relied on the [HEROES Act](#), which grants the Secretary of Education limited “modification” and “waiver” authority during wartime or national emergency situations, as purported authority to cancel almost a half-trillion dollars in student loan debt owed to the Treasury. But today the Court correctly held that the plan was neither a modification nor a waiver.

Chief Justice John Roberts, writing for a 6-3 majority, stated, “The Secretary’s comprehensive debt cancellation plan is not a waiver because it augments and expands existing provisions dramatically. It is not a modification because it constitutes ‘effectively the introduction of a whole new regime.’ And it cannot be some combination of the two, because when the Secretary seeks to add to existing law, the fact that he has ‘waived’ certain provisions does not give him a free pass to avoid the limits inherent in the power to ‘modify.’”

Chief Justice Roberts wrote that “modifications” made under the HEROES Act before the Covid-19 pandemic had been minor and of little effect, while the Secretary of Education’s actions in this case created a “novel and fundamentally different loan forgiveness program.”

In its amicus brief, NCLA also argued that both the Trump and Biden Administrations similarly exceeded their lawful powers when they suspended student loan borrowers’ payment obligations and the accrual of interest beyond the September 2020 end date legislated by Congress in the CARES Act at the start of the pandemic. NCLA argued that ongoing suspension of payments and interest is just as unlawful as the larger debt-cancellation plan. As Justice Kagan’s dissenting opinion in today’s case acknowledges, “how could it not be?”

NCLA released the following statements:

“The Executive Branch is out of control. Whether it’s lockdowns, eviction moratoria, vaccine mandates, or now school loan debt cancellation, these are just not powers the Executive Branch possesses. In this case, Congress explicitly limited the pause on student loan debt payments to a few short months. That does not authorize the Executive Branch to extend or expand the relief Congress legislated, as the Supreme Court recognized today. This administration needs to stop acting like this country has an all-powerful, single branch of government.”

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

“It was obvious from Day One that this half-trillion-dollar raid on the public fisc was unconstitutional as well as ill-considered, but the Administration thought it could get away with it because nobody would have standing. Fortunately, the Supreme Court found standing today and stopped yet another pen-and-phone administrative gambit.”

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

For more information visit the *amicus* 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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