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NCLA Asks Appeals Court to Block Unlawful Biden Scheme Trying to Cancel Student Loan Debt

Mackinac Center for Public Policy and Cato Institute v. Miguel Cardona, et al.

Washington, DC (October 10, 2023) – The Biden Administration's Department of Education has begun illegally wiping out $39 billion of student loan debt owed by more than 800,000 people under the Income-Driven Repayment (IDR) program by crediting non-payments during periods of forbearance as monthly payments via a "One-Time Account Adjustment." Today, the New Civil Liberties Alliance filed an opening brief for the Mackinac Center for Public Policy and the Cato Institute, calling on the U.S. Court of Appeals for the Sixth Circuit to stop this scheme that disregards federal law, the Constitution, and the United States Supreme Court.

Moving on an accelerated schedule to deter court review, the Department of Education announced the unlawful plan in July before the ink was dry on the Supreme Court opinion striking down its old $430 billion student loan debt cancellation plan. The Administration's new policy counts certain non-payment periods as "monthly payments" needed to qualify for loan-forgiveness programs. Doing so results in cancellation of debt for borrowers who have not yet satisfied mandatory statutory conditions for forgiveness. In addition to the $39 billion cancellation, the new plan would cancel even more debt at taxpayer expense for at least another 2.8 million borrowers in the future, an action the Department has no lawful authority to take.

NCLA argues that the Department of Education's decree violates the Constitution's Appropriations Clause, which grants Congress exclusive authority to expend taxpayer funds to pay for debt cancellation. The cancellation further violates loan-forgiveness statutes that require participating borrowers to make a specific number of monthly payments before having their loans forgiven. Additionally, instead of promulgating the plan through the required notice-and-comment and negotiated rulemaking process under the Administrative Procedure Act, the Department simply issued a press release announcing its wishes that did not bother to identify any laws to justify the plan.

Cancelling borrowers' debt through this scheme erases their incentive to participate in the Public Service Loan Forgiveness (PSLF) program by completing ten full years of work for qualified non-profit employers while making monthly payments. The Administration's substitute plan thus directly harms non-profit organizations that benefit from PSLF like the Mackinac Center and Cato and undermines Congress's goals in enacting the PSLF program. In August, a district court rejected this standing argument in *Mackinac Center for Public Policy and Cato Institute v. Cardona*, an error the Sixth Circuit should correct. NCLA made similar standing arguments in its successful *Biden v. Nebraska amicus curiae* brief, in a mooted federal lawsuit with the Cato Institute against the previous debt cancellation plan, and in an ongoing Mackinac Center suit challenging the Department's repeated student loan payment suspensions. We believe this theory of standing should and will ultimately prevail.

On October 4, President Biden announced an additional $9 billion in student loan debt cancellation, including $5.2 billion for PSLF borrowers and $2.8 billion for IDR borrowers. The announcement did not explain what legal authority it was using to accomplish such cancellation, but instead characterized the new policy as "fixes" made to IDR and PSLF, which suggests that this latest round of cancellations is part of the "One-Time Account Adjustment." Hence, preventing further unconstitutional debt erasure is more pressing than ever.

NCLA released the following statements:

"The Supreme Court has declared unlawful the Administration's $430 billion student loan program to cancel student loan debt by administrative fiat without involving Congress. Yet, the Administration is still pursuing a series of similarly unlawful loan cancellations by administrative fiat that, taken together, will cost even more than the program the Supreme Court halted. These unlawful giveaways to the Administration's favored constituency are utterly illegal because only Congress can expend funds to pay for debt cancellation."
— Sheng Li, Litigation Counsel, NCLA

"It was bad enough for the Administration to pursue unlawful debt cancellation before the Supreme Court held its plan illegal. Now that the Court has ruled, continuing the extreme scheme is constitutionally repugnant. The Administration aims to cancel student loan debt—no matter how unlawful its actions—on the apparent theory that courts cannot move fast enough to stop it or else will decide no one has standing to oppose its will. Still, non-payments are not payments. Lawless rule by executive decree to the contrary is a dangerous game that makes a mockery of representative democracy and self-government. Statutes passed by Congress bar this conduct. Supreme Court precedent now prohibits it. Yet the President is ignoring both. The Department of Education's ongoing campaign to cancel billions of dollars of student loans by rewriting statutes is disgraceful and despotic."
— 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.

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