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Media Inquiries: [Trevor Schakohl](mailto:Trevor.Schakohl@ncla.org), 202-908-6206

NCLA Asks Court to Uphold Lawsuit Against Dep't of Education's Illegal Student Loan Payment Pause

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

Washington, DC (December 5, 2023) – The U.S. government has asked a federal judge to dismiss an NCLA lawsuit on behalf of the Mackinac Center for Public Policy against the Dept. of Education's unlawful 35-month suspension of monthly student loan payment obligations. The New Civil Liberties Alliance has filed a [response](#) urging the U.S. District Court for the Eastern District of Michigan to continue the case, *Mackinac Center for Public Policy v. U.S. Department of Education*, and take action against the Department's abuse of power.

Congress lawfully suspended monthly payment obligations and interest accrual on federal student loans by statute for six months in 2020 in response to the Covid-19 pandemic. The Mackinac Center has no objection to Congress's exercise of its exclusive power of the purse to pause payments and cancel approximately \$30 billion in interest that would otherwise have accrued. However, when that statutory suspension expired in September 2020, the Department unilaterally extended it without any lawful basis for nearly 35 additional months at a cost of at least \$175 billion to taxpayers. That's a problem. Each month of *administrative* extension of this payment-and-interest suspension has *unlawfully* cancelled debt in violation of the Constitution's Appropriations Clause.

The payment-and-interest suspension eviscerated the financial incentives that Public Service Loan Forgiveness Program (PSLF) provides for borrowers to work at public service employers like the Mackinac Center, irreparably harming these organizations and circumventing Congress's goals in creating the program. Congress enacted the PSLF in 2007 to help nonprofit groups attract employees by forgiving a borrower's debt after that borrower makes 120 monthly payments while working for nonprofit organizations or other public service employers. The 35-month suspension has unconditionally cancelled at least \$175 billion in debt that could otherwise be forgiven under PSLF, thus reducing the incentive for affected borrowers to seek debt cancellation through the program. The government is also counting 35 months of non-payments during the suspension as "monthly payments" needed to earn loan forgiveness through PSLF and other programs, drastically shortening the statutorily mandated time that borrowers are incentivized to work for public service employers like the Mackinac Center.

NCLA asks the Court to declare these suspension and debt cancellation measures unlawful and put a stop to them before the Department of Education can overstep its authority even more. NCLA proudly represents the Mackinac Center and Cato Institute in a different [lawsuit](#) against the Department for canceling \$39 billion of student loan debt owed under the Income-Driven Repayment program by crediting non-payments during periods of forbearance as monthly payments via a "One-Time Account Adjustment." These lawsuits appear to be the main efforts—and perhaps the only ones since the Supreme Court's decision in *Biden v. Nebraska* last June—to force the Department of Education to obey that decision and apply its holding to its other student debt actions.

NCLA released the following statements:

"The Department's own regulation concedes that PSLF's purpose is to 'encourage individuals to enter and continue in full-time public service employment,' so its denial of economic injury here is self-contradictory. By

granting hundreds of billions of dollars of debt forgiveness regardless of where borrowers work—without Congressional authorization—the Department undermines the competitive incentive Congress provided via PSLF debt forgiveness specifically to public service employers like the Mackinac Center.”

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

“The Administration’s response to the Supreme Court’s *Biden v. Nebraska* decision, which ruled that massive debt cancellation is a ‘major question’ that requires Congress’ involvement, has been to ignore that decision and continue canceling massive amounts of student loan debt without Congressional authorization. This lawlessness is brazen and shocking, and the lower federal courts must put an end to it immediately. That starts by recognizing the Mackinac Center’s economic injury here and denying the government’s motion to dismiss this lawsuit.”

— **Mark Chenoweth, President, 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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