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NCLA Asks Supreme Court to Block Education Dept.'s Latest Illegal Scheme to Cancel Student Loan Debt

States of Alaska, South Carolina, and Texas v. Department of Education, et al.

Washington, DC (July 16, 2024) – Today, the New Civil Liberties Alliance filed an *amicus curiae* brief in *Alaska, South Carolina, and Texas v. Dept. of Education*, urging the Supreme Court to restore a preliminary injunction against the Department's illegal "SAVE" plan for transferring $475 billion in student loan debt to taxpayers. The Department's scheme rewrites 1993 amendments to the Higher Education Act (HEA), transforming loan-*repayment* plans that Congress authorized into loan-*cancellation* plans that Congress did not authorize. In an unreasoned decision, a divided panel of the U.S. Court of Appeals for the Tenth Circuit stayed the district court's injunction blocking the Department's new plan. Partnering with the Cato Institute, Mackinac Center for Public Policy, and Defense of Freedom Institute as *amici curiae*, NCLA calls for a halt to this unconstitutional Executive Branch attempt to wield legislative power.

The district court issued the preliminary injunction stopping SAVE because the states of Alaska, South Carolina, and Texas are likely to prevail in their claim that it exceeds the Secretary of Education's authority under the 1993 HEA amendments. The amendments state that "income contingent repayment shall be based on the [borrower's] adjusted gross income," and would "not … exceed 25 years." The Department claims this language allows it to enact SAVE, an income-contingent repayment plan with monthly payments so low that very little would be repaid by the end of the repayment period, at which point the substantial remaining balance would be cancelled.

Nothing in the 1993 amendments' text or legislative history suggests Congress granted the Department discretion to design plans like SAVE that prioritize the cancellation of loans instead of their repayment. If the 1993 law did grant such power, it would be an unconstitutional delegation of legislative power, as it contains no intelligible principle to guide the Department's discretion of how generous to make repayment plans.

To make matters worse, the Department's scheme is arbitrary and capricious, as it was promulgated without addressing comments about the massive amount of debt it attempts to cancel. The Supreme Court recently granted a stay in *Ohio v. Environmental Protection Agency* because EPA offered no "reasonable response" to comments casting doubt on the cost-benefit analysis of its final rule. For the same reason, the Justices should restore the preliminary injunction against the Department of Education.

The Department's illegal scheme completely erases the recruitment and employee-retention benefits state employers hold under the Public Service Loan Forgiveness program, which allows Americans to have student debt forgiven by completing ten full years of work for qualified non-profit employers while making monthly payments. Losing this competitive advantage in the labor market inflicts direct and immediate competitive harm on Alaska, South Carolina, Texas, and other States, as well as NCLA's *amici* partners.

NCLA released the following statements:

"The Department claims it has had the power since 1993 to cancel as much student-loan debt as it wants under the guise of income-driven repayment (IDR) plans. But if that were true, why did Congress enact legislation in 2007 and again in 2010 to establish IDR plans with explicit limits that are far less generous than what the Department now claims it could have established any time since 1993? The answer, of course, is that Congress never authorized the Department to design any plan that is more generous than what Congress has enacted. The Supreme Court should reinstate the injunction against this unlawful plan."
— **Sheng Li, Litigation Counsel, NCLA**

"The Department of Education is thumbing its nose at the U.S. Supreme Court's decision in *Biden v. Nebraska* last year. Here's hoping the Court takes advantage of this opportunity to enjoin the SAVE plan and prevent further arrogation of legislative power and even more illegal spending by Biden's Department of Education."
— **Mark Chenoweth, President, 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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