**FOR IMMEDIATE RELEASE** **Media Inquiries:** Ruslan Moldovanov, 202-869-5237

**NCLA Asks Tenth Circuit to Stop 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 29, 2024)** – Today, the New Civil Liberties Alliance filed an *amicus curiae* brief in *Alaska, South Carolina, and Texas v. Dept. of Education* with the U.S. Court of Appeals for the Tenth Circuit. NCLA urges the Court to affirm and order the expansion of a preliminary injunction stopping the Department's "SAVE" plan, which rewrites the 1993 amendments to the Higher Education Act (HEA) to transform student-loan-*repayment* plans Congress authorized into loan-*cancellation* plans Congress did not authorize at a $475 billion cost to taxpayers. Partnering with the Cato Institute and Mackinac Center for Public Policy as *amici curiae*, NCLA calls for halting the entirety of this unconstitutional Executive Branch attempt to wield legislative power.

The district court preliminarily enjoined part of SAVE because the States of Alaska, South Carolina, and Texas are likely to prevail in their claim that the plan 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 cancel loans instead of requiring their repayment. If the 1993 law did grant such power, it would unconstitutionally delegate legislative power, as it contains no intelligible principle to guide the Department's discretion of how generous to make repayment plans. Last week, the U.S. Court of Appeals for the Eighth Circuit blocked all components of SAVE until the court can reach a final decision on the request for an injunction in a separate case against the program. The Tenth Circuit should do the same in this case. NCLA has also filed an *amicus* brief asking the U.S. Supreme Court to lift the Tenth Circuit's current stay on the district court injunction immediately.

NCLA agrees with the district court that Alaska, South Carolina, and Texas have standing because SAVE injures their state systems that service federal loans. However, the district court failed to recognize that the States *also* have standing as public-service employers. The Department's illegal scheme completely erases the recruitment and employee-retention benefits state employers enjoy under the Public Service Loan Forgiveness program, which allows Americans to have student debt forgiven by completing ten full years of work for qualified government or nonprofit employers while making monthly payments. Losing this competitive labor-market advantage inflicts direct and immediate competitive harm on States, as well as NCLA's *amici* partners.

**NCLA released the following statements:**

“The Department now 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. If that were true, why did Congress enact legislation in 2007 and 2010 to establish IDR plans with explicit limits that are far less generous than what the Department now claims it can establish on its own? In fact, Congress never authorized the Department to design any plan that is more generous than what Congress has enacted. The Court should affirm and expand the injunction against this unlawful plan.”
— **Sheng Li, Litigation Counsel, NCLA**

“President Biden wants to reform the Supreme Court because he says it is not following the Constitution. But Biden and his Department of Education have been brazenly ignoring a lawful Supreme Court ruling for over a year now that forbade student loan debt cancellation without action from Congress. The States have standing to enforce this injunction, and it should be upheld in order to vindicate the Supreme Court’s ruling last year.”
— **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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