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## **NCLA Asks en Banc Sixth Circuit to Stop Unlawful Biden Scheme to Cancel Student Loan Debt**

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

**Washington, DC (July 1, 2024)** – Today, the New Civil Liberties Alliance [petitioned](#) the *en banc* U.S. Sixth Circuit Court of Appeals to hear the *Mackinac Center for Public Policy, Cato Institute v. Cardona* case for halting the Department of Education’s illegal erasure of \$39 billion of student loan debt and counting. The Department’s scheme has already begun wiping out debt that borrowers owe under the Public Service Loan Forgiveness (PSLF) and Income-Driven Repayment (IDR) programs, by crediting non-payments during periods of forbearance as monthly payments via a “One-Time Account Adjustment.” On behalf of the Mackinac Center and the Cato Institute, NCLA calls on the *en banc* Court to stop this plot that disregards federal law, the Constitution, and the U.S. Supreme Court.

Moving on an accelerated schedule to deter court review, the Department of Education announced the unlawful plan in July 2023 before the ink was dry on the [Supreme Court opinion](#) striking down its old \$430 billion student loan debt cancellation plan. The Administration’s 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.

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 the Cato Institute, and undermines Congress’s goals in enacting the PSLF program. In May, a Sixth Circuit panel erroneously rejected this standing argument in *Mackinac Center for Public Policy, Cato Institute v. Cardona*.

The panel improperly held that the economic disadvantage that Administration’s plan creates for NCLA’s clients compared to competitors was not enough to give them standing against it, failing to draw factual inferences in the Plaintiffs’ favor and ignoring uncontroverted allegations that support their standing. The panel further decided that that competitor standing does not exist because the “Adjustment” is directed only at third-party borrower-employees rather than the for-profit employers against whom Plaintiffs compete in the labor market. This standard would prevent judicial review of any unlawful government action that imposes economic disadvantage, as long as it strategically does so only through third parties like competitors’ employees. The *en banc* Court should correct these serious mistakes.

**NCLA released the following statement:**

“The panel decision rejecting competitor standing inexplicitly refused to accept uncontroverted facts, like that non-profit think tanks compete against for-profit companies for college-educated employees and that counting 36+ months of non-payments toward the 120 monthly payments needed to receive public service loan forgiveness reduces the number of monthly payments that a borrower must make. *En banc* review is needed to correct these glaring errors.”

— **Sheng Li, Litigation 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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