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## **NCLA Asks Eighth Circuit to Stop Education Dept.’s Latest Illegal Plot to Cancel Student Loan Debt**

*State of Missouri, et al. v. President Joseph R. Biden, Jr., et al.*

**Washington, DC (October 1, 2024)** – Today, the New Civil Liberties Alliance filed an *amicus curiae* [brief](#) in *Missouri, et al. v. Biden* urging the U.S. Court of Appeals for the Eighth Circuit to affirm its panel’s earlier [preliminary injunction](#) stopping the Department of Education’s “SAVE” plan. The Biden Administration plan 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. Following on the Supreme Court [overturning](#) the administration’s previous illegal student loan debt cancellation plan last year in [Biden v. Nebraska](#), NCLA calls on the Eighth Circuit to reject this new unconstitutional Executive Branch attempt to wield legislative power.

The Eighth Circuit’s preliminary injunction expanded a district court order to block all components of the SAVE plan, which exceeds the Secretary of Education’s authority under the 1993 HEA amendments. The 1993 law states 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.

The Eighth Circuit should once more recognize that at least one Plaintiff state, Missouri, has standing because SAVE injures its state agency that services federal loans. However, the other States of Arkansas, Florida, Georgia, North Dakota, Ohio, and Nebraska *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 and other public-service employers, as NCLA has argued in *amicus* [briefs](#) for a separate case against the Department’s plan.

### **NCLA released the following statements:**

“The 1993 law on which the Department relies merely lengthens low-income borrowers’ repayment term from 10 years to up to 25 years. As anyone with a mortgage knows, lengthening the repayment period reduces the monthly-payment amount, but it does not cancel any debt.”

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

“The Department of Education’s ongoing efforts to evade the law written by Congress are unlawful. It is shocking that the Department is continuing its antics after getting slapped down once already by the Supreme Court. The Eighth Circuit needs to put the Department in its place and prevent the unlawful transfer of student-loan debt to taxpayers.”

— **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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