No. 24-1784

In the United States Court of Appeals for the Sixth Circuit

MACKINAC CENTER FOR PUBLIC POLICY,

Plaintiff-Appellant,

V.

U.S. DEPARTMENT OF EDUCATION;

LINDA MCMAHON, SECRETARY OF US DEPARTMENT OF EDUCATION;

JAMES BERGERON, CHIEF OPERATING OFFICER OF FEDERAL STUDENT AID,

U.S. DEPARTMENT OF EDUCATION,

Defendants-Appellees.

On Appeal from the Final Judgment of the U.S. District Court for the Eastern District of Michigan, Northern Division, No. 1:23-cv-10795

Appellant's Opening Brief

Oral Argument Requested

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Sixth Circuit Rule 26.1, the undersigned counsel states that the Mackinac Center for Public Policy is a nongovernmental, nonstock corporation and that it has no parent corporation. Because it is a nonstock corporation, no publicly held corporation owns 10% or more of its stock. Nor does any publicly held corporation have a financial interest in the outcome of this case.

/s/ Daniel Kelly

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STATEMENT REGARDING ORAL ARGUMENT

Appellant respectfully requests oral argument because it will assist the Court in its review of the issues presented by this appeal. This appeal involves important questions about standing to challenge administrative actions that not only result in a particularized and concrete economic injury to the plaintiff/appellant, but that also have a broad national impact.

STATEMENT OF JURISDICTION

The District Court had subject-matter jurisdiction because the case arose "under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. It had jurisdiction to award the requested declaratory and injunctive relief because appellant suffered a "legal wrong" as a result of "agency action" when the Department of Education, without statutory authorization, reduced a congressionally mandated wage subsidy of which appellant was an intended beneficiary and from which appellant is in fact benefiting. 5 U.S.C. § 702 ("A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."); 5 U.S.C. § 703 (authorizing "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction ... in a court of competent jurisdiction."); 28 U.S.C. § 2201 ("In a case of actual controversy within its jurisdiction, ... any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought."). Jurisdiction for mandamus relief was conferred by 28 U.S.C. §

1361, which provides that "district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

This Court has jurisdiction because appellant is appealing a "final decision[] of the district court[] of the United States." 28 U.S.C. § 1291. This appeal is timely because a notice of appeal of the district court's judgment and order dated July 18, 2024, was filed within 60 days of that decision on September 13, 2024. *See* Fed. R. App. P. 4(a)(1)(B).

STATEMENT OF ISSUES

Whether the Mackinac Center for Public Policy ("Mackinac"), a beneficiary of a statutorily granted wage subsidy, has standing to challenge the appellees' unauthorized reduction of the subsidy through administrative fiat.

STATEMENT OF THE CASE

In 2007, Congress enacted the Public Service Loan Forgiveness ("PSLF") program for the express purpose of benefitting employees with certain types of student loans as well as the qualified organizations—like

Mackinac—that employ them.[1] The program benefits the employees by forgiving student loans once they complete a total of ten years of employment with one or more public service organizations.[2] It benefits the organizations by turning the forgivable balance of the employees' loans into a wage subsidy, which decreases the amount those organizations need to spend on salary to be competitive in attracting college-educated talent in the labor market. The Department of Education has formally acknowledged the benefit this program provides to PSLF employers and, as discussed below, it still formally acknowledges those benefits, even if only outside of these proceedings.[3]

Mackinac is a § 501(c)(3) organization with approximately 45 employees[4] and is a PSLF-qualified employer. *See* 20 U.S.C. § 1087e(m)(3)(B). It regularly competes in the labor market to recruit and retain college-educated employees for staff positions.[5] The wage

[1] 20 U.S.C. § 1087e(m) (College Cost Reduction and Access Act of 2007).
[2] 20 U.S.C. § 1087e(m)(1)(B). Qualifying student loans include the Federal Direct Stafford Loan, Federal Direct PLUS Loan, Federal Direct Unsubsidized Stafford Loan, or a Federal Direct Consolidation Loan. 20 U.S.C. § 1087e(m)(3)(A).
[3] We will refer to the appellees collectively as the "Department."
[4] R. 22 Page ID #3 at ¶1 (Amended Complaint).
[5] R. 22-1 Page ID #207 at ¶¶8–12 (Declaration of Joseph G. Lehman).

subsidy provided by the PSLF program assists in that competition, *id.*, because it increases the total compensation Mackinac can offer current and prospective employees without increasing its out-of-pocket costs. Without the PSLF wage subsidy, Mackinac would have to spend more of its own resources to offer the same compensation package to college-educated employees. At the time the amended complaint in this matter was filed, Mackinac was benefitting from this wage subsidy because it employed four individuals who were participating in the PSLF program (the "PSLF Employees"). *Id.* Additionally, it was seeking recruits for two open positions. *Id.*

In early 2020, the Department of Education started reducing the congressionally prescribed wage subsidy for those who, like Mackinac, hire PSLF participants. The Department announced (via a March 20, 2020 press release) that it would forgive interest on student loans by reducing the interest rate to zero for "a period of at least 60 days."[6] This initial Department-granted forgiveness was relatively minor because, seven days later, Congress enacted the Coronavirus Aid, Relief, and

[6] R. 22 Page ID #171 at ¶24 (Amended Complaint); R. 9-1 Page ID #108 (Exhibit 1 to Brief in Support of Motion for Preliminary Injunction).

Economic Security ("CARES") Act, which turned interest forgiveness into lawful federal policy. Pub. L. No. 116-136, 134 Stat. 281 (2020). But the CARES Act forgave only that amount of interest that otherwise would have accrued through September 30, 2020. *Id.* § 3513(a)-(b).

Several months after adoption of the CARES Act, as expiration of the statutory period of interest forgiveness drew near, the President ordered the resumption of his own interest forgiveness program. *Memorandum on Continued Student Loan Payment Relief During the COVID-19 Pandemic*, 85 Fed. Reg. 49585 § 2 (Aug. 8, 2020). Within weeks, the Department followed through on the President's order, stating in a press release that interest would be forgiven through the end of 2020.[7] The Department subsequently extended the order seven more times (each time without statutory authority to do so), which eventually spanned a total of 35 months.[8] Those serial periods of interest forgiveness came to an end—at least insofar as they purported to rely on the CARES Act for authority—upon enactment of the Fiscal Responsibility Act of 2023, in which Congress provided that "the waivers

[7] R. 22 Page ID #172 at ¶31 (Amended Complaint).
[8] R. 22 Page ID ##171, 173–78 at ¶¶ 26, 34, 37, 39, 41, 43, 45, 48 (Amended Complaint).

and modifications of statutory and regulatory provisions relating to an extension of the suspension of payments on certain loans and waivers of interest on such loans under section 3513 of the CARES Act" shall not be extended beyond August 29, 2023. Pub. L. No. 118-5, 137 Stat. 10, 34 § 271 (2023) (hereinafter the "FRA"). Nothing in the FRA, however, prevents the Department from asserting alternative (equally baseless) grounds to forgive even more interest on student loans.

To remedy this continuing injury, and to prevent the Department from further exacerbating it, Mackinac sued appellees in the U.S. District Court for the Eastern District of Michigan, Northern Division. As relevant to this appeal, the amended complaint contains six causes of action.[9] Mackinac alleges that the Department's unauthorized reduction of the wage subsidy violated three provisions of the United States Constitution: the Appropriations Clause,[10] the Property Clause,[11] and the legislative Vesting Clause.[12] The amended complaint also alleged that the Department violated the Administrative Procedure Act by acting

[9] R. 22 (Amended Complaint).
[10] U.S. Const. Art. I § 9; R. 22 Page ID #189 (Amended Complaint, Count I).
[11] *Id*. Art. IV § 3; R. 22 Page ID #191 (Amended Complaint, Count II).
[12] *Id*. Art. I § 1; R. 22 Page ID #192 (Amended Complaint, Count III).

(1) arbitrarily and capriciously;[13] (2) in excess of its statutory authority;[14] and (3) in derogation of procedures required by law.[15]

The Department moved to dismiss the amended complaint, arguing that its administrative reduction of the wage subsidy did not injure Mackinac, and even if it had, the injury is neither traceable to its actions nor redressable by the judiciary.[16] The District Court agreed and dismissed the amended complaint without prejudice on July 18, 2024.[17] Mackinac timely appealed on September 13, 2024.[18]

STANDARD OF REVIEW

"A dismissal for lack of standing is ... reviewed *de novo*." *McGlone v. Bell*, 681 F.3d 718, 728 (6th Cir. 2012) (citing *Prime Media, Inc. v. City of Brentwood*, 485 F.3d 343, 348 (6th Cir. 2007)).

SUMMARY OF THE ARGUMENT

The Department caused economic injury to Mackinac when, without authority, it lowered the wage subsidy Congress conferred on

[13] R. 22 Page ID #197 (Amended Complaint, Count V).
[14] R. 22 Page ID #194 (Amended Complaint, Count IV).
[15] R. 22 Page ID #200 (Amended Complaint, Count VI).
[16] R. 25 Page ID #212 (Brief in Support of Motion to Dismiss).
[17] R. 30 Page ID #317 (Opinion and Order).
[18] R. 32 Page ID #342 (Notice of Appeal).

those who, like Mackinac, employ individuals with student loans eligible for forgiveness under the PSLF program. Because an employee's forgivable debt and the PSLF wage subsidy are just two sides of the same coin, Mackinac suffers a direct economic injury with every dollar of debt forgiveness that is not conditioned on the employee's completion of a full ten years of employment with one or more PSLF employers. So, when the Department started forgiving interest on student loans prior to completion of PSLF employment obligations, it decreased—dollar for dollar—the wage subsidy bestowed upon Mackinac by the PSLF program, which in turn makes it more expensive for Mackinac to maintain the same level of compensation for its PSLF Employees.

This direct economic injury is more than sufficient, all by itself, to support standing because Mackinac is challenging the Department's authority to take the very actions that caused (and continue to cause) that injury. In addition to the immediate harm this causes its financial interests, the harm also manifests as a downstream reduction in Mackinac's ability to compete in the labor market for college-educated employees.

The District Court must therefore be reversed for three reasons. First, it did not substantively address the direct economic injury the Department caused by decreasing Mackinac's congressionally granted wage subsidy. Instead, it focused solely on whether the injury's downstream manifestation as a reduction in Mackinac's competitiveness in the labor market was sufficient to satisfy the standing requirement.

Second, the District Court misconstrued the doctrine of "competitor standing" in three specific respects. First, it assumed that Congress's grant of a wage subsidy has no effect on economic behavior, and so it concluded that losing part of the subsidy cannot adversely affect Mackinac's competitiveness in the labor market. Second, contrary to all relevant authority, it held that a plaintiff must prove that its reduced competitiveness actually led, past tense, to competitive losses in the market—whether sales (as when companies compete for customers in the relevant market), or employees (as when companies compete for talent in the labor market). This misconstruction guts the central purpose of the "competitor standing" doctrine, which is to recognize competitive injuries caused by governmental action *before* they manifest as lost sales (or, in this context, lost employees or recruitment opportunities). And third, it understood the competitor standing doctrine to require Mackinac to name specific competitors in the labor market, rather than rely on the statutorily defined category of competitors provided by Congress.

Finally, the District Court erred in concluding that Mackinac's injury was neither caused by the Department nor was redressable by the judiciary. It said that if Mackinac had indeed been injured, it would have been through the decisions made by third parties—that is, by employees who might choose to leave Mackinac's employment or who might decide not to work there in the first place.[19] But the injury Mackinac claims is the direct economic harm caused by the *Department*'s decision to reduce a congressionally prescribed wage subsidy through the forgiveness of interest, something over which Mackinac's employees had no input or control. And in addressing the concept of competitor standing, the District Court mistakenly focused on the decisions of marketplace participants rather than on the injury-causing decisions of governmental actors. That is, it failed to recognize that marketplace competition *always*, without fail, depends on the decisions of third parties (whether customers or potential employees). As relevant here, however, standing

[19] R. 30 Page ID #336–40 (Opinion and Order).

jurisprudence does not place the decisions of such third parties at center stage. Instead, it addresses the effects of governmental action on a plaintiff's ability to *compete* for favorable decisions by those market participants. And that is precisely what Mackinac asserts in this case—the Department's reduction of the wage subsidy makes it more difficult to attract and retain college-educated talent in the labor market. As for redressability, an order restoring the wage subsidy and declaring that the Department has (and had) no authority to reduce it will remedy Mackinac's injury.

For these reasons, Mackinac respectfully requests this Court to reverse the District Court's judgment as to standing and to remand the matter so that Mackinac may address the merits of its case.

ARGUMENT

The Department caused a cognizable injury to Mackinac both by directly reducing a statutory wage subsidy from which it had been benefitting, and by impairing its competitiveness in the labor market. This harm is enough for Mackinac to maintain its claims because the concept of "standing" is simply meant to ensure that a plaintiff is asking the court to use its judicial power to remedy an injury, rather than asking it to opine on a policy dispute that belongs in a different branch of government. *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024) ("By requiring the plaintiff to show an injury in fact, Article III standing screens out plaintiffs who might have only a general legal, moral, ideological, or policy objection to a particular government action.").

The elements of standing are well known and are undisputed in this case: "To satisfy the Constitution's restriction of this Court's jurisdiction to 'Cases' and 'Controversies,' Art. III, § 2, a plaintiff must demonstrate constitutional standing. To do so, the plaintiff must show an 'injury in fact' that is 'fairly traceable' to the defendant's conduct and 'that is likely to be redressed by a favorable judicial decision.'" *Bank of Am. Corp. v. Miami*, 581 U.S. 189, 196 (2017).

The first section of this brief addresses why the Department's interest forgiveness economically harms Mackinac, and why that harm counts as an "injury in fact." The second section explains how the economic harm additionally manifests as a downstream impairment of Mackinac's ability to attract and retain college-educated employees in the labor market, which confirms that the Department's actions have created a "here and now" injury. The final section demonstrates that, *pace* the District Court, it is the Department's actions, not the decisions of third parties, that have caused Mackinac's injury. It also explains why a suitable remedy is entirely within the court's power to supply.

I. THE REDUCED WAGE SUBSIDY IS A DIRECT ECONOMIC HARM THAT SUPPORTS STANDING

The Supreme Court classifies economic harm as an "obvious" concrete injury for standing purposes: "[C]ertain harms readily qualify as concrete injuries under Article III. The most obvious are traditional tangible harms, such as physical harms and monetary harms. If a defendant has caused physical or monetary injury to the plaintiff, the plaintiff has suffered a concrete injury in fact under Article III." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021); *accord All. for Hippocratic Med.*, 602 U.S. at 381 ("An injury in fact can be a physical injury, a monetary injury, an injury to one's property, or an injury to one's constitutional rights, to take just a few common examples."); *Merck v. Walmart, Inc.*, 114 F.4th 762, 773 (6th Cir. 2024) ("Some asserted injuries are easy. Traditional tangible harms, like physical or monetary harms, readily qualify." (cleaned up)).

The Supreme Court also says, as we discuss below, that the types of economic harm that are capable of sustaining standing include adverse actions with respect to a governmentally granted subsidy. We first review the Supreme Court's teachings on this subject and then explain why the reduction in the PSLF subsidy injured Mackinac economically.

A. Adverse Financial Impacts Qualify as "Monetary Harms"

Government actions that adversely affect an organization's finances fit comfortably within the category of injuries sufficient to support standing, as the Supreme Court said just two years ago. *Biden v. Nebraska*, 600 U.S. 477 (2023). And it said so in the same context as this case: the forgiveness of student loan indebtedness. There, the Court addressed whether the State of Missouri had standing to challenge the Department's 2022 directive that completely canceled student loans held by some individuals and substantially reduced the indebtedness of others. *See id.* at 483. The Court focused on the economic injury to the Missouri Higher Education Loan Authority, a government corporation that services student loans ("MOHELA"). The Court observed that the forgiven student loans would cost MOHELA a significant amount "in fees that it otherwise would have earned …." *Id.* at 490. "This," the Court said, "is an injury in fact directly traceable to the Secretary's plan …." *Id.*

Whether the adverse economic impact is visited on the affected party through a loss of revenue (as in *Biden v. Nebraska*) or, instead, impairment of a subsidy designed to incentivize certain economic behavior (as it was here), is immaterial for purposes of standing. In *Clinton v. City of New York*, 524 U.S. 417 (1998), the Court considered whether the beneficiary of a proposed subsidy had standing to challenge its elimination. In that case, the subsidy took the form of favorable tax treatment for certain economic behavior Congress wished to encourage. Specifically, a proposed amendment to the tax code would have "permit[ted] owners of certain food refiners and processors to defer the recognition of gain if they sell their stock to eligible farmers' cooperatives." *Id.* at 424. "The purpose of the amendment," the Court said, "was to facilitate the transfer of refiners and processors to farmers' cooperatives." *Id.* (cleaned up). The amendment to the tax code, which was part of a larger bill, fell to a presidential "line-item" veto. One of the anticipated beneficiaries of the proposed tax subsidy, Snake River Potato

Growers, Inc. (hereinafter "Snake River"), sued on a claim that the line-item veto was unlawful.

The government challenged Snake River's standing, but the Court was not persuaded. Instead, for the purpose of identifying an economic harm, it treated the organization's loss of a subsidy no differently from the loss of revenue. The Court said "[t]hree critical facts identify the specificity and the importance of that injury" in establishing Snake River's standing to challenge the governmental decision that eliminated the subsidy. *Id*. at 432. It identified them as the interrelationship between the subsidy, its cancellation, and the plaintiff, each of which has a direct counterpart in this case.

With respect to the first point, the Court noted that the proposed amendment to the tax code was intentionally designed to incentivize a particular type of economic behavior: "Congress enacted § 968 for the specific purpose of providing a benefit to a defined category of potential purchasers [farmer cooperatives] of a defined category of assets [processing plants]." *Id*. at 424, 432. The practical effect of the provision was to subsidize the *prospective purchasers*, even though the *sellers* were the ones who received the tax break: "The members of that statutorily defined class [the farmer cooperatives] received the equivalent of a statutory 'bargaining chip' to use in carrying out the congressional plan to facilitate their purchase of such assets." *Id.* at 432. Second, loss of the subsidy was the result of a governmental decision: "[T]he President selected § 968 as one of only two tax benefits in the Taxpayer Relief Act of 1997 that should be canceled. The cancellation rested on his determination that the use of those bargaining chips would have a significant impact on the federal budget deficit." *Id.* And finally, the Court noted that Snake River was poised to benefit from the subsidy because it had been set up "for the very purpose of acquiring processing facilities, it had concrete plans to utilize the benefits of § 968, and it was engaged in ongoing negotiations with the owner of a processing plant who had expressed an interest in structuring a tax-deferred sale when the President canceled § 968." *Id.* Additionally, Snake River was "actively searching for other processing facilities for possible future purchase" if the veto was struck down, and there were "ample processing facilities in the State that Snake River may [have] be[en] able to purchase." *Id.* The loss of the congressionally prescribed bargaining chip—the subsidy—conferred standing on Snake River: "By depriving them of their statutory bargaining chip, the cancellation inflicted a sufficient likelihood of economic injury to establish standing under our precedents." *Id.*

Even when the path between governmental action and the resulting impairment of a subsidy is convoluted and complicated, the Supreme Court does not deny standing. The plaintiff must simply be able to connect the dots between the two. In *Barlow v. Collins*, 397 U.S. 159 (1970), tenant farmers challenged the Department of Agriculture's amendment to a regulation that impaired the utility of their cotton subsidy payments. *Id.* at 161–62. The connection between governmental action and impairment of the subsidy was significantly more attenuated than the straightforward connection here. There, the challenged amendment didn't even reduce the amount of the subsidy. Instead, it altered a provision that protected tenant farmers from demands that they assign their subsidy payments to their landlords as security for rent on the property they would farm. *Id.* The farmers explained that, if they had to make such assignments they would then be "required to obtain financing of all their other farm needs—groceries, clothing, tools, and the like—from the landlord as well, since prior to harvesting the crop they lack cash and any source of credit other than the landlord." *Id.* at 163.

But the landlord "levies such high prices and rates of interest on these supplies that the tenants' crop profits are consumed each year in debt payments." *Id.* Under the pre-amendment program, the farmers asserted, they could "attain a modest measure of economic independence" by using "their advance subsidy payments to form cooperatives to buy supplies at wholesale and reasonable prices in lieu of the excessive prices demanded by the landlord of captive consumers with no funds to purchase elsewhere." *Id.* (cleaned up). "Thus," the Court summed up, "petitioners allege that they suffer injury in fact from the operation of the amended regulation." *Id.*

The farmers' theory of how the Department of Agriculture's amendment to the subsidy program threatened them with economic harm, it must be said, was complicated. And yet, the Supreme Court said "*there is no doubt* that in the context of this litigation the tenant farmers, petitioners here, have the personal stake and interest that impart the concrete adverseness required by Article III." *Id.* at 164 (emphasis supplied).

Together, as we explain below, these cases show that Mackinac's direct economic harm consequent upon the Department's reduction of its wage subsidy supports its standing to bring its claims. *Biden v. Nebraska* establishes that economic harm to someone other than the student debtor can confer standing in the context of student-loan forgiveness. *Clinton v. City of New York* demonstrates that the reduction of a subsidy is equivalent to lost revenue for purposes of establishing standing through economic harm. And if the complicated connection between government action and economic harm described in *Barlow* is enough to satisfy standing requirements, the far simpler connection in this case must surely be satisfactory.

B. Reducing Mackinac's Wage Subsidy Is an Economic Harm

The PSLF represents a valuable wage subsidy—a "bargaining chip," if you will—that Mackinac uses to attract and retain college-educated employees in the labor market. *Am. Bar Ass'n v. Dep't of Educ.*, 370 F. Supp. 3d 1, 19 (D.D.C. 2019) ("[T]he PSLF statute allows public service organizations to attract and retain desirable employees ...."). Reducing that subsidy harmed Mackinac in the same way Snake River's loss of its anticipated bargaining chip caused an injury capable of conferring standing. The District Court erred by failing to recognize that the reduction of this subsidy is, all by itself, a direct economic harm sufficient to support standing. While acknowledging that Mackinac had alleged this harm in its amended complaint,[20] the District Court failed to treat it as the injury-in-fact that it is.

The wage subsidy at issue here functions in a straightforward fashion. When Congress enacted the PSLF program, it created two classes of beneficiaries: (1) student loan debtors, and (2) PSLF employers like Mackinac. The benefits existed in equipoise, but were mechanically connected such that increasing the benefit for one class would necessarily come at the expense of the other. Consequently, when the Department decided to change the balance of benefits in favor of student debtors (by forgiving interest on their loans before completing their ten years of employment with one or more PSLF employers), it economically harmed PSLF employers by lowering their statutorily prescribed wage subsidy. Whether the adjustment in this balance was wise, prudential, or even necessary under the circumstances is not the question before the Court. The only question is whether increasing the benefits for student debtors

[20] "In Count I, Plaintiff alleges that the Suspension violated the Article I Appropriations Clause because '[c]ancelling interest that would have otherwise accrued' … 'is economically the same as canceling debt' owed to the United States, without Congressional authorization."). R. 30 Page ID #327–28 (Opinion and Order).

at the expense of PSLF employers like Mackinac is an economic harm that qualifies as an "injury-in-fact." For the following reasons, the answer must be "yes."

That the PSLF program provides economic benefits not just to student debtors, but also to public service organizations like Mackinac, is no surprise to anyone, least of all the Department. *Am. Bar Ass'n*, 370 F. Supp. at 18–19 (D.D.C. 2019) (citation omitted) ("Although the [PSLF] statute provides a direct benefit in the form of loan forgiveness to individual borrower[s], … it also promotes the interests of public service employers by providing significant financial subsidies to the borrowers they hire on the condition they remain employed in public service."). Indeed, prior to this litigation, the Department openly, affirmatively, and formally proclaimed that this is so. By promulgating 34 C.F.R. § 685.219(a), the Department affirmatively asserted that "[t]he Public Service Loan Forgiveness Program is intended to encourage individuals to enter and continue in full-time public service employment by forgiving the remaining balance of their Direct loans after they satisfy the public service and loan payment requirements of this section." *Id.* Congress obviously intended to benefit student debtors, but as this provision acknowledges, it just as plainly intended to benefit public service employers. If it had wanted to restrict benefits to only the student debtors, it could have simply modified existing student loan forgiveness programs to cancel indebtedness after 10 years, rather than 25, without requiring employment with a public service organization. *See*, *e.g.*, 20 U.S.C. § 1098e (b)(7) (authorizing forgiveness of a student loan after the debtor makes payments under an "income-based repayment" plan for no more than 25 years).

But when Congress enacted the PSLF, it chose to do more than just benefit student loan debtors. It also chose to give PSLF employers a bargaining chip to use in recruiting and retaining college-educated employees in the labor market. *Clinton v. City of New York* is particularly instructive here because the interrelationship between the subsidy, its impairment, and Mackinac maps perfectly on the correlative elements in that case. Here, Mackinac occupies the same position as Snake River—both are purchasers in their respective markets (the labor market for Mackinac, the processing plant market for Snake River). The student debtors are similarly situated to the owners of processing plants in *Clinton*, both of which participate as sellers in their respective markets. At issue both here and in *Clinton* are governmental subsidies designed to incentivize specific types of transactions between the statutorily defined participants.

Congress, as the Supreme Court acknowledged, understood that financial incentives—subsidies—affect economic behavior. *Clinton*, 524 U.S. at 424 ("The purpose of the amendment, as repeatedly explained by its sponsors, was to facilitate the transfer of refiners and processors to farmers' cooperatives." (cleaned up)). So, when it provided a tax break to owners of processing plants who agreed to sell their assets to statutorily defined buyers (such as Snake River), it understood itself to be granting an economic benefit not just to the owners, but also to Snake River. That is, although it was the *sellers* who enjoyed a reduced tax liability, it was the *purchasers* who received the bargaining chip—a subsidy—which decreased the amount the farmer cooperatives would have to spend out of their own resources to obtain the processing plants. And to ensure this benefit went only to this class of purchasers, the proposed amendment to the tax code made the tax break available only when the owners sold their assets to the class of purchasers Congress wished to subsidize. *Id.* at 424 nn.4–5.

The fact the subsidy benefits both sides of the transaction means that both sides have standing to challenge its impairment. The *Clinton* Court specifically rejected the argument "that because the sellers of the processing facilities would have received the tax benefits, only they have standing to challenge the cancellation of § 968." *Id.* at 434. It explained that "[t]his argument not only ignores the fact that the cooperatives were the intended beneficiaries of § 968, but also overlooks the self-evident proposition that more than one party may have standing to challenge a particular action or inaction." *Id.*

The structure and function of the PSLF program unmistakably mirror *Clinton*. Like the sellers in *Clinton*, student loan debtors participate in a marketplace—in this case, a market in which they offer their labor. Transactions in this marketplace are based, at least in part, on the amount of compensation the employer is willing to offer and the employee is willing to accept—just as in *Clinton* a successful transaction would occur only when buyer and seller agree on a purchase price. And just like in *Clinton*, sellers in this marketplace stand to benefit from a government program if they do business with statutorily defined buyers. The sellers, both here and in *Clinton*, receive forgiveness of some part of their financial obligation to the government—in *Clinton* it was a tax liability for which the sellers would otherwise be responsible in the absence of the tax break; here it's student loan indebtedness. But that forgiveness is available only if the transaction is made with a buyer described by Congress; the financial obligation would otherwise remain. Both here and in *Clinton* the governmental program benefited not just the sellers, but the buyers as well. The bargaining chip in *Clinton* reduced the amount the farmer cooperatives had to spend out of their own resources to purchase the processing plants from the sellers. Here, the PSLF program is a bargaining chip that reduces the amount PSLF employers have to spend out of their own resources to attract and retain college-educated employees. Finally, the intent in both programs was to benefit both the purchaser and seller. Whereas in *Clinton* it was the bill's advocates explaining the purpose of the tax break, here it was the Department when it acknowledged that the PSLF "is intended to encourage individuals to enter and continue in full-time public service employment …." 34 C.F.R. § 685.219(a).

Mackinac and Snake River share the same injury—loss of a subsidy in their respective marketplaces. In *Clinton*, the subsidy didn't materialize because of a presidential veto. Here, the subsidy has been in operation for years, and Mackinac had been and presently still does benefit from it. But the injury is no less real than it was in *Clinton* because, even though the statute granting the subsidy is still in effect, the Department has been systematically decreasing its amount through its program of interest forgiveness. These unauthorized reductions directly and immediately injure Mackinac because every dollar of forgiven interest is a dollar reduction in the value of the bargaining chip Congress granted to those who employ PSLF participants. This is necessarily so because the amount of the PSLF wage subsidy is equal to the amount of debt forgiveness the employee will receive after working for a PSLF employer (or combination of such employers) for the statutorily required ten years. So, by forgiving interest that otherwise would have accrued, the Department reduced the forgivable balance of qualifying loans and, hence, the wage subsidy Congress prescribed.

Mackinac continues to experience this injury because, with respect to its PSLF Employees, it must either (1) use its own resources to increase their salary, or (2) risk losing them to non-PSLF employers who can offer a salary higher than what Mackinac can offer without the full wage subsidy. *Am. Bar Ass'n*, 370 F.Supp. 3d at 19 ("By design, then, the PSLF statute facilitates a public service organization's recruitment of employees by decreasing their employees' long-term debt burden. This debt relief reduces pressure on public service organizations to raise salaries."). Mackinac suffers the same injury with respect to those individuals it is trying to recruit as employees.

Mackinac is not asserting an economic harm any different from what Snake River asserted in *Clinton*. The only material difference is that the Department reduced Mackinac's wage subsidy, whereas Snake River lost its entire anticipated subsidy through a line-item veto. But there can be no doubt that Snake River would still have had standing if the subsidy had become law and the IRS impaired the bargaining chip's value by lowering the tax break prescribed by Congress. So, the direct economic harm described here is more than enough to support Mackinac's standing to challenge the Department's unauthorized reduction of the wage subsidy.

The District Court erred by failing to acknowledge that the reduction of a subsidy is an economic harm—a harm the Supreme Court readily recognizes as an injury-in-fact capable of sustaining standing.

Instead, it required Mackinac to *also* prove that the reduction "caused ... its employees to stop working or altered their employment plans." R. 30 Page ID #334. If this extra element truly were necessary to establish standing, the *Clinton* Court would have required Snake River to prove that the owners of processing plants wouldn't sell their assets without the tax break, or that the farmer cooperatives couldn't reach a satisfactory deal without the bargaining chip. But the *Clinton* Court did not require such proof because that's not how subsidies work. They don't guarantee transactions (whether purchases or employment), they just incentivize and facilitate them. *Clinton*, 524 U.S. at 424 ("The purpose of the amendment … was to *facilitate* the transfer of refiners and processors to farmers' cooperatives." (Emphasis supplied) (cleaned up)). The cognizable harm in such cases is not that the desired transactions don't occur, it is that the reduction in the subsidy makes them more costly.

Just like in *Clinton*, Mackinac suffered economic harm when the Department reduced its wage subsidy, and so the District Court erred when it failed to recognize this as an injury-in-fact that supports standing. But in addition, Mackinac also experienced this injury as a compromise of its competitiveness in the labor market. As we explain next, the "competitor standing" doctrine further confirms that the District Court erred in dismissing the amended complaint when it failed to follow the Supreme Court's lead in recognizing that governmental interruption of a market's competitive conditions can support standing.

II. THE REDUCED WAGE SUBSIDY COMPROMISED MACKINAC'S COMPETITIVENESS IN THE LABOR MARKET

The wage subsidy Congress conferred on Mackinac and other public-interest organizations is valuable in and of itself, but it is also valuable because of what Mackinac can *do* with it. Mackinac uses this bargaining chip in the labor market to attract and retain college-educated employees. In a competitive market, the governmental grant or reduction of a subsidy will materially alter the competitive conditions that contribute to success or failure. That's not a side effect. Governments offer subsidies for the specific purpose of altering competitive conditions to make the favored economic result more probable. Consequently, when the government changes the subsidies, it often causes an injury-in-fact—as it did here—that results in standing for the adversely affected market participants.

A. Governmental Subsidies Change Competitive Conditions in the Marketplace

Companies suffering direct economic harm from governmental action often bolster their standing argument by demonstrating how that harm compromises their competitiveness in the relevant markets. They do this because the Supreme Court "routinely recognizes probable economic injury resulting from governmental actions that alter competitive conditions as sufficient to satisfy the Article III 'injury-in-fact' requirement." *Clinton*, 524 U.S. at 433 (cleaned up) (quoting 3 K. Davis & R. Pierce, Administrative Law Treatise 13–14 (3d ed. 1994)). In the District Court, Mackinac couched its economic harm in the context of compromised competitiveness in the labor market because, as *Clinton* says, "[i]t follows logically that any petitioner who is likely to suffer economic injury as a result of governmental action that changes market conditions satisfies [the injury-in-fact] part of the standing test." *Id.* (cleaned up).

1. Courts Regularly Grant Standing for Competitive Injuries

Changes to market conditions sufficient to support standing can manifest in a variety of ways. And one of the few constants in the competitive-injury doctrine is that the nature of the competition is not limited to pre-existing categories. Sometimes the competition involves what immediately springs to mind: the purchase and sale of goods or services. *Sherley v. Sebelius*, 610 F.3d 69, 72 (D.C. Cir. 2010) ("The form of that [competitive] injury may vary; for example, a seller facing increased competition may lose sales to rivals, or be forced to lower its price or to expend more resources to achieve the same sales, all to the detriment of its bottom line."). At other times, the competition addresses subjects such as the entry of new participants in a market. Thus, in a trio of related cases, the Supreme Court said competitor standing exists when a government agency changes market conditions by allowing regulated entities to compete in markets that had previously been closed to them. *Ass'n of Data Processing Serv. Orgs. v. Camp*, 397 U.S. 150, 152 (1970) ("[N]o doubt" that data processing service providers had standing to contest banks' entry into their market); *Arnold Tours, Inc. v. Camp*, 400 U.S. 45, 45–46, (1970) (Travel agents had standing to contest banks' entry into their market); *Inv. Co. Inst. v. Camp*, 401 U.S. 617, 620–21 (1971) (Investment companies had standing to contest banks' entry into their market).

Competitor standing sometimes ranges further afield, even into areas where the competition isn't about strictly economic matters. For instance, the D.C. Circuit says a competitive injury sufficient for standing purposes could be political. *Shays v. Fed. Election Comm'n*, 414 F.3d 76 (D.C. Cir. 2005). The Circuit's "competitor standing cases," the court said, "embody a principle that supports [the congressional candidates'] standing: that when regulations illegally structure a competitive environment—whether an agency proceeding, a market, or a reelection race—parties defending concrete interests (*e.g.*, retention of elected office) in that environment suffer legal harm under Article III." *Id.* at 87. It said there was standing not because the case fit into a pre-existing category of competition, but because it was analogous to standard economic competition between businesses participating in the same market. "Given that [the candidates] clearly do face genuine rivalry from [other] candidates and parties in a position … to exploit FEC-created loopholes, our cases thus support analogizing their situation to business rivalry, a context where, as explained above, ample precedent supports standing." *Id.* (cleaned up). Therefore, because the political candidates had "asserted equivalent injury—competition intensified by

[Bipartisan Campaign Reform Act]-banned practices—and thus face an equivalent need to adjust their campaign strategy, they too suffer harm to their legally protected interests." *Id.*

Drawing a little closer to the circumstances of this case, competition in a market for government grants has been recognized as potentially creating economic harm. In confirming the legitimacy of this type of competition for purposes of standing, the D.C. Circuit went out of its way to note that just an *increase* in competition is enough to support standing. The court led its analysis with an assertion that competition for government benefits will obviously be sufficient for this purpose: "We see no reason any one competing for a governmental benefit should not be able to assert competitor standing when the Government takes a step that benefits his rival and therefore injures him economically." *Sherley*, 610 F.3d at 72. There, the Department of Health and Human Services had promulgated new guidelines that authorized the National Institutes of Health "to fund more research projects involving human embryonic stem cells than it had previously done." *Id.* at 70. The total amount of funds for that type of research remained constant, so funding additional projects meant more intense competition for federal dollars. *Id.* at 73.

Nonetheless, the district court denied competitor standing, in part, because the "application process to receive NIH funding is already extremely competitive." *Id.* at 71 (cleaned up). But the D.C. Circuit reversed "because the Guidelines have *intensified* the competition for a share in a fixed amount of money," so "the plaintiffs will have to invest more time and resources to craft a successful grant application. That is an actual, here-and-now injury." *Id.* at 74 (emphasis supplied).

The type of competition most relevant here, however, involves the government's use of subsidies—whether by granting, cancelling, or modifying them—to change a market's competitive conditions. In *Rental Housing Ass'n of Greater Lynn, Inc. v. Hills*, 548 F.2d 388 (1st Cir. 1977), the First Circuit considered whether an organization of landlords (the "Association") had standing to challenge the government's use of housing subsidies to support a project to convert a factory into low-income housing for the elderly. *Id.* at 389. The Association was concerned that the governmental subsidy would cause its members to "lose tenants to the new project and thereby suffer competitive harm." *Id.* The defendants argued that the Association had no standing to challenge the subsidies. *Id.* at 390. The district court agreed, *id.* at 389, but the court of appeals reversed. In doing so, the First Circuit categorically rejected the idea that competitive injuries do not sustain standing. "Defendants have cited, and we have found, no authority for the proposition that competitive harm is an insufficient allegation of injury in fact." *Id.* at 390. The reality is that not only do competitive injuries commonly provide a basis for standing, the opinions saying so are, in the First Circuit's view, "legion": "[T]he cases finding allegations of competitive injury sufficient [to establish an injury-in-fact] are legion." *Id.*

The market dynamic at work in the *Hills* case is particularly instructive here, as discussed below. The significance of a subsidy lies in its ability to change economic behavior with respect to the subject of the competition. In *Hills*, the parties competed for current and future tenants. The Association anticipated that the housing subsidy would shift the advantage in that competition toward the new project owner, that is, that the governmental subsidies would give the new project owner an edge in attracting the Association members' tenants. The court agreed, and so held that the dynamic created by the government's subsidies resulted in competitor standing. *Id.* at 389 ("[W]e think the allegation of competitive injury sufficient.").

2. Reducing Mackinac's Wage Subsidy Caused a Competitive Injury

The labor market in which Mackinac partakes is, in its function, just like any other market. Success depends on a variety of factors, in which the monetary element of the transaction is one amongst many considerations. Buyers (whether of goods or labor) compete with others in the market by offering an attractive price, along with other nonmonetary factors, in hopes of enticing a willing counterparty. Sellers (whether of goods or labor) compete by demonstrating the value of what they have to offer, both in economic and nonmonetary terms. Responding to the law of supply and demand, buyers adjust the prices they offer, and sellers adjust the price they're willing to accept, until they come to mutually agreeable terms. Governmental subsidies exist for the specific purpose of affecting the monetary aspect of a marketplace's competitive conditions. And they do so with the intent of making it more likely that the desired transactions will actually occur.

The PSLF bargaining chip Congress conferred on organizations like Mackinac is no different from any other governmental subsidy in this regard. Congress created it specifically because, as the Department says, it "intended to encourage individuals to enter and continue in full-time public service employment …." 34 C.F.R. § 685.219(a). The bargaining chip alters the competitive conditions in the labor market for college-educated employees by enabling Mackinac to effectively offer a higher salary than it would otherwise be able to offer in the absence of the subsidy. That, in turn, makes it more likely that the desired behavior will occur—to wit, employment of individuals with student-loan debt by public-service organizations.

If *granting* the subsidy/bargaining chip is a benefit to organizations like Mackinac because it makes them more competitive in the labor market, it must necessarily follow by force of logic that *reducing* the subsidy is an injury because it makes them *less* competitive. That is, it makes them less competitive in relation to those against whom Congress is trying to help them compete—to wit, employers that don't qualify under the PSLF program.

The competitive dynamic at work here is no different from that in *Clinton*. Snake River's economic harm from the loss of its anticipated subsidy made it less competitive in the market for processing plants. As the Supreme Court said (in quoting the district court opinion), the loss of Snake River's subsidy was the loss of "the benefit of being on equal footing with their competitors [(that is, others in the market to purchase processing plants)]," the result of which is that it would "likely have to pay more to purchase processing facilities now that the sellers will not be able to take advantage of section 968's tax breaks." *Clinton*, 524 U.S. at 427 (quoting *City of New York v. Clinton*, 985 F. Supp. 168, 177 (D.D.C. (1998)) (cleaned up). The same result obtains here. Reducing Mackinac's wage subsidy means it will likely have to pay more to hire college-educated employees now that the student-loan debtors (the sellers) won't have the same economic incentive to choose work at public-service organizations over other employers.

This is also the lesson of *Hills*. There it was the grant of a subsidy, rather than a reduction, that altered competitive conditions in a manner harmful to the plaintiff. The Association had been on equal footing with other participants in the rental-housing market prior to the government's intervention but lost it when the owner of the new project obtained a HUD subsidy. Whether the competitive injury comes from the grant of a subsidy to a competitor, or the reduction of a subsidy to the plaintiff, the government's alteration of the competitive conditions in the market are economically identical—the intervention makes it more expensive for the plaintiff to compete. And that is true even when the increased expense is collateral to the central transaction, as in *Sherley*, in which it became more expensive just to *prepare* to compete for government grants. As *Clinton*, *Sherley*, and *Hills* all illustrate, when the government's intervention makes it more expensive to successfully compete, or even to prepare to compete, resolution of the standing question will always be the same.

The impairment of Mackinac's bargaining chip is, therefore, well within the boundaries of the competitor-standing doctrine. The competitive conditions that exist in the labor market, and how economic factors affect them, have been known and understood since time out of mind. And if the doctrine is capacious enough to encompass the "political market," as analogized by *Shays*, there can be no doubt about it also encompassing the labor market.

B. The District Court Erred in Its Competitor-Standing Analysis

In addition to failing to recognize the reduced subsidy as an economic harm, the District Court also erred in concluding this injury did not compromise Mackinac's competitiveness in the labor market. There are three specific elements of the District Court's analysis that, together, led to this error. First, it assumed that Congress's grant of a wage subsidy has no effect on economic behavior, and so it concluded that losing part of the subsidy cannot adversely affect Mackinac's competitiveness in the labor market. Second, contrary to all relevant authority, it required Mackinac to prove that the reduced competitiveness had led—past tense—to actual competitive losses in the market. And third, it misunderstood the competitor-standing doctrine to require Mackinac to name specific competitors in the labor market, rather than rely on the statutorily defined category of competitors provided by Congress. Considering each error in turn will illustrate the full extent of the District Court's mistake.

1. Congress Has Authoritatively Determined That Wage Subsidies Benefit Mackinac

Whether a wage subsidy will ultimately produce the economic effects Congress desires is not, for these purposes, a justiciable question. When it enacted the PSLF, *Congress* made the policy judgment that it would, in fact, do so. So long as Congress has authority to legislate on a topic, the utility or wisdom of the resulting legislation is not for the courts to second-guess. Nor is it for the Department to argue against, especially when it already has a rule on the books confirming Congress's understanding that it was giving an effective economic bargaining chip to organizations like Mackinac. So, when the District Court concluded that Mackinac had sustained no injury because it did not prove how the wage subsidy would affect economic behavior, it not only erred as a matter of economic logic, but it also erred by arrogating to itself authority over a question Congress had already *conclusively* answered.

This is not a circumstance in which the District Court misconstrued or did not understand Mackinac's position. Its opinion accurately reflected Mackinac's argument that the PSLF program gave it a wage subsidy, and that forgiving interest on student loans reduced that subsidy, thereby impairing its competitive standing in the labor market. The opinion, for instance, recounted Mackinac's argument that "the 'competitor standing' doctrine applies to its case such that the Department's Suspension and On-Ramp caused it concrete and particularized harm by placing it at an 'economic disadvantage' relative to for-profit, private employers which Plaintiff alleges it competes with to recruit and retain college-educated employees." R. 30 Page ID #331 (Opinion and Order). It further acknowledged that, in taking this position, "Plaintiff (a) argues that the PSLF Program confers it—and all public employers—certain recruitment and retention advantages …." *Id.* at Page ID #332. It then dismissively referred to Mackinac's "own understanding of 'economic logic' to argue that the Department's Suspension and On-Ramp allowances (suspending interest accrual …) reduce these advantages by decreasing borrower's 'PSLF forgivable debt,' such that (c) Plaintiff and other public employers are placed at a competitive disadvantage compared to private employers." *Id.* at Page ID ##332–33.

The District Court, therefore, did not fail to appreciate the nature of Mackinac's argument but instead rejected Congress's judgment that the wage subsidy would serve as an effective bargaining chip in the labor market. Consequently, the court put the onus on Mackinac to demonstrate the verity of what Congress had already authoritatively determined. "Although Plaintiff attempts to rely on its own theories of 'economic logic,'" the court said, "it does not allege any facts showing how the Suspension … affected its ability to recruit and retain college-educated employees." *Id.* at Page ID #334 (cleaned up).

The key, perhaps, to this element of the District Court's error is its stated belief that Mackinac was asserting its *own* theories of "economic logic" in describing how the reduced wage subsidy affected its competitiveness. It was not. Rather, it was asserting *Congress*'s theory of economic logic. And it was repeating the *Department*'s theory of economic logic as embodied by 34 C.F.R. § 685.219(a). Judges may disagree with Congress's judgment as freely as anyone else—when they are off the bench. But in deciding cases, the court must accept Congress's judgment on the utility and wisdom of a policy within its authority to adopt. *Ferguson v. Skrupa*, 372 U.S. 726, 729 (1963) ("Under the system of government created by our Constitution, it is up to legislatures, not courts, to decide on the wisdom and utility of legislation."); *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965) ("We do not sit as a super-legislature to determine the wisdom, need, and propriety of laws that touch economic problems, business affairs, or social conditions."); *Bank Markazi v. Peterson*, 578 U.S. 212, 232 (2016) ("Applying laws implementing Congress' policy judgments, with fidelity to those judgments, is commonplace for the judiciary."). The District Court, therefore, was obliged to accept that wage subsidies do, indeed, confer a benefit on the subsidized party by making the desired economic behavior more likely to take place. If the Department disagrees with this, the court is the wrong forum to make its point. It should take it up with Congress.

The District Court's initial rejection of Congress's judgment on the utility of wage subsidies inexorably led to its next error: failing to accept that impairing Mackinac's congressionally granted bargaining chip is, axiomatically, a benefit to its competitors. If conferring a bargaining chip on the subsidized party is an economic benefit that helps it compete in the relevant market, it must necessarily follow—as a matter of logic, if nothing else—that reducing the subsidy results in a leg up to its competitors. The District Court, however, asserted that "Plaintiff's competitor[-]standing argument fails because Plaintiff … has not explained *how* these unidentified competitors benefit from the Suspension or On-Ramp—beyond speculating that all private employers effectively received recruitment and retention advantages because borrowers with less debt will be more likely to work in the private sector." R. 30 Page ID #334–35 (Opinion and Order). This assertion, again, rejects Congress's judgment that wage subsidies grant a competitive edge in the labor market to the subsidized party, and that the absence of such a subsidy must mean the statutorily defined class of competitors gained a competitive edge. *Accord Castro v. Scanlan*, 86 F.4th 947, 954 (1st Cir. 2023) ("The logic of the economic competitor standing doctrine is 'firmly rooted in the basic law[] of economics' that one direct competitor's gain of market share is another's loss.") (quoting *United Transp. Union v. ICC*, 891 F.2d 908, 912 n.7 (D.C. Cir. 1989)).

The District Court exhibited concern that respecting Congress's judgment on this question would allow too many plaintiffs to challenge executive actions. R. 30 Page ID # 335 ("If we recognized Plaintiff's purported economic disadvantage concept, we would create a 'boundless theory of standing.' That we cannot do. Economic disadvantage is not enough, nor is speculation.") (quoting *Mackinac Ctr. for Pub. Pol'y v. Cardona*, 102 F.4th 343, 354 (6th Cir. 2024) (internal citations omitted) (quoting *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 99 (2013)). While courts should be wary of theories that would remove the injury inquiry from the Supreme Court's standing jurisprudence, this case does not put any stress at all on that principle.

In *Already, LLC*, the Supreme Court confronted the plaintiff's proposition that the concept of standing should be broadened to the point that there would be no need to assert even the possibility of an injury.

The case involved a Nike trademark that Already, LLC ("Already") was allegedly violating. When Nike sued, Already counterclaimed that the trademark was invalid. 568 U.S. at 88. Nike shortly thereafter issued a covenant not to sue that effectively precluded it from ever pursuing Already for a violation of the challenged trademark. *Id.* at 88-89. Already, unwilling to lose an opportunity to cancel Nike's trademark, pressed its counterclaim even though it could no longer describe any potential injury. *Id.* at 88–89. It was in this context that the Supreme Court opined that "[u]nder this approach, Nike need not even have threatened to sue first. Already, even with no plans to make anything resembling the Air Force 1, could sue to invalidate the trademark simply because Already and Nike both compete in the athletic footwear market." *Id.* at 99. This case isn't anywhere near the line the Supreme Court was protecting in *Already, LLC*. Mackinac's claim of injury is present and continuing. It is based on the reduction of a wage subsidy that Congress has concluded is beneficial as a bargaining chip in the labor market. The Department hasn't promised, as in *Already, LLC*, to stop causing injury to Mackinac, nor has it repealed the decisions that have been causing that injury.

Nor does this Court's application of the *Already, LLC* principle in *Cardona* suggest that it applies here. *Cardona* addressed whether the Department's decision to grant a forbearance on student loan payments caused a cognizable harm. 102 F.4th at 350. This Court determined, as a factual matter, that the forbearance did not cause an injury, which made its reference to the *Already, LLC* principle appropriate. *Id*. at 352. But this case is not *Cardona*. The Department's reduction of the wage subsidy as demonstrated here, *does* injure Mackinac. Consequently, Appellant does not assert standing in the absence of an injury, as was the case in both *Already* and *Cardona*.

Whether wage subsidies help Mackinac compete in the labor market is a question Congress has already answered. And Congress's judgment on that question also establishes that Mackinac's competitors gain a competitive edge when the wage subsidy is unlawfully reduced. Because there can be no question about the existence of an injury to Mackinac, both *Already, LLC* and *Cardona* are inapplicable. The District Court committed an outcome-determinative error when it rejected Congress's authoritative resolution of these questions.

2. Competitor Standing Does Not Require Proof of Competitive Losses

One significant aspect of competitor-standing is that a plaintiff need not wait until it suffers losses in the market before challenging the governmental action that threatens those losses. This is largely because in such cases the contest is not over the decisions made by market participants, but over the governmental actions that will adversely *affect* the market participants' decisions. So, "to show such an injury [based on competitor standing], a plaintiff need not show 'currently *realized* economic loss.'" *Castro*, 86 F.4th at 955 (quoting *Adams v. Watson*, 10 F.3d 915, 920–21 (1st Cir. 1993)) (emphasis in original). That's why it was entirely unremarkable when the *Hills* court concluded that the Association had competitor standing even though the "[subsidized] project is not yet completed, and hence specific proof of competitive injury is not possible …." *Hills*, 548 F.2d at 389. In the court's view, "it could hardly be thought that administrative action likely to cause harm cannot be challenged until it is too late." *Id.*

The District Court, however, concluded Mackinac has not suffered an injury within the meaning of the competitor-standing doctrine because it hasn't established that it has already realized competitive losses in the labor market. Specifically, it said that "[t]o the extent that the Suspension automatically paused every borrower's loan interest from accruing, Plaintiff does not allege that this pause—or any other aspect of the Suspension or On-Ramp—*actually caused* any of its employees to stop working or altered their employment plans." R. 30 Page ID #334 (Opinion and Order) (emphasis supplied).

This is not, and cannot be, the standard for establishing competitor standing. If it were, it would mean the Supreme Court erred when it found standing in *Clinton*. There, the subsidy did not make it through the legislative process, so it was categorically impossible for the farmer cooperatives to prove they had realized losses in the marketplace because of the lack of the anticipated bargaining chip. If the District Court is correct, it would also mean the Supreme Court erred in *Association of Data Processing Service Organizations, Inc.* That case involved a challenge to the Comptroller of the Currency's ruling that national banks could enter the market for data processing services. In describing the plaintiff's complaint, the Court noted that it "allege[d] that competition by national banks in the business of providing data processing services *might* entail some future loss of profits for the petitioners …." 397 U.S.

at 152 (emphasis supplied). Not only did the complaint not allege that the plaintiff had already realized competitive losses, it only predicted what it believed would reasonably occur based on the Comptroller's ruling. But that did not prevent the Court from concluding the plaintiff had established competitor standing. This is because "'competitor standing' cases necessarily turn on degrees of probability, a measurement not easily susceptible to concrete definitions or mechanical application." *Adams*, 10 F.3d at 922–23 (citations omitted; cleaned up).

It would be particularly destructive to require competitors in the labor market to prove competitive losses to establish standing under this theory. A competitive loss in this context means that an employee leaves for another employer, or chooses not to work with the organization in the first place. Forcing Mackinac to wait until one of these events occurs before bringing its lawsuit would mean that the loss the District Court says the lawsuit may address would be irremediable. No court is going to issue a judgment countermanding an employee's decision on where to work, nor should it. So, if the District Court is correct about the injury Mackinac may be permitted to address in a competitor-standing case (loss of employees or recruitment opportunities), it would mean that courts are powerless to provide a remedy. The only possible relief in such competitive-injury cases is to address the adverse governmental action that will likely result in the competitive loss *before the loss occurs*. Plaintiffs cannot be forced to wait until the horse leaves the barn, so to speak, before challenging the government's decision to leave the barn door open.

3. Competitor Standing Does Not Require Mackinac to Name Specific Competitors

The District Court's third error with respect to the competitor-standing doctrine is its insistence that a complaint must provide the names of the companies against whom the plaintiff competes. The court did not explain why it is necessary to know the competitors' names to determine whether Mackinac has suffered an injury-in-fact, but it most assuredly counted that as a case-ending deficiency: "Plaintiff's competitor standing argument fails because Plaintiff has not sufficiently alleged *who* it competes with—beyond all private employers who hire college-educated employees …." R. 30 Page ID #334 (Opinion and Order) (emphasis in original).

The Supreme Court does not recognize this competitor-naming requirement. In the *Camp* trio of cases, the anticipated competitors were simply "the national banks," and the Court offered not even a hint that competitor standing would turn on naming which banks in that category might choose to compete. Identifying the *category* of competitors was appropriate because it reflected the class of competitors designated by the governmental action under review (that is, the Comptroller's ruling that national banks could enter the marketplaces at issue). And in *Clinton*, there was no mention of any specific competitor, and barely a mention of even the *category* of competitors. Instead, the Court was satisfied that there was a market for the purchase and sale of processing plants, and that there were participants in that market other than Snake River. 524 U.S. at 432. Similarly, in *Sherley*, the D.C. Circuit didn't require the plaintiff to identify who the likely competitors for grant funding might be—it was sufficient that the challenged regulation put the plaintiffs in competition with unidentified prospective actors who were expected to propose "projects involving ESCs [embryonic stem cells]." 610 F.3d at 74. That identification of potential competitors sufficed because that is the category of researchers the new HHS regulations allowed to compete with the plaintiff for grant funds. *Id.* at 71.

Here, the relevant category of competitors comprises private employers who do not qualify for the PSLF program. This is so for two reasons. First, and most importantly, because Congress legislatively identified this as the relevant category of competitors. And second, because Mackinac is challenging governmental decisions that benefit that entire category by reducing the wage subsidy Congress made available to Mackinac (and all other PSLF employers). If this is an insufficient designation of competitors, it is (once again) a matter for Congress to address, not the judiciary.

The District Court leaned heavily, even exclusively, on this Court's decision in *Cardona* to support its conclusion. But that opinion is not controlling here for at least two reasons. First, this appeal does not address the same harm alleged in that case. There, this Court acknowledged that "Plaintiffs challenge only the part [of the Department's student loan adjustment] that would count the months or years spent in long-term forbearance as payments toward forgiveness …." 102 F.4th at 350. This appeal, on the other hand, addresses standing only in the context of the Department's decision to actually forgive, not defer, part of the employees' student loans. And second, although this Court faulted Mackinac for not having "identified their competitors beyond saying private employers that hire college-educated workers," *id.* at 353, the Court did not explain why that was relevant to competitor standing. As such, the Court's opinion did not impose a new standing requirement that is not recognized by the Supreme Court (and one that would undermine the standing found in multiple decisions in the Court's competitor-standing line of cases).

* * *

For these reasons, the District Court's injury-in-fact analysis was erroneous in two significant respects. It did not recognize that the reduction of Mackinac's wage subsidy is a direct economic harm that supports this element just as much as the same injury suffered by Snake River supported standing in *Clinton*. And its treatment of the competitor-standing doctrine misconstrued its elements and operation. These errors, whether alone or in combination, require reversal of the District Court's judgment.

III. The Department Caused Mackinac's Injury, and It Is Redressable by the Court

Finally, the District Court erred in concluding that the Department did not cause Mackinac's injury and that the judiciary cannot redress it.

R. 30 Page ID #336 (Opinion and Order) ("The second element of Article III standing is similarly unsatisfied. Even if Plaintiff's allegedly reduced retention and recruitment advantages were sufficiently concrete and particularized, Plaintiff has not shown that the Department's Suspension or On-Ramp caused this reduction."); *id.* at Page ID #340 ("At bottom, Plaintiff has not shown redressability, largely for the same reasons that Plaintiff has not shown causation.").

The District Court properly set the table for the causation analysis. It posited that "'[t]o satisfy the causation requirement,' a plaintiff '"must show that its injuries are fairly traceable to the challenged acts of the defendants."' R. 30 Page ID #336 (cleaned up) (quoting *Simpson-Vlach v. Mich. Dep't of Educ.*, 616 F. Supp. 3d 711, 736 (E.D. Mich. 2022). Then it recognized that, "[a]t the pleading stage, this showing is 'relatively modest' and 'less demanding than the standard for proving tort causation.'" *Id.* (quoting *Buchholz v. Meyer Njus Tanick, PA*, 946 F.3d 855, 866 (6th Cir. 2020)).

But the analysis went astray directly thereafter when the District Court asserted that the injury in this case turns on the actions of nonparty actors. "[A] plaintiff plainly does not have standing," the court said, "if the injury 'results from the independent action of third part[ies] not before the court.'" *Id.* (quoting *Wuliger v. Mfrs. Life Ins. Co.*, 567 F.3d 787, 796 (6th Cir. 2009)). It said that if Mackinac had indeed been injured, it would have been through the decisions made by third parties—that is, by student-loan debtors who might choose to leave Mackinac's employment or who might decide not to work there in the first place. *Id.* at Page ID #337 ("Plaintiff's alleged speculative economic injury—even if concrete and particularized—would be caused by Plaintiff's own employees or prospective employees, not the challenged Suspension or On-Ramp allowances." (cleaned up)).

Although the principle described in *Wuliger* and *Simon* is correct, Mackinac has never claimed its injury was caused by anyone other than the Respondents in this appeal. Mackinac's position is that the *Department* caused a direct economic injury by reducing the wage subsidy, something over which Mackinac's employees had no input or control. It is additionally Mackinac's position that this injury manifests as compromised competitiveness in the labor market. But that doesn't change the identity of the injury-causing actor.

The District Court's error with respect to causation appears to be founded primarily on its assumption that the competitor-standing doctrine shifts the focus from the government actor to the marketplace participants. If that were true, the doctrine would be entirely incapable of ever identifying an injury sufficient to confer standing because success in the market *always*, without fail, depends on the decisions of third parties (whether customers, suppliers, potential employees, etc.). The competitor-standing doctrine does not concern itself, at least not primarily, with whether the decisions of those third parties have harmed the plaintiff. Instead, it focuses on the decisions of the governmental actor that are likely to *affect* the decisions of those third parties. The difference between the two is the difference between subjects and objects. The subject of the competitor standing inquiry is the governmental action. The doctrine then asks what effect the subject is likely to have on the object. It is always, however, the *subject* that identifies the actor committing the actionable injury, as is confirmed by every competitor-standing case cited in this brief.

Here, the subject of the competitor-standing inquiry is the Department's decision to lower the wage subsidy. The doctrine then asks whether the subject is likely to have an adverse effect on the decisions of market participants, in this case current and prospective employees. The District Court, however, hobbled its analysis by reprising its refusal to accept Congress's judgment that the PSLF wage subsidies provide an effective bargaining chip that organizations like Mackinac can use to compete in the labor market. "For starters," the court said, "Plaintiff's causation argument necessarily rests on the wholly speculative assumption that if a PSLF Program borrower has less loan debt …, then they are less incentivized to work in the public sector." R. 30 Page ID #337. If the effect of a wage subsidy in the labor market is an assumption, wholly speculative or otherwise, it is *Congress*'s assumption the court rejected, not Mackinac's. And as described above, the District Court had no authority to ignore Congress's legislative judgment.

Having dismissed out of hand the subject that courts are supposed to address in competitor-standing cases, the District Court then turned to the varying factors employees consider in making employment decisions, but it did so without tethering its opinion to any legal standard. *See, e.g., id.* ("Each person uniquely considers numerous factors when deciding where and when to work, and weighs these factors differently.

For some, location is paramount. Some seek an ideal work-life balance. Many individuals working within the public sector have a genuine interest in and passion for the service work they do, which may or may not be outweighed by private-sector pay, which may or may not be greater than rates paid by an individual's public employer."). This free-floating observation about the decisions of nonparty actors, because it has no connection to any legal structure, is irrelevant to the standing analysis. As a result, there is only one remaining possible injury-causing actor in this case—the Department. This ought to be obvious from the fact that it was the Department that decided to lower Mackinac's wage subsidy, a decision over which student-loan debtors have no say.

Finally, although the District Court was correct that there is a reflective relationship between redressability and causation, the errors described above prevented it from accurately applying that principle. If there is no causation, the injury is not redressable. Conversely, except in unusual circumstances, where there is causation, there will also be redressability. *All. for Hippocratic Med.*, 602 U.S. at 380–81 ("The second and third standing requirements—causation and redressability—are often 'flip sides of the same coin.' If a defendant's action causes an injury, enjoining the action or awarding damages for the action will typically redress that injury. So the two key questions in most standing disputes are injury in fact and causation." (Citation omitted)).

Mackinac's primary interest in this case is to protect its wage subsidy under the PSLF program. To that end, its amended complaint (as relevant to this appeal) requested the court to declare that the Department lacks authority to reduce the wage subsidy, to enjoin any further reduction of the wage subsidy, and to "hold unlawful and set aside agency action … found to be … (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[,] … (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] (D) without observance of procedure required by law …." 5 U.S.C. § 706(2). A judgment to this effect will remedy Mackinac's injury by protecting the advantageous labor market position that Congress designed it to have.

CONCLUSION

Mackinac respectfully requests this Court to reverse the District Court's judgment and remand the matter so that it may litigate the merits of its claims.

June 6, 2025

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with Fed. R. App. P. 32(a)(7)(B)(i) because it contains 12,181 words. This brief also complies with the typeface and type-style requirements of Fed. R. App. P. 32(a)(4)-(6) because it has been prepared in 14-point Century Schoolbook font using Microsoft Word.

/s/ Daniel Kelly

CERTIFICATE OF SERVICE

I certify that on June 6, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit using the CM/ECF system. I also certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Daniel Kelly

DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

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