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 U.S. 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 Reply Brief

Oral Argument Requested

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SUMMARY OF THE ARGUMENT

The Department caused an Article III injury by unlawfully decreasing a wage subsidy that had allowed Mackinac to provide a higher total compensation package to its PSLF employees without spending more of its own money. It is the same injury that any company receiving a congressionally-prescribed subsidy suffers when the executive branch unlawfully impairs its value: The recipient must either spend more of its own money to make up for the impairment (a financial harm), or it must suffer the economic consequences of losing the subsidy's value (in the form of decreased competitiveness in the relevant market).

The Department misunderstands the PSLF program's wage subsidy, and the injury it causes by unlawfully reducing its value, in two fundamental ways. First, it believes the sole purpose of the PSLF program is to forgive student debt. But debt forgiveness is not the program's *purpose*—it is instead the engine that powers Congress's actual goal: to persuade student debtors to choose public service over private interest jobs. Second, because the Department ignores the dynamic relationship between the PSLF program's component parts, it fails to discern that the engine at the heart of the program, without which it can do nothing, is a wage subsidy.

The program's benefit to both employers and employees is palpable. It benefits employers by making them more competitive in the labor market without increasing the compensation they must pay out of their own resources. It benefits employees by increasing their total compensation through debt forgiveness, but only after employers have enjoyed the benefit of the wage subsidy. Mackinac experiences an injury, therefore, when the wage subsidy's value decreases—an injury directly traceable to the Department's unlawful orders. Because a judgment granting Mackinac's requested relief would redress that injury, Mackinac has standing, and the case is not moot. The district court should be reversed.

ARGUMENT

I. The Department Rejects Congress's Economics

The Department's problem with Mackinac's injury goes beyond its rejection of the economic theory upon which Congress built the PSLF program—it rejects the idea that economics is taking place at all. Economics, as relevant here, is not the study of the program's effect on student debtors to the exclusion of the employers who hire them. It is an understanding of the economic interactions of all the participants in the program.

The Department correctly identifies the program's components: public-service employers, student debtors, and debt obligations owed to the United States. It also recognizes the anticipated end results: More student debtors taking public-service jobs and the forgiveness of student debt. But that's where its PSLF program analysis, such as it is, stops. The Department refuses to account for how these components interact to make the program actually *work*. That is, its brief does not account for economics at all. Consequently, it fails to recognize the wage subsidy the program created, or the economic harm it caused Mackinac by unlawfully reducing it.

Congress understood perfectly well the economic dynamic of these elements, and it used that engine to drive the PSLF program. Congress created the program because, as the House Report accompanying the College Cost Reduction and Access Act of 2007 said, it was "concerned with the growing number of individuals who do not choose to enter into lower paying professions, such as public service … ." H.R. Rep. No. 110-210, at 48 (2007) (hereinafter "House Report"). The PSLF program's goal, therefore, was to encourage student debtors to take such positions: "To further encourage public service, the legislation includes revisions to the Direct Loan Income Contingent Repayment program." *Id.* at 49. Those "revisions" comprised the PSLF program.

The program's engine, the wage subsidy, is funded by a contingent cancellation of the PSLF participants' student loans: "Individuals who choose public service will have the option to have their loans forgiven after 10 years if payments are made during that time period." *Id.*; 20 U.S.C. § 1087e(m) (repayment plan for public-service employees). This contingent debt forgiveness does not bear the label "wage subsidy," but that is so only because "wage subsidy" simply describes the interaction between public-service employers, student debtors, and debt forgiveness. The wage subsidy might be more recognizable to the Department if Congress had funded it by a direct grant to public-service employers in the amount of their employees' forgivable student loan balances. Whatever the method of funding, however, the engine that makes the program work is identical: a wage subsidy in the amount of each student debtor's loan balance. *Am. Bar Ass'n v. U.S. Dep't of Educ.*, 370 F. Supp. 3d 1, 19 (D.D.C. 2019) (The PSLF program "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.").

The economic theory upon which Congress based the program's engine is as old and well-known as the field of economics itself: You get more of what you subsidize.[1] The PSLF program subsidizes public-service employment by using debt forgiveness to raise student debtors' total effective income.[2] The additional income is necessarily a wage subsidy because debt forgiveness is contingent on the debtor working in one or more public-service positions for a prescribed period of time.

Congress knew the wage subsidy would benefit PSLF employers by helping them attract college-educated employees without spending more of their own money. Public-service employers are at a financial

[1] *See, e.g.*, Raymond F. Mikesell & C. Edward Galbreath, *Subsidies and Price Control*, 32 Am. Econ. Rev. 524, 534 (1942) ("If by means of subsidy payments to the sellers, a given price is held down, consumers will be able to buy more goods with the same amount of money than they could if the price were allowed to rise.").

[2] Debt forgiveness, as the Internal Revenue Code recognizes, is income. "[G]ross income means all income from whatever source derived, including (but not limited to) the following items: … Income from discharge of indebtedness … ." 26 U.S.C. § 61(a)(11).

disadvantage in the market for college-educated employees because they are generally unable to pay as much as the private-interest employers against whom they compete to attract and retain the same talent. That was the economic lock Congress designed the PSLF program to pick. The program's wage subsidy, although perhaps not bringing public-service employers up to full parity with private-interest employers, would at least make them more competitive.

Not only did Congress understand that the PSLF program created a wage subsidy, and that the subsidy would persuade student debtors to choose public-service employers over their private-interest counterparts, it also knew that this result would be entirely predictable. So predictable, in fact, that Congress was able to estimate the number of student debtors who would participate in the program: "CBO estimates that approximately 50,000 new borrowers each year would eventually be eligible for, and participate in, income-contingent loan forgiveness each year" after enactment of the PSLF program. House Report, *supra*, at 72. The effect of subsidizing economic behavior is not a metaphysical mystery. It is one of the most basic facts of economic life.

The Department misses all of this—the wage subsidy, the utterly predictable causal relationship between the subsidy and student debtors' decisions to take public-service jobs, the benefit to Mackinac—because it refuses to acknowledge there are economic effects that arise out of the interaction between the PSLF program's elements. That is to say, the Department appears to believe the program does not have an engine.

Because of that apparent belief, it was perhaps inevitable that the Department would treat the economic theory on which Congress built the program so derisively. It summarily dismisses it, without analysis, as "highly attenuated." Appellee Br. 10-11 (hereinafter "Department Br."). And while the Department thinks a student debtor's response to a wage subsidy "rests on unsupported speculation" and presents nothing but a "speculative chain of possibilities," *id.* at 11, 21, Congress was able to predict that 50,000 student debtors *per year* would choose public-service jobs over the private-interest alternative *because of the wage subsidy*. House Report, *supra*, at 72.

Ultimately, whether the Department understands any of this is beside the point, but it cannot disregard it. *Congress* understood it was creating a wage subsidy, and *Congress* understood the subsidy would predictably result in student debtors opting for public-service employment. As Mackinac said in its opening brief (and the Department does not refute), Congress's judgment on these matters is not for the Department to contest in this forum. Appellant Br. 44-45 (hereinafter "Mackinac Br."). Its objections and questions are for the legislature, not this Court. *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.").

II. The Department's Modification of the PSLF Program Caused an Economic Injury

By constructing the PSLF program's engine as it did, Congress authoritatively established that the program provides economic benefits to both PSLF employers and student debtors. Because the Department's unlawful orders impaired the wage subsidy, it follows as a matter of course that Mackinac suffers a direct economic injury. Mackinac must now spend more of its own resources to maintain the same level of effective compensation it pays its PSLF employees. The Department's response to this argument is first to reject Congress's judgment about the PSLF program's purpose and effects, and second to inaccurately claim Mackinac forfeited its argument by not raising it in the district court.

A. The Injury

The bulk of the Department's response to Mackinac's direct economic injury is to reject the PSLF program's engine and its economic rationale. Specifically, it lists three ways in which it believes its theory of the program should supplant that of Congress. First, it claims the program "does not entitle an *employer* to anything; it entitles a borrower to loan forgiveness after satisfying the [program's] statutory requirements … ." Department Br. 28 (emphasis in original). But the contingent debt forgiveness and the wage subsidy are the same thing: the economic engine that makes the program work. The label one chooses depends solely on perspective, not substance. From the employee's perspective, it's debt forgiveness; from the employer's, it's a wage subsidy. It is impossible, therefore, for the program to benefit *only* the student debtors. Further, not only does the program provide a benefit to PSLF employers, it says the employers are entitled to their benefit *first*.

Only *after* the student debtor completes his entire term of public service is he entitled to receive debt forgiveness. 20 U.S.C. § 1087e(m)(2).

Second, the Department says its premature debt forgiveness did not injure Mackinac because it left the public-service requirement intact. Department Br. 28-29. But this claim ignores *why* student debtors choose to remain in such positions for the prescribed time. PSLF employees are not indentured servants—they can leave whenever they wish. The program works only because it makes the student debtor's economic benefit contingent on fulfilling the public-service employment requirement. By prematurely forgiving their debts, the Department reduces the incentive to stay. If the Department reduces the wage subsidy enough, at some point it becomes more economically beneficial for student debtors to switch to private-interest employment before completion of their terms of public service. The Department's orders, therefore, disregard not only Congress's decision to make debt forgiveness available only after the term of service is complete, but also its decision to make debt forgiveness function as a wage subsidy.

And third, the Department simply disagrees with Congress about the need for the PSLF program. In the Department's view, Congress could have increased public-service employment by forgiving student debt *without* a public-service prerequisite. "[R]educing borrowers' loan balances" before completion of the service requirement, the Department says, "might cause more borrowers, not fewer, to pursue public interest employment, because borrowers who owe less can afford to forgo the comparatively higher salaries available in the private sector." Department Br. 29. The Department cites nothing to support this speculation, and then uses it to steal an intellectual base. Instead of demonstrating that the wage subsidy does not work as designed, it just assumes it doesn't and then substitutes its own economic speculation in place of Congress's judgment. But Congress structured the program the way it did because it concluded that turning student debt into a wage subsidy was the most effective method of increasing public-service employment. The Department may not change Congress's program, nor may it privilege its own dubious and unsupported economic theory over that of the legislative branch. Mackinac's injury does not disappear just because the Department thinks it knows better than Congress.

After rejecting Congress's form of the program and the economic theory upon which it is based, the Department concludes that "[p]laintiff's reliance on *Clinton v. City of New York*, 524 U.S. 417 (1998), is thus misplaced." Department Br. 29. Faulty premises do not ordinarily lead to logically sound conclusions, and such is the case here. The Department's flawed premise is that the PSLF program's economic engine is unnecessary and its economic rationale insupportable, so its conclusion that "[t]his case is nothing like *Clinton*," *id.* at 30, cannot logically follow. If *Clinton* is meaningfully distinguishable, therefore, the Department must identify the points of analogical departure.

It claims there are two. First, it said that unlike this case *Clinton* addressed "a tax benefit" designed to "put [farmers' cooperatives] on 'equal footing' with their competitors" in their efforts to purchase processing facilities. *Id.* at 30. Presumably, the distinction the Department is drawing is (a) that the wage subsidy does not put Mackinac on "equal footing" with its competitors in the labor market, as opposed to (b) the difference between tax benefits and wage subsidies or between farmers' cooperatives and public-interest employers. Assuming that is true, this is a distinction without a difference. The wage subsidy may not always—or even ever—put public-service employers on completely "equal footing" with their private-interest competitors, but it at least makes public-service employers *more* competitive (if not perfectly so) in the labor market. The difference between the subsidies at issue in this case and *Clinton* is, therefore, a matter of degree, not kind. And the Department says not a word about why the degree affects the existence of an injury.

The Department's second distinction is no more instructive on why *Clinton*'s analysis should not control the disposition of this case. "[T]he plaintiff in *Clinton* challenged the total elimination of the tax benefit," the Department says, whereas "the challenged action here did not alter the requirement that borrowers must work in public service for 10 years before receiving loan forgiveness under PSLF." Department Br. 31. The two halves of this quote are both significant, but for different reasons. The first half identifies another difference in degree rather than kind. Whether the government reduces the subsidy as opposed to eliminating it speaks to the gravity of the injury, not its existence. It simply isn't plausible to claim that the government could continue reducing the wage subsidy's value without causing an injury so long as it doesn't zero it out. The Department says nothing about why the very last incremental reduction would be the thing that causes a cognizable injury.

The second half of the quote above is just not true. "[T]he challenged action here," the Department claims, "did not alter the requirement that borrowers must work in public service for 10 years before receiving loan forgiveness under PSLF." *Id.* But this is *precisely* what the Department's orders did. Each of the orders forgave the interest that would have otherwise accrued during the orders' effective dates, which means the student debtors received loan forgiveness (partial, to be sure, but still loan forgiveness) *before* completing the public-service requirement, not *after*. Its claim to the contrary is objectively inaccurate. And that inaccuracy is material because it purports to refute Mackinac's well-pled facts establishing the economic injury it suffered, which it may not do in this procedural posture. Am. Compl. ¶¶ 70-77. Mackinac took its appeal from the district court's decision on the Department's motion to dismiss, the consideration of which requires the court to "take the material allegations of the [complaint] as true and construed in the light most favorable to the [plaintiff]." *United States v. Ritchie*, 15 F.3d 592, 598 (6th Cir. 1994). For the purpose of evaluating standing, the Court must also "accept as valid the merits of [the plaintiff's] legal claims[.]" *FEC v. Cruz*, 596 U.S. 289, 298 (2022).

In sum, the Department has offered no cognizable basis upon which to distinguish this case from *Clinton*. Both cases address governmental subsidies, both subsidies have the effect of benefitting purchasers in their respective markets, and both subsidies are funded by a reduction in the sellers' obligations to the government. So, when the Supreme Court said "[t]he Snake River farmers' cooperative … suffered an immediate injury" when it lost its anticipated subsidy, *Clinton*, 524 U.S. at 432, it could just as well have been describing the economic injury Mackinac has suffered here. And when it concluded that "[b]y depriving them of their statutory bargaining chip, the cancellation inflicted a sufficient likelihood of economic injury to establish standing under our precedents," *id.* at 432, it resolved the standing analysis in this case as well.

B. Mackinac Did Not Forfeit This Argument

The Department offered no other substantive argument to support its belief that Mackinac hasn't suffered a direct economic injury. It did, however, claim that Mackinac forfeited this argument by not raising it in the district court. Although Mackinac's briefing in this Court separates the analysis of the direct and competitive injury, it is not true that Mackinac didn't assert a direct injury in its district court briefing. *See,* *e.g.*, Mem. in Opp'n to Mot. to Dismiss 10 ("Plaintiff has standing because the administrative payment-and-interest suspension takes away a benefit that Defendants' own regulations acknowledge Congress created for public service employers like Plaintiff."), 11 ("Defendants' administrative payment-and-interest suspension undermines PSLF's financial incentive for such affected borrowers … ."), 12 ("PSLF confers on qualifying public service employers an economic advantage … in recruiting and retaining highly educated employees. The payment-and-interest suspension undermines that advantage by reducing PSLF's financial incentive to work at public service jobs … ."), 14 ("Defendants' own regulations acknowledge that PSLF provides financial incentives that 'encourage individuals to enter and continue in full-time public service employment … .'"), 15-16 ("PSLF's financial subsidy in the form of debt cancellation allows public service employers to offer higher effective compensation to workers … ."), 17 ("The magnitude of the PSLF subsidy benefiting public service employers varies based on the amount that would be eventually forgiven for each borrower-employee. The more PSLF-forgivable debt the borrower-employee has, the greater the subsidy. *Any* reduction in the borrower-employee's debt level reduces the subsidy at least a little bit."); 18 ("Here, the suspension extends a portion of debt-cancellation benefits that had previously been limited to PSLF-qualifying employers to Plaintiff's competitors. Just like the researchers in *Sherley*, Plaintiff must now invest more time and resources to recruit and retain college-educated employees.").

Mackinac's district court brief may have addressed the direct economic harm concurrently with its competitive injury, but that does not mean the argument was not there. Just over a month ago, the Sixth Circuit opined on a forfeiture argument very similar to what the Department makes here. There, the court observed that the appellant's "brief below argued causation in a single short paragraph, and his opening appellate brief didn't explicitly address it—for example, under a separate heading." *Smith v. City of Union, Ohio*, 144 F.4th 867, 878 (6th Cir. 2025). Nonetheless, the court rejected the forfeiture claim. *Id.* at 879.

Mackinac's discussion of the direct economic injury caused by the Department's reduction in the wage subsidy was twinned with its discussion of its competitive injury, and as such appeared throughout its district court brief (albeit not under a separate heading). And, of course, it is on prominent display in its opening brief in this Court. The forfeiture doctrine does not penalize a party for clarifying its arguments on appeal. If the rule were otherwise, appellants would be reduced to refiling their district court briefs in the circuit court.

III. MACKINAC HAS SUFFERED A COMPETITIVE INJURY

Mackinac's competitive injury is about as straightforward as it gets and certainly does not require the labyrinthine spelunking the Department's brief suggests. There is a labor market for college-educated employees, and it is competitive. Like all other employers, Mackinac is continually either recruiting new talent or attempting to retain the talent it already has. But there are others in the labor market who also recruit and attempt to retain college-educated employees. The market is competitive because employees are free to choose their employers based, at least in part, on compensation. Mackinac, as a non-profit organization, is generally at a competitive disadvantage because it competes with for-profit companies that can usually offer college-educated employees a higher compensation package.

Congress surveyed this market and was not well pleased with what it saw. It said it was "concerned with the growing number of individuals who do not choose to enter into lower paying professions, such as public service," and as a direct response to that concern, it enacted the PSLF program "[t]o further encourage public service … ." House Report, *supra*, at 49. Or, as the Department says, "[t]he Public Service Loan Forgiveness Program is intended to encourage individuals to enter and continue in full-time public service employment … ." 34 C.F.R. § 685.219.

The reason the PSLF program is effective in achieving Congress's goal—the *only* reason it is effective—is that it changes competitive conditions in the labor market.[3] And it does that by creating a wage subsidy in favor of public-service employers (as discussed above), which assists them in competing against private-interest employers for college-educated talent. Indeed, turning student debt into a wage subsidy in favor of employers like Mackinac is literally the only thing the PSLF program actually *does*. The existence of the program is proof positive

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[3] The competitor standing doctrine applies in the labor market just as much as it does in other markets. *See, e.g.*, *Mendoza v. Perez*, 754 F.3d 1002, 1011 (D.C. Cir. 2014) (competitor standing in the labor market for livestock herders); *Int'l Longshoremen's & Warehousemen's Union v. Meese*, 891 F.2d 1374, 1379 (9th Cir. 1989) (competitor standing in the labor market for longshoremen); *Wash. All. of Tech. Workers v. U.S. Dep't of Homeland Sec.*, 892 F.3d 332, 339 (D.C. Cir. 2018) (competitor standing in the labor market for STEM workers).

that Congress intentionally changed the labor market's competitive conditions. And it did so with sufficient impact that it could predict the wage subsidy would cause 50,000 student debtors a year to choose public-service employers over their labor market competitors. House Report, *supra*, at 72.

Mackinac's competitive injury is exactly what the competitor standing doctrine describes. This Court recognizes that "[g]overnment action that creates increased competition can cause economic injury. That is the basic law of economics." *Mackinac Ctr. for Pub. Pol'y v. Cardona*, 102 F.4th 343, 351 (6th Cir. 2024) (cleaned up). That injury, the Supreme Court says, can be the result of governmental alterations to a market's competitive conditions: "The 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. It follows logically that any petitioner who is likely to suffer economic injury as a result of governmental action that changes market conditions satisfies this part of the standing test." *Clinton*, 524 U.S. at 433 (cleaned up) (quoting 3 K. Davis & R. Pierce, Administrative Law Treatise 13-14 (3d ed. 1994)).

Mackinac's injury is a classic example of *Clinton*'s description of competitive standing. When Congress enacted the PSLF program, it established the competitive conditions it wished to see in the labor market for student debtors. It did so, as explained above, by using student debt to fund a wage subsidy that would increase the effective compensation public-service employers could offer college-educated talent. The wage subsidy put Mackinac in an improved competitive position vis-à-vis the private-interest employers who pursue the same talent. The Department, however, changed the congressionally established competitive conditions when it unlawfully decreased the value of the wage subsidy. A smaller wage subsidy benefits private-interest employers at the expense of public-service employers because the latter must either spend more of their own resources to maintain their competitive position, or risk failure in the competition for college-educated employees.

This differs in no material respect from the competitive injury in either *Clinton* or *Rental Housing Ass'n of Greater Lynn, Inc. v. Hills*, 548 F.2d 388 (1st Cir. 1977). The Department was unable to distinguish *Clinton* (as demonstrated above), and although Mackinac addressed *Hills* at length in its opening brief the Department does not mention it even once. *Clinton* and *Hills* are particularly instructive because they both addressed competitive standing in the context of governmental subsidies that effectively changed the price of the subject of the competition. In *Clinton*, the government subsidized the cooperatives' purchase of processing facilities. In *Hills*, the government subsidized low-income housing for seniors. Neither court had any difficulty recognizing the change in the relevant market's competitive conditions resulting from the governmental subsidies. The cooperatives suffered injury because the elimination of the anticipated subsidy meant the price they would have to pay for processing facilities would be greater; the existing landlords in *Hills* suffered injury because they would have to lower rents or lose tenants. In both cases, the economic effect of the governmental subsidies was identical: the market conditions changed by putting the plaintiff in a weaker competitive position relative to other market participants.

That is what has occurred here. By reducing the PSLF program's wage subsidy, the Department has changed the competitive conditions in the labor market for college-educated talent. The Department's unlawful orders have lowered the total effective compensation Mackinac can offer college-educated employees, which bestows a corresponding competitive advantage on private-interest employers in the market for the same talent. To remedy that competitive disadvantage, Mackinac must now spend more of its own resources. Being forced "to invest more time and resources" because the government changed the market's competitive conditions "is an actual, here-and-now injury." *Sherley v. Sebelius*, 610 F.3d 69, 74 (D.C. Cir. 2010).

Finally, the Department relies heavily—one might even say overwhelmingly—on this Court's decision in *Cardona* as the basis for rejecting Mackinac's competitive injury. But this case and *Cardona* involve two different economic theories based on two different types of government action. The claim at issue in *Cardona* had nothing to do with the impairment of the PSLF wage subsidy. Instead, *Cardona* addressed only whether counting periods of forbearance toward the PSLF public-service employment requirement created a cognizable injury. *Cardona*, 102 F.4th at 350 ("Plaintiffs challenge only the part that would count the months or years spent in long-term forbearance as payments toward forgiveness … ."). Forbearance and forgiveness have nothing in common with respect to the economics of the PSLF program. Forbearance simply delays payment, leaving the amount of indebtedness no less than before. Forgiveness, on the other hand, *does* reduce the amount of indebtedness. And because the amount of the wage subsidy equals the amount of indebtedness, forgiveness necessarily impairs the wage subsidy while forbearance does not. The Court's economic analysis in *Cardona*, therefore, cannot apply here.

Consequently, the significance of the Department's repeated reference to this Court's observation in *Cardona* that the plaintiffs "have not identified their competitors beyond saying private employers that hire college-educated workers" is unclear. *Id*. at 353. The Department obviously believes this to be a *sine qua non* for standing but does not say why. The Supreme Court, however, does not require competitor identification as a prerequisite to competitor standing. There simply needs to be an identified market in which the plaintiff competes. In *Clinton*, for instance, the only mention of the cooperatives' competitors was an oblique acknowledgement that they existed. In fact, the only reference in the entire opinion to a competitor was the Supreme Court's summary of the district court's decision: "[T]he Snake River plaintiffs were injured by the President's cancellation of § 968, as they lost the benefit of being on equal footing with their competitors and will 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 (cleaned up). The Supreme Court's conclusion that competitor standing had been established was based on the loss of the cooperatives' anticipated bargaining chip, not their identification of their competitors. Nor did the *Sherley* Court mention a competitor-identification requirement en route to concluding that the plaintiff had established competitor standing. It just nebulously noted that the plaintiffs would be competing with "proposals involving [embryonic stem cells]." *Sherley*, 610 F.3d at 73.

IV. CAUSATION/REDRESSABILITY

In any event, the Department says, Mackinac's injury resulted from the independent decisions of third parties because there is no causal connection between a reduction in the wage subsidy and the employment decisions of student debtors. It claims, for example, that "plaintiff's argument rests on unsupported speculation as to how third-party student-loan borrowers will respond to the challenged action," Department Br. 11, and that "[h]ow those borrowers will respond to the pause in interest accrual vis-à-vis their employment is wholly speculative," *id.* at 18, and that plaintiff's "economic theory rests on speculation regarding the actions of independent third parties," *id.* at 19. Therefore, the Department says, this "is not a typical competitor standing case" because the harm arises from the choices of third parties. *Id.* at 17. And without evidence proving "that [a] current or prospective employee altered his employment plans because of the pause in interest accrual," the Department argues, there can be no causation. *Id* at 19.

The Department's argument is, essentially, that it does not believe the PSLF program does what Congress designed it to do—cause student debtors to choose public-service employment. That's a surprising assertion coming from the Department responsible for implementing a program that Congress estimated would cause 50,000 student debtors a year to choose public-service employment over private-interest jobs. Congress was confident that the PSLF program's wage subsidy would fuel a significant yearly increase in public-service employment, so it is bizarre for the Department to claim that the effect of impairing that employment-influencing subsidy would be "wholly speculative."

This isn't the first time a governmental agency has tried to defeat standing by claiming the regulations for which it is responsible don't have the intended effect. In *Diamond Alternative Energy, LLC v. EPA*, 145 S. Ct. 2121 (2025), the Supreme Court addressed California's claim that producers of automotive fuels did not have standing to challenge a regulation designed to decrease the manufacture and sale of automobiles powered by such fuel. "[T]he fuel producers lacked Article III standing," California argued, "because they had not established any probability that automobile manufacturers would change course if EPA's decision [to approve California's regulation] were vacated." *Id.* at 2132 (cleaned up). The fuel producers, however, pointed out that "the entire purpose of California's [regulation] is to reduce the use of gasoline and other liquid fuels in motor vehicles as compared to what otherwise would occur in a free market." *Id.* at 2134. That, they said, would "cause automakers to … produce fewer gasoline-powered vehicles," which in turn would mean "fewer gasoline sales, leading to a monetary injury in fact for producers of gasoline and other liquid fuels." *Id.*

California, like the Department here, brushed off the causal relationship with the assertion that "this case is unusual and does not fit the typical pattern" because "even if the California regulations are invalidated, automakers would not likely manufacture or sell more gasoline-powered cars than they do now." *Id.* at 2137. That is, California argued that notwithstanding the regulation's goal of discouraging the manufacture and sale of gasoline-powered automobiles, invalidating the regulation would have no effect on the manufacture and sale of gasoline-powered automobiles. For the purpose of trying to defeat standing, California said its regulation would have no discernible effect.

The Department is attempting something similar here. The only circumstance in which impairment of the wage subsidy will have no impact on student debtors' employment decisions is if such subsidies, as a rule, do not affect employment decisions. It cannot simultaneously be true that the wage subsidy efficaciously assists public-sector employers in recruiting and retaining student debtors, *and* that impairing the subsidy will *not* affect their recruitment and retention efforts. The wage subsidy either works as Congress designed it, in which case impairing the subsidy will make it more costly to hire student debtors (as Mackinac argues), or the wage subsidy *doesn't* work as Congress designed it, in which case impairing its value has no effect (as the Department argues).

The Supreme Court did not buy California's argument, nor should this Court buy the Department's adaptation. "To begin with," the Supreme Court said, asserting that the regulation will not achieve its intended purpose "is an odd argument for EPA and California to advance." *Id.* "After all, if invalidating the regulations would change nothing in the market, why are EPA and California enforcing and defending the regulations?" *Id.* Something similar could be asked of the Department: If reducing the wage subsidy will not adversely affect recruitment and retention, why have the program at all?

This Court should reverse the district court for the same reason the Supreme Court reversed the lower court in *Diamond Alternative Energy*. There, the court of appeals said "redressability depended on how third-party automakers would act in the absence of California's fleet-wide emissions standards and electric-vehicle mandate," and because the plaintiffs had not proved what actions those third parties would take, it had not satisfied the causation/redressability element of standing. *Id.* at 2132. The Department makes the same argument here.

The Supreme Court, however, rejected the circuit court's (and the Department's) method of accounting for the decisions of third parties when evaluating standing. It said that "this Court's analysis of causation and redressability has recognized commonsense economic realities." *Id.* at 2136. Therefore, "[w]hen third[-]party behavior is predictable, commonsense inferences may be drawn." *Id.*

Not only is the behavior of student debtors in response to the wage subsidy "predictable," Congress went through the process of actually predicting it. House Report, *supra*, at 72. Consequently, the Supreme Court's admonition that commonsense inferences may inform the causation/redressability requirement applies to this case. One obvious commonsense inference is that impairing the program's wage subsidy makes it less likely that a student debtor will opt for public-service employment, which in turn means Mackinac will have to spend more of its own resources in the labor market. *Diamond Alternative Energy* authoritatively refutes the Department's argument that Mackinac must prove that specific employees will choose not to pursue or remain in public-service employment in order to satisfy standing.

The Department's final argument in this category is that the relief Mackinac requested won't redress its injury. Mackinac asked for a judgment "setting aside the payment-and-interest suspension and its extensions." Am. Compl., ad damnum clause at E. If those are set aside, the value of the PSLF program's wage subsidy will be restored to what it was prior to the Department's unlawful orders. That will certainly redress the injury Mackinac has already sustained. Mackinac also asked for a declaration that the orders reducing the program's wage subsidies were unlawful, which will protect the value of Mackinac's wage subsidy going forward. *Id.* at A-D. The Department quibbles with Mackinac's request for "[a] judgment requiring the Department, to the extent practical, to nominally unwind by $1 per affected borrower its unlawful debt cancellations caused by the suspension and its extensions and thereby partially restore PSLF incentives that were improperly depleted." *Id.* at F. This was proposed as a potential limitation on the relief requested under paragraph E and is peripheral to the case and to Mackinac's objectives. In any event, the Court may disregard this limitation.

V. THIS CASE IS NOT MOOT

This case is not moot for two reasons. First, and most obviously, Mackinac's complaint requests a judgment setting aside the Department's unlawful orders reducing the wage subsidy. A judgment in Mackinac's favor, therefore, would restore the wage subsidy to its original unimpaired value.

And second, the Fiscal Responsibility Act of 2023 ("FRA") did not moot even the declaratory relief Mackinac requested. The Department cryptically asserted that no further executive reductions of the wage subsidy are possible because "Congress expressly provided that the Secretary 'may not use any authority to implement an extension' of the pandemic-era suspension on payments and waivers of interest, unless so authorized by a later Act of Congress." Department Br. 36 (quoting Fiscal Responsibility Act of 2023, Pub L. No. 118-5, § 271(b), 137 Stat. Ann. 10, 33). But that assertion provides an incomplete, and misleading, account of what Congress said.

A more accurate accounting of what Congress forbade was reliance *on the CARES Act* as authority for any extensions of previous orders reducing the wage subsidy. The FRA says that "[e]xcept as expressly authorized by an Act of Congress enacted after the date of enactment of this Act, the Secretary of Education may not use any authority to implement an extension of any executive action or rule specified in subsection (c)." Fiscal Responsibility Act § 271(b). The "executive action or rule" to which this refers is the following: "[T]he waivers 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* (20 U.S.C. 1001 note)." *Id.* § 271(c) (emphasis added). So, what the FRA forbids is the extension of any previously issued waivers and modifications that were based on the CARES Act.

This hardly forecloses the Department from issuing future orders impairing the value of the wage subsidy. First, instead of *extending* the previously issued waivers or modifications (which is the only thing the FRA prohibits), the Department could simply start over with *new* waivers or modifications (which the FRA does not address). And second, the FRA's prohibition on extensions applies only to those waivers and modifications that were issued "under section 3513 of the CARES Act." That provision, of course, is what gave the Department lawful authority to forgive interest on student loans, but only through September 30, 2020. The Department, however, apparently believes statutory authority is optional, inasmuch as most of the orders at issue in this case did not rely on any statutory authority at all. *See, e.g.*, Am. Compl. ¶ 24, 30, 38, 40, 42, 44, 48. Mackinac's requested declaratory relief would protect the value of the wage subsidy going forward, so it is not moot.

CONCLUSION

For the foregoing reasons, this court should reverse the district court and remand this case for further proceedings.

August 27, 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 6,491 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 August 27, 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