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Mackinac Center Asks Federal Court to Immediately Halt ED’s Unlawful Student Loan Payment Pause

Mackinac Center for Public Policy v. U.S. Department of Education, Miguel Cardona, and Richard Cordray

Washington, DC (May 11, 2023) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, has filed a [Motion for Preliminary Injunction](#) in *Mackinac Center for Public Policy v. U.S. Department of Education, Miguel Cardona, and Richard Cordray*. The Motion urges the U.S. District Court for the Eastern District of Michigan to stop the Department of Education’s unlawful, ongoing pause on the obligation of student-loan debtors to make monthly payments on their outstanding debt and the accrual of monthly interest on that debt. The student-loan pause wipes out \$5 billion of U.S. Treasury assets every month, and it has done so for the past 32 months at a cumulative cost to taxpayers of \$160 billion and counting. This unauthorized, backdoor form of debt reduction disproportionately benefits high-income earners with larger loans, such as doctors and lawyers.

Congress suspended monthly payment obligations and interest accrual on federal student loans by law for six months in response to the Covid-19 pandemic. When that pause expired in September 2020, the Department unilaterally extended it without any lawful basis. Congress’s decision to suspend student-loan payments and interest accrual used its exclusive power of the purse. But Congress only authorized six months of debt relief—approximately \$30 billion—and did not authorize a penny more in expenditure. So, every additional month’s extension of the pause has unlawfully cancelled debt, in violation of the Constitution’s Appropriations Clause.

There is no reason to believe the current extension is the final one, as the Department of Education has already twice renewed purportedly “final” extensions. Unless enjoined, the government will continue to inflict irreparable harm not only on the Mackinac Center, but also on many other nonprofit organizations. Lowering student-loan debt through the payment-and-interest moratorium undermines congressionally-enacted debt forgiveness programs that incentivize borrowers to take certain jobs, including the Public Service Loan Forgiveness (PSLF) program, which Congress enacted in 2007 to provide strong incentives for borrowers to seek and maintain employment with qualifying public-service employers, including § 501(c)(3) nonprofit organizations.

The Major Questions Doctrine prohibits agencies from addressing issues of such “vast economic and political significance” without explicit congressional authorization. NCLA argues that suspending student-loan payments and outright canceling interest for all borrowers is a question of vast economic and political significance for Congress to decide. Recasting the HEROES Act of 2003, the purported legal justification for the extensions, from a statute permitting limited modifications for targeted groups—primarily those serving in the military during wartime—to one that can suspend payments and cancel interest for all 45 million borrowers is a change so significant as to essentially rewrite the statute. The only way to protect Plaintiff here from the competitive injury it is suffering is to enjoin the Department of Education’s unlawful action and restart payments on student loans.

NCLA released the following statement:

“The CARES Act’s six-month student-loan debt payment pause reflected Congress’s considered judgment for when payments and interest must resume. The Department of Education had and has no authority to override that

judgment. This unlawful ongoing student-loan payment pause fits a familiar pattern that already played out in the context of the federal eviction moratorium. First, Congress enacts a temporary economic-relief program, then an administrative agency extends that program indefinitely, and finally courts step in to halt the unlawful scheme.”
— **Sheng Li, Litigation Counsel, NCLA**

For more information visit the case page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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