



FOR IMMEDIATE RELEASE

Media Inquiries: [Judy Pino](#), 202-869-5218

NCLA Suit for Cato and Mackinac Center Contests Biden’s New Student Loan Debt Canceling Scheme

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

Washington, DC (August 4, 2023) – The New Civil Liberties Alliance filed a [Complaint](#) on behalf of the Cato Institute and the Mackinac Center for Public Policy today in the U.S. District Court for the Eastern District of Michigan to stop President Biden’s utter disregard for federal law and the Constitution. Moving on an accelerated schedule to deter court review, the Department of Education announced its unlawful new scheme before the ink was dry on the [Supreme Court opinion](#) striking down its old \$430 billion student loan debt cancellation plan.

The latest scheme would immediately wipe out \$39 billion of student loan debt owed to the U.S. Treasury by more than 800,000 people under the Income-Driven Repayment (IDR) program by crediting non-payments during periods of forbearance as monthly payments. The plan would cancel even more debt prematurely at taxpayer expense for another 2.8 million IDR borrowers in the future. The Department has no lawful authority to do this.

NCLA argues the U.S. Department of Education’s actions violate the Constitution’s Appropriations Clause, which grants Congress near-exclusive authority to cancel debt owed to the Treasury. Instead of promulgating the plan through the required notice-and-comment and negotiated rulemaking process under the Administrative Procedure Act, the Department simply issued a press release that did not identify any laws to justify it.

Canceling borrowers’ debt through this scheme would erase their incentive to participate in the Public Service Loan Forgiveness (PSLF) program by completing ten full years of work for qualified non-profit employers while making monthly payments. The plan thus directly harms non-profit organizations that benefit from PSLF like Cato and the Mackinac Center and undermines Congress’ goals in enacting the PSLF program. NCLA made similar standing arguments in its successful *Biden v. Nebraska amicus curiae* [brief](#), in a now-closed [federal lawsuit](#) with the Cato Institute against the previous student loan debt cancellation plan, and in a continuing Mackinac Center [suit](#) challenging the Department of Education’s repeated student loan payment suspensions.

NCLA released the following statements:

“In the *Nebraska* case, the Supreme Court struck down the Department of Education’s brazen attempt to pull a billion-dollar ‘elephant’ out of a statutory ‘mousehole.’ This time the Department’s loan-cancellation scheme does not even pretend to have a statutory ‘mousehole.’ The PSLF and IDR statutes require borrowers to make a certain number of monthly payments before earning forgiveness. By trying to count non-payments as payments, the strategy seems to be to cancel \$39 billion faster than a court can review and stop this blatantly unlawful act.”
— **Sheng Li, Litigation Counsel, NCLA**

“Newsflash for Secretary Cardona and Administrator Cordray: Non-payments are not payments. No amount of nonsense changes the essential fact Congress required debtors to make payments *before* receiving debt relief.”
— **Mark Chenoweth, President and General 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.

###