

Student Loan Forgiveness Challenge Faces Sixth Circuit Pushback

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- Case centers on 2023 move to wipe out debt for 800,000
- Judge expresses skepticism on challengers' standing to sue

At least one federal appeals judge seemed skeptical Thursday that two libertarian think tanks had the ability to sue the Biden administration over its move to cancel nearly \$40 billion in student debt.

The challenges to the plans are based on a part that affects participants in the Public Service Loan Forgiveness program, which wipes out the remaining balance of federal student loans held by public employees and those who work for certain nonprofits after 10 years. The Washington, D.C.-based Cato Institute and the Mackinac Center for Public Policy, based in Michigan, say the loan forgiveness put them at a disadvantage because it harms their ability to hire good candidates by offering them the benefit of participation in that forgiveness program.

But Judge Andre B. Mathis, of the US Court of Appeals for the Sixth Circuit, told an attorney for the think tanks during oral argument in Cincinnati that he was “having a difficult time seeing that here, where you point to specific private employers that your clients are competing with that you have a disadvantage with.”

Sheng Li, an attorney from the New Civil Liberties Alliance representing the think tanks, said he didn't believe case law required that specific competitors be listed and that his clients are competing with “private employers in general.” But even if the think tanks had to do so, the case should still be revived because the trial judge quickly dismissed it and didn't give them a chance to revise their complaint, Li argued.

The think tanks also said the government deprived them of their rights under the Administrative Procedure Act by not following the traditional federal rulemaking process and having a period where the public could weigh in.

\$39 Billion

While the Biden administration has announced other instances of student debt forgiveness, with one being announced Thursday, the policy and actions at issue center on the Education Department's July 2023 announcement to forgive \$39 billion for more than 800,000 borrowers enrolled in income-driven repayment plans. The forgiveness announcement came shortly after

the US Supreme Court shot down Biden's grander plan to slash student debt for more than 40 million people.

The administration said it was correcting "past administrative failures" affecting the number of monthly payments that qualify toward forgiveness. In addition to the 800,000 whose loans were forgiven, many more had their payment plans shortened.

The Mackinac Center and Cato Institute sued in August, seeking a temporary restraining order and preliminary injunction to prevent the administration from adjusting the accounts. A Michigan federal judge quickly ruled that think tanks didn't have standing to challenge the action.

"The promise of loan forgiveness after 10 years of payment and service provides a powerful financial incentive for borrowers to work for qualified public service employers over their competitors in the non-public service sector," Li said Thursday.

The administration said there's no reason to disturb the trial judge's order. The think tanks have no "personal stake" in how much debt student borrowers have and didn't cite any cases that give them standing as a competitor of other companies, Justice Department attorney Thomas Pulham said.

"They say that these borrowers, when they are given the loan forgiveness to which they're entitled after 10 years in service, that all of a sudden, when their loans are forgiven, that they are going to leave their established public service careers that they've had for at least 10 years and immediately run to the private sector to make more money," Pulham said. "I mean, normally, one would think that the debt obligation from student loans is what creates the pressure to make more money."

The case is Mackinac Ctr. for Pub. Pol'y v. Cardona, 6th Cir., No. 23-1736, oral argument 3/21/24.