



## Cato Institute Fights for Standing to Challenge Biden's Student Debt Relief Program

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CINCINNATI (CN) — Two conservative think tanks argued in court Thursday that the Biden administration overstepped its authority when it canceled student loans for more than 800,000 people who have been in repayment for more than 20 years.

The Koch-founded Cato Institute and the Mackinac Center for Public Policy filed a lawsuit challenging the debt relief program in August, in which they alleged that the federal government exceeded its power, particularly because it did not properly provide public notice or space for public comment on the matter.

A federal judge struck down their lawsuit and said that they lacked the legal standing. The groups shortly appealed to the Sixth Circuit, maintaining that Biden's modifications to the loan forgiveness program, which allowed the cancellation of \$39 million in student debt for 804,000 people, violated the appropriations clause of the Constitution.

Sheng Li, an attorney with the New Civil Liberties Alliance representing the conservative groups in the lawsuit, argued in court on Wednesday that the policy also minimized the competitive advantage that nonprofit companies should receive for participating in the debt relief program.

"The program is injured when an executive agency here, by counting non-payments oxymorically as payments, reduces, shortens or otherwise diminishes that advantage," he said.

U.S. Circuit Judge Andre Mathis, appointed by President Joe Biden, asked for more specificity: "Who are the competitors, for your clients that the competitive standard applies to? Who are you competing with?"

"If you look at our clients' web pages, with their scholars and staff, they hire lawyers, economists, communications folks," Li replied. "There's a nationwide market for competition for those professions. Many of the current staff — and in, you know, Cato's attorneys, for instance — many of them used to work for profit, big law firms. And there's a competition between nonprofit employers like Cato and the Mackinac Center and for profit employers."

After Mathis took issue with that argument, because Li didn't cite those instances in the original complaint, the attorney walked back.

"I think the competition is with respect to private employers in general," Li said. "I don't think we need to identify specific private employers."

Congress created the underlying program, the Public Service Loan Forgiveness Program, in 2007. It provides borrowers loan forgiveness after 10 years if they work a public service job and make their monthly payments on time.

The Biden administration adjusted that program in 2023 after investigations and audits found that borrowers in these programs weren't getting the loan forgiveness to which they were entitled, thanks to "improper recordkeeping and abusive practices by loan servicers," Education Secretary Miguel Cardona wrote in a [brief](#).

The modifications to the program, collectively referred to as an account adjustment, tie borrowers' monthly payments to a percentage of their disposable income and guarantee balance forgiveness after an extended period of time — typically 20 to 25 years.

In court Wednesday, the plaintiffs argued that the new relief options could make student loan borrowers less attracted to working in the public sector, because after they get the loan forgiveness they can just run off to work in the private sector, where they might make more money.

Education Department attorney Thomas Pullman shot down that logic.

"I mean, normally one would think that the debt obligation from student loans is what creates the pressure to make more money," Pullman said. "So I think it's really counterintuitive that as soon as people no longer have loans — that that's when they all of a sudden need to, you know, rush to a higher salary."

As to standing, Pullman argued that the plaintiffs had no personal stake in the loan balance of student loan borrowers, so they were not harmed by the Department of Education correcting failures in the administration of student loan programs.

"The plaintiffs say that they have competitor standing but they are not in competition with student loan borrowers," Pullman said. "And they have not cited any cases that recognized competitor standing to challenge a benefit conferred on a third party."

The plaintiffs also allege that the lower court erred when it dismissed the group's lawsuit without giving them a chance to respond. Pullman said the error was actually on the part of the plaintiffs, because they didn't attempt to remedy their complaint or conduct discovery after the initial lawsuit was struck down.

"They waited till the reply brief to spring this on the court. So this argument is totally forfeited, as a result of their their own conduct," Pullman said. "In addition, the cases that they rely on, say that a district court should not dismiss sua sponte case on the merits. This was not a dismissal on the merits...This was a dismissal for lack of jurisdiction."

U.S. Circuit Judge Eugene Siler, appointed by former President George W. Bush, and U.S. Circuit Judge Guy Cole, appointed by former President Bill Clinton, also appeared on Thursday's panel.

The judges did not indicate when they plan to rule on the case.