



NCLA Amicus Brief Supports States' Suit Against Biden Administration's Mass Student Loan Cancellation

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Washington, D.C., Oct. 25, 2022 (GLOBE NEWSWIRE) -- The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, has filed an *amicus curiae* brief in the lawsuit brought by six States—Nebraska, Missouri, Arkansas, Iowa, Kansas, and South Carolina—to block the Biden Administration's unlawful student loan debt cancellation plan. The U.S. Court of Appeals for the Eighth Circuit issued a stay of the executive action while it considers the States' emergency request. NCLA urges the Eighth Circuit to halt the debt cancellation plan while it considers the States' arguments on appeal because the plan is so obviously unconstitutional. Specifically, the U.S. Department of Education's invocation of the Higher Education Relief Opportunities for Students (HEROES) Act of 2003 to rewrite statutory provisions to cancel hundreds of billions of dollars owed to the Treasury violates both the Vesting and Appropriations Clauses of the Constitution.

The Department of Education's scheme is legislative in character because it amends laws duly passed by Congress. It is also an appropriation because any amount of canceled debt directly reduces funds that would otherwise flow into the Treasury. The HEROES Act would be unquestionably unconstitutional if it empowered an executive agency like the Department of Education to amend statutes and appropriate funds. Yet, that is in essence what the Biden Administration (mis)interprets that law to do. In short, the Department of Education relies on an unconstitutional interpretation of the HEROES Act to justify its unlawful mass debt cancellation.

Plaintiff States also would suffer concrete and irreparable injuries absent an injunction. In addition to the injuries set forth in the Motion for Injunction Pending Appeal, the student loan debt cancellation plan further injures the States by taking away congressionally enacted incentives under the Public Service Loan Forgiveness (PSLF) program for student-loan borrowers to find and maintain employment at state agencies. NCLA represents the Cato Institute in the U.S. District Court for the District of Kansas in a challenge to the Biden Administration's invocation of the HEROES Act to cancel hundreds of billions of dollars of federally held student debt. Like 501(c)(3) organizations, States benefit as employers from the incentive scheme built into the PSLF. And, like nonprofit employers, States as employers will be irreparably harmed by the Biden Administration's unlawful infringement of the PSLF's incentive structure.

The government argues that the HEROES Act should be read broadly to grant it license to make virtually any modification or waiver of prior acts of Congress it deems necessary to address the Covid-19 pandemic, including wiping out debt owed to the Treasury. But if construed so broadly, the Act would divest to an executive agency Congress's sole power to make laws and appropriate funds, in violation of Article I of the Constitution. Adherence to the separation-of-powers principles embedded in the Constitution is, in NCLA's view, essential to maintaining our Republic's representative form of government.

NCLA released the following statements:

“This attempt to wipe out a half-trillion dollars of debt owed to the Treasury is an obviously unconstitutional attempt by the President to usurp Congress's power of the purse. The President is attempting a *fait accompli* before courts intervene—he knows that once the ledger is illegally wiped clean, there is little hope of recouping losses to the public fisc. An injunction pending appeal exists for this precise scenario: to halt a clearly unlawful action that cannot be undone.”

— **Sheng Li, Litigation Counsel, NCLA**

“The States are financially affected by this lawless action and should have standing to bring the matter to court. It is amazing that even the proponents of this action can barely allege a legal basis for it. The Constitution puts the ‘power of the purse’ in Congress. That is where it should stay.”

— **John J. Vecchione, Senior Litigation Counsel, NCLA**