

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

CATO INSTITUTE,

Plaintiff,

v.

U.S. DEPARTMENT OF EDUCATION;

MIGUEL CARDONA, Secretary, U.S.
Department of Education, in his official capacity;

RICHARD CORDRAY, Chief Operating Officer
of Federal Student Aid, U.S. Department of
Education, in his official capacity;

JOSEPH R. BIDEN, President of the United
States, in his official capacity;

Defendants.

CASE NO. 22-CV-4055-TC-REC

NOTICE OF EIGHTH CIRCUIT RULING

Plaintiff Cato Institute files this Notice to alert the Court to a recent ruling by the U.S. Court of Appeals for the Eighth Circuit that is relevant to this case.

On Thursday, October 20, 2022, the U.S. District Court for the Eastern District of Missouri dismissed a complaint filed by Nebraska and five other states (including Kansas) challenging the same Loan Cancellation Program that Plaintiff challenges in this case. *See Nebraska v. Biden*, No. 22-cv-1040 (E.D. Mo.) (Dkt. 44). The States then filed a motion for an injunction pending appeal and an emergency motion for an administrative stay prohibiting the government from discharging any student loan debt under the program until the Eighth Circuit rules on the States' motion for an injunction pending appeal. *See Nebraska v. Biden*, No. 22-3179 (8th Cir.). The Eighth Circuit granted the States' emergency motion for an administrative stay on Friday, October 21, 2022. The Eighth Circuit's Order

is attached as Exhibit 1. The Eighth Circuit set an expedited briefing schedule on the motion for an injunction pending appeal, ordering the government to file its opposition by Monday, October 24, at 5:00 pm and the States to file their reply by Tuesday, October 25, at 5:00 pm.

Notwithstanding the Eighth Circuit's administrative stay, Plaintiff continues to believe that its Motion for Temporary Restraining Order and Preliminary Injunction (ECF No. 13) should proceed as indicated therein. Given the expedited briefing schedule ordered by the Eighth Circuit, that Court may lift its administrative stay of the Loan Cancellation Program at some point in the coming week, which would again enable Defendants to inflict irreparable harm on Plaintiff through the Loan Cancellation Program, unless this Court intervenes. *See* ECF No. 13-1. Moreover, even if the Eighth Circuit were to grant the States' motion for an injunction pending appeal in *Nebraska v. Biden*, there is no guarantee that the scope of such an injunction would protect Plaintiff from irreparable harm. Plaintiff therefore continues to request a TRO from this Court to halt the cancellation of any student-loan debt until the Court rules on Plaintiff's motion for preliminary injunction, as well as expedited briefing and consideration of its motion for a preliminary injunction. *See* ECF No. 13.

October 24, 2022

Respectfully submitted,

/s/ Markham S. Chenoweth

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NEW CIVIL LIBERTIES ALLIANCE

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CERTIFICATE OF SERVICE

I hereby certify that, on October 24, 2022, a true and correct copy of the foregoing was filed electronically through the Court's CM/ECF system, to be served on counsel for all parties by operation of the Court's electronic filing system for all parties who have appeared and to be served on those parties who have not appeared in accordance with the Federal Rules of Civil Procedure.

The following parties will be served through certified mail:

Joseph R. Biden
President of the United States
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Miguel Cardona
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Chief Operating Officer, Federal Student Aid, U.S. Department of Education
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Merrick Garland
Attorney General, Department of Justice
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The following parties will be served by hand:

Duston J. Slinkard
United States Attorney for the District of Kansas
500 State Ave., Suite 360
Kansas City, Kansas 66101

/s/ Markham S. Chenoweth
Mark Chenoweth