



July 5, 2023

The Honorable Henry J. Kerner
Special Counsel
Office of the Special Counsel
1730 M Street, NW, Suite 218
Washington, DC 20036

Re: Hatch Act Violations by Miguel Cardona

Dear Mr. Kerner:

America First Legal Foundation (“AFL”) is a national, nonprofit organization working to protect the rule of law, prevent executive overreach, ensure due process and equal protection for all Americans, and promote knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States.

We write to request that the Office of Special Counsel (“OSC”) investigate whether U.S. Department of Education Secretary Miguel Cardona violated the Hatch Act by using his official title to send partisan press statements. On June 30, 2023, Secretary Cardona, acting in his official capacity, issued a statement concerning the Supreme Court’s decision invalidating the Biden Administration’s student debt relief plan. He said that “It’s an outrage that lawsuits brought on by Republican elected officials have blocked critical student debt relief.”¹ On July 1, 2023, Secretary Cardona, acting in his official capacity, said further that “Republican state officials” made sure that “student debt is a barrier for Americans to access college or economic opportunity” and did not “put the needs of students and borrowers first.”²

As you know, the Hatch Act prohibits any executive branch official or employee from “us[ing] his official authority or influence for the purpose of interfering with or affecting the result of an election.”³ Historically, the OSC has deemed public statements by persons similarly situated to Secretary Cardona that attack others based on political affiliation to be prohibited political activity. For example, in its investigation of Kellyanne Conway the OSC found that Ms. Conway’s “attacks” on several Democratic members of Congress was relevant to its conclusion that she

¹ Dep’t of Edu., Press Office, Secretary Cardona Statement on Supreme Court Ruling on Biden Administration’s One Time Student Debt Relief Plan (June 30, 2023), <https://bit.ly/43b7x2z>.

² Dep’t of Edu., The Biden-Harris Administration Won’t Stop Fighting for Borrowers (July 1, 2023), <https://bit.ly/3NZ73qX>.

³ 5 U.S.C. § 7323(a)(1).

violated the Hatch Act.⁴ Similarly, the OSC’s 2021 report on its “Investigation of Political Activity by Senior Trump Administration Officials During the 2020 Presidential Election” found that certain “statements”, including attacks on a political party substantively identical to those made by Secretary Cardona, “is unquestionably political activity, and officials representing the U.S. government are prohibited from making such comments while engaged in official duties.”⁵

Accordingly, AFL respectfully requests that OSC investigate whether Education Secretary Miguel Cardona violated the Hatch Act when he used an official government account to share partisan political material.

Sincerely,

/s/ Gene P. Hamilton

Gene P. Hamilton

Vice President and General Counsel

America First Legal Foundation

⁴ Letter from Henry J. Kerner, U.S. Off. of Special Couns., to Donald J. Trump, President of the United States (June 13, 2019) (available at <https://bit.ly/3O0KeEt>).

⁵ See, e.g., U.S. Off. of Special Couns., Investigation of Political Activities by Senior Trump Administration Officials During the 2020 Presidential Election at 16, 18-19, 21, 26, 30, 39 (Nov. 9, 2021) bit.ly/3CZM69Y.



Yesterday's Supreme Court decision on student debt relief

U.S. Department of Education sent this bulletin at 07/01/2023 05:29 PM EDT

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U.S. DEPARTMENT OF EDUCATION

July 1, 2023

The Biden-Harris Administration won't stop fighting for borrowers

Yesterday, the Supreme Court issued a decision invalidating the Biden-Harris Administration's student debt relief plan following a legal challenge by Republican state officials.

We believe the Supreme Court got it wrong.

President Biden and I recognize how critical student debt relief would have been for tens of millions of Americans and their families, and we understand many borrowers may be wondering how yesterday's decision affects them.

This decision from the Supreme Court means that the Administration cannot move forward with the one-time student debt relief plan announced last year. The Department had already approved applications for more than 16 million borrowers, and if you are one of those borrowers, you should know that we are unable to provide you with relief under this program due to the Court's ruling.

While we disagree with yesterday's ruling, our Administration will not stop fighting to provide relief to borrowers who need it most, and we will use every tool at our disposal to do so.

Yesterday, our Administration announced three actions to do just that:

- **First, we are taking action aimed at opening an alternative path to debt relief for working and middle-class borrowers.** We started the process to provide relief to as many people as we can, as fast as we can, through rulemaking. Under the law, this path will take time, but we are determined to keep fighting for borrowers and we will keep you updated in the months ahead.
- **Second, the Administration is releasing the details of the most affordable repayment plan ever created, called the [Saving on a Valuable Education \(SAVE\) Plan](#).** Later this summer, borrowers will start saving money under the new plan, which will cut monthly payments to \$0 for millions of borrowers making \$32,800 or less (\$67,500 for a family of four) and save all other borrowers at least \$1,000 per year. Additionally, it will stop runaway interest that leaves borrowers owing more than their initial loan.
- **Third, to help borrowers back into repayment, we are creating a temporary "on-ramp" to repayment for one year for those struggling to make payments.** For borrowers who still cannot make their payments, we are creating a temporary "on-ramp" period that will help borrowers avoid the harshest consequences of missed, partial, or late payments. During that time, missed, partial, or late payments will not lead to negative credit reporting, default, or loans being sent to collection agencies. Borrowers who can make payments should do so, as payments will be due and interest will accrue during this transition period. Additionally, missed payments will not count toward loan forgiveness under any of the income-driven repayment plans or Public Service Loan Forgiveness.

I encourage borrowers to visit StudentAid.gov/debtrelief to learn more about these actions and to identify a repayment plan that works for them as they prepare for monthly payments due in October 2023.

In addition to these actions, our Administration will continue our important work of making college more affordable and accessible for more American families and making the student loan system more manageable for borrowers. Under President Biden's leadership, we have taken unprecedented steps toward this goal, including by increasing Pell Grants by \$900, which is the largest increase in a decade; fixing a broken Public Service Loan Forgiveness program and discharging \$42 billion in debt so public service workers can get the loan relief they were promised; and holding colleges accountable when they take advantage of students and borrowers.

We will not stop fighting to make sure that student debt is not a barrier for Americans to access college or economic opportunity. We will continue to put the needs of students and borrowers first, help borrowers access the support and resources they need, and make the promise of college a reality for more American families.

We'll keep fighting for you!

Sincerely,

Miguel A. Cardona
Secretary of Education

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