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Democrats Push Immediate Sign-Up for College Debt Relief as Legal Challenges Mount

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Democratic lawmakers are urging people who qualify for the Biden administration's student debt relief program to sign up sooner rather than later amid mounting lawsuits and legal uncertainty regarding the plan.

"The deadline to apply is December 31st, 2023. But it only takes minutes to apply, and you don't need to upload any forms, so why not apply tonight?" wrote Sen. Kirsten Gillibrand (D-NY) in a Monday tweet.

President Joe Biden's student debt relief program, which aims to help an estimated 43 million borrowers receive up to \$10,000 or \$20,000 of loan forgiveness, saw more than 8 million applicants during the program's initial trial rollout this weekend, and potentially millions more have applied since its opening on Monday.

But before borrowers could even fill out the easy application form, mount against the president's plan for weeks since he announced the debt relief program in August, adding up to at least five challenges from various conservative and libertarian legal groups.

The libertarian Cato Institute became the latest group to file a lawsuit against Biden's program on Tuesday, calling the program an "unlawful administrative power."

However, it remains to be seen whether the various lawsuits claiming an administrative overreach will prevail in court because only one lawsuit filed by six Republican-led states has found its way in front of a judge who is still mulling whether to grant standing over their case.

District Judge Henry Autrey, an appointee of President George W. Bush, took up the lawsuit filed by GOP state attorneys general from Missouri, Arkansas, Kansas, Nebraska, South Carolina, and Iowa last month.

During a hearing for a preliminary injunction on Oct. 12, Autrey asked whether states have standing, or the ability to demonstrate they will suffer irreparable harm, to bring the litigation against the president and the Department of Education, likening the legal threshold for standing to baking a cake.

“You can have all the ingredients for a cake. But it’s hard to make a cake if you don’t have a pan to put the cake in. The pan is the standing,” Autrey said.

Autrey declared a recess over the case and said last week that attorneys would soon hear from him on the matter.

Numerous challengers to the debt relief program have argued the government does not have the authority to discharge debt by using the 2003 HEROES Act, while the government contends Congress gave the secretary of education the power to utilize said law. The government also believes challengers lack standing to sue over the forgiveness plan because there has not been any action to cite irreparable harm or injury by the program.

However, financial aid and student loan researcher Mark Kantrowitz told the *Washington Examiner* that borrowers should apply for the program without hesitation, noting litigants may not succeed in finding standing against the president's program.

"I've yet to see any of these lawsuits against the president's plan that I think would have even a chance of demonstrating legal standing," Kantrowitz said, noting that the Department of Education will keep adjusting the terms of the program when a new challenger sues over a particular element of the program.

The Education Department also suggests that applicants who sign up could be processed to receive forgiveness within four to six weeks after filing the application.

Notably, the Biden administration scaled back its relief late last month in response to legal concerns, saying it would no longer allow borrowers who have federal loans owned by private entities to qualify for the relief program. And Kantrowitz contends it's possible for courts to claw back forgiveness that's already been provided, "but that's extremely unlikely," he said.

"But so far, there haven't been any temporary restraining orders and preliminary injunctions against the president's plan," Kantrowitz said, adding that "I certainly have been telling people: '[If you] want to get forgiveness, don't procrastinate.'"

While Kantrowitz believes a court would be "hard pressed" to find legal standing for the plaintiffs that have sued already, he contends that "doesn't mean that a court wouldn't necessarily do that, some courts have shown some flexibility with legal standing if they think a case really needs to be heard," noting that challengers could still lose on appeal even if a district judge thinks they have standing.

For the case before Autrey in the U.S. District Court for the Eastern District of Missouri, any of the losing parties could appeal his decision to the 8th Circuit Court of Appeals, which is primarily composed of Republican-appointed judges.