Courts Are ‘On Biden’s Side’? One Just Froze His Scheme To Buy Votes With Student Loan Bailout

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Late Friday, a federal appellate court froze the Biden administration’s plan to begin canceling student loans, crushing the president’s plot to start zeroing out the debts on Sunday, just two weeks out from midterm elections.

The Eighth Circuit’s decision in *Nebraska v. Biden* suspending the loan-forgiveness plan dealt a humiliating blow to the president, who just hours earlier bragged that the courts had declared, “We’re on Biden’s side.” But even before the ruling, no court had sided with the president; rather, the earlier cases were all tossed because the Biden administration crafted the program to prevent anyone from obtaining “standing” to challenge the unilateral executive action.

“Standing,” or the legal right to sue because of a cognizable injury, remains at issue in *Nebraska v. Biden*, with the Eighth Circuit’s decision on Friday merely temporarily pausing Biden’s plans to wipe out over $400 million in student debt. This week, the federal appellate court will decide whether to enjoin the loan-forgiveness program during the appeal. The Eighth Circuit is not the only court to watch this week, however, as two other challenges to the Biden administration’s student-debt bailout program are teed up for decision and a third may be soon — and any one of these courts could prevent the vote-buying scheme from taking effect before midterms.

Here’s what you need to know to understand the relevant issues, the pending cases, and the Biden administration’s desperation to keep the courts from addressing the legality of his student-loan wipeout.

How It All Began

On Aug. 24, 2022, Biden announced that the Department of Education will provide up to $20,000 in student loan cancellation, with individuals earning less than $125,000 ($250,000 for married couples), qualifying for this relief. The secretary of education then, on Aug. 30, 2022, issued a memorandum explaining its view that it had the authority under the HEROES Act to

cancel student loans, reversing the opinion of the Trump administration that no such categorical authority exists.

The HEROES Act is a federal statute Congress passed in the aftermath of the Sept. 11 attacks that, among other things, authorized the secretary of education to "waive or modify any statutory or regulatory provision applicable to the student assistance programs" when the secretary deems it "necessary in connection with a war or other military operation or national emergency…" Under the HEROES Act, "the term 'national emergency' means a national emergency declared by the President of the United States."

The Biden administration's secretary of education on Oct. 12, published the terms of the student loan cancelation plan, justifying the action based on the presidential proclamation of a national emergency due to the Covid-19 pandemic and the resulting "financial hardship arising out of the COVID–19 pandemic on individuals who owe student loans." Since then, the administration has opened a portal to apply for loan cancelations, with the president claiming on Friday that 8 million borrowers had already submitted applications.

Even before the secretary of education published the terms of the Biden administration student-loan cancellation plan, litigation began. On Sept. 27, 2022, Frank Garrison filed suit against the Department of Education and Miguel Cardona, in his official capacity as the secretary of education, arguing the HEROES Act did not authorize the Department of Education to discharge student loans en masse. Garrison's lawsuit further alleged the agency action violated the separation of powers principles and the "non-delegation" doctrine, which teaches that Congress holds "the lawmaking function" under our constitutional structure and cannot convey the authority to make laws to another branch of government.

In challenging the student-loan bailout plan, Garrison alleged as an injury that the Biden administration's discharge plan would cause him to incur at least $1,000 state income tax liability that he would not otherwise incur. That tax liability would result because the Biden administration's loan-forgiveness scheme was automatic, and under state law the discharge was taxable. Garrison, however, already qualifies to obtain loan forgiveness in approximately four years under the Public Service Loan Forgiveness ("PSLF") plan, and such debt cancellation is not taxed in Indiana. Thus, as Garrison alleged in his complaint, the Biden administration's debt "forgiveness" plan injured him financially by imposing a state tax burden, entitling him to sue to challenge the secretary's decree.

After Garrison filed suit, the Department of Education opted Garrison out of the loan forgiveness program and created an opt-out provision that would allow other individuals who would otherwise automatically receive relief to opt out of the program. This change sought to destroy Garrison's claimed injury, and without an injury Garrison would lack "standing" to challenge the debt-bailout program.

The trial court agreed that Garrison lacked standing to challenge the loan-cancellation plan but concluded that the problem for Garrison was that Indiana caused his asserted injury by imposing a state tax liability, and thus it wasn't a matter for the federal court. Accordingly, the court

dismissed Garrison's lawsuit and refused to consider whether the Biden administration acted beyond its constitutional and statutory authority.

On Oct. 4, 2022, in *Brown County Taxpayers Association v. President Joseph R Biden Jr.*, a Wisconsin nonprofit organization filed a separate lawsuit challenging the loan-forgiveness plan. In its complaint, the Brown County Taxpayers Association presented the same arguments Garrison had made — that the Department of Education exceeded its authority under the HEROES Act and violated the separation of powers principles. The Brown County Taxpayers Association also argued that the Biden administration violated the Equal Protection Clause of the Constitution by justifying the student loan debt relief plan with a race-based motive, stating the program was intended to help "black students," "black borrowers," and "other borrowers of color."

A federal court dismissed Brown County Taxpayers Association's lawsuit, concluding the organization lacked "standing" to sue because the only injury the group alleged was an injury to them as "taxpayers." The Brown County Taxpayers Association sought to stay the Biden administration's loan-forgiven program while it appealed the dismissal of its complaint. But on Thursday, Justice Amy Coney Barrett denied the Wisconsin organization's request for an injunction pending appeal, which is unsurprising because, other than in limited circumstances involving the Establishment Clause, taxpayers lack standing to challenge government action.

On Thursday, a federal court in Missouri likewise dismissed a challenge to the loan-forgiveness program in *Nebraska v. Biden*, finding the plaintiffs in that case — the states of Nebraska, Missouri, Arkansas, Iowa, Kansas, and South Carolina — lacked standing to sue. And it was this decision, along with the Supreme Court's refusal to stay the loan-forgiveness plan in the *Brown County* case, that President Biden touted on Friday as the courts agreeing with him, even though no court had yet reached the merits of the loan-forgiveness plan.

By Friday evening, the six plaintiff states had filed a motion for stay pending appeal with the Eighth Circuit Court of Appeals and an emergency motion for administrative stay of agency action in *Nebraska v. Biden*. The Eighth Circuit granted that emergency motion and entered an order prohibiting the Biden administration from discharging any student loan debt until the court rules on the plaintiffs' motion for an injunction pending appeal. The federal appellate court further ordered the Biden administration to file its response by Monday at 5:00 p.m., and the six states challenging the debt-forgiveness order to file their reply by Tuesday at 5:00 p.m.

To obtain an injunction pending appeal, the states must convince the Eighth Circuit that at least one state has standing and that the plaintiffs have a likelihood of succeeding in their challenge to the Biden administration's student-loan forgiveness plan.

Arguing for State Standing

In arguing for standing, the six states first highlight the injury to Missouri, which, through its Missouri Higher Education Loan Authority, or "MOHELA," services student loans. Last fiscal year alone, MOHELA earned $88.9 million for servicing some 5.2 million accounts. That revenue, in turn, allows MOHELA to, among other things, fund scholarships. The Biden

administration’s debt cancelation program will result in nearly half of all borrowers having “their debt completely” eliminated, which will injure MOHELA by greatly reducing its revenue stream, according to Missouri.

Missouri, along with Arkansas and Nebraska, point to another aspect of the Biden administration’s original debt relief plan to argue standing. Initially, in announcing the student-loan cancelation, the Department of Education told “borrowers with privately held federal student loans,” they could qualify for loan cancelation “by consolidating these loans into the Direct Loan program,” which is run by the federal government. Following that announcement, students consolidated millions in student loans to qualify for the discharge.

That consolidation injured Missouri, Arkansas, and Nebraska financially, the states argued because, for instance in Missouri, MOHELA used private loans to secure bonds and earned interest payments from the loans and fees in servicing the loans. The Arkansas Student Loan Authority likewise alleged an injury caused by the consolidation, with debtors consolidating $6 million of private loans, which in turn reduced the revenues earned by the state for administering the private loans. Nebraska argued the consolidation also harmed its financial interests by negatively affecting its investments in private loans.

The same day the states filed suit against the Biden administration, the secretary announced that borrowers with non-federally held student loans could no longer become eligible by consolidating those loans with the federally held Direct Loans. Those borrowers “who have applied to consolidate prior to Sept. 29,” however, remained eligible.

Based on this change in policy, the trial court held that Missouri, Arkansas, and Nebraska lacked standing to sue. The court also rejected Missouri’s argument that the reduced servicing revenue to MOHELA gave the state standing, reasoning that because the state’s general fund was not responsible for any deficit MOHELA might face, Missouri was not harmed by the loan cancellation. The federal district court also rejected the six states’ argument that they had standing to sue because the Biden administration’s plan will reduce state tax revenues, with the court reasoning that the states can modify their revenue codes.

In their briefing to the Eighth Circuit, Missouri, Arkansas, and Nebraska present a strong argument for standing, with each of the states identifying concrete financial harm caused by the Biden administration’s cancelation of the debt. And while consolidation of private loans is no longer permitted, that harm already occurred.

If the Eighth Circuit agrees, then it will consider the merits of the states’ lawsuit to determine if they have established a likelihood of success on their claim that the secretary of education exceeded his authority under the HEROES Act. On the merits, the states’ argument is even stronger given that the Biden administration’s loan cancellation plan universally wiped out student debt, reaching nearly half-a-trillion dollars in loans.

Here, the states are likely to succeed based on “the major-questions doctrine,” which teaches that “a federal agency may regulate on issues of immense ‘economic and political significance’ only with explicit congressional authorization.” The student-loan forgiveness plan has such immense

“economic and political significance,” erasing, as it does, some $400 billion in federal student loan debt. Yet the HEROES Act contains no explicit authorization to eliminate student loans en masse based on income levels, indicating the Department of Education exceeded its authority in plotting to erase the debt. Accordingly, based on the “major-questions doctrine,” the Eighth Circuit should grant an injunction pending appeal.

A Few More Shots

Whether the Eighth Circuit will agree remains to be seen, but three other lawsuits challenging the Biden administration’s student-loan cancelation plan remain viable, with two currently poised for rulings this week.

On Tuesday, federal Judge Mark Pittman, a Trump appointee, will hear a motion for a preliminary injunction brought by two plaintiffs, Myra Brown and Alexander Taylor, both of whom owe student loans but do not qualify for debt cancelation, either at all or not completely. Brown owes commercially held student loans, and as such, does not qualify under the terms of the Biden plan, while Taylor only qualifies for a $10,000 cancelation because he did not receive any Pell Grants while in college.

Brown and Taylor argue that the Department of Education’s cancelation program is arbitrary and that had the secretary complied with the notice and comment mandates of the Administration Procedure Act, they and similarly situated debtors could have convinced the department to provide them relief. The Biden administration counters that the HEROES Act is exempt from the Administration Procedures Act and that these plaintiffs lack standing to sue.

Also poised for decision this week is the CATO Institute’s lawsuit against the Biden administration. On Friday, the nonprofit organization filed a motion for a temporary restraining order in a federal court in Kansas, seeking to freeze any loan cancellation during the pendency of its legal challenge.

Like the majority of the other plaintiffs, the CATO Institute argues that the Biden administration lacked authority under the HEROES Act to unilaterally cancel student loans. To establish standing, the CATO Institute highlights its status as a nonprofit organization, which benefits from the student-loan forgiveness program Congress established for debtors who work in the nonprofit sector for 10 years. Biden’s categorical cancellation of student loans will harm CATO and other nonprofits, the institute argues, since potential employees with student loans will no longer find it advantageous to work for a nonprofit.

Presiding Judge Toby Crouse, a Trump appointee, has not yet ruled on CATO’s motion for a temporary restraining order, but a decision or a hearing schedule should be forthcoming soon.

Arizona’s Attorney General Mark Brnovich presented an argument similar to CATO’s in a lawsuit filed against the Biden administration in an Arizona federal court. In Arizona’s complaint, Brnovich argues that the congressionally established cancelation of student loans for government lawyers allows his office to recruit better candidates and that by canceling student loans, Arizona is harmed. Arizona also argues the loan-cancelation plan harms the state by

reducing its tax revenues. Arizona has not yet filed a motion to enjoin the cancelation of any loans, however, although such a motion could be forthcoming this week.

It seems likely that in at least one of these four cases, the court will find standing and enter a preliminary injunction preventing the cancelation of any student loans. But if not, contrary to Biden's spin, that does not mean the courts agreed the Department of Education acted within its authority. It just means the Biden administration devised a scheme to prevent anyone from having standing to challenge the law. And that strategy is every bit as shameless as the regulatory loan "forgiveness" timed with midterm elections.