



# Biden's Student Debt Relief Program Is Now in the Hands of the Supreme Court

Marjorie Cohn

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More than 40 million lower-income people burdened with student loans are still waiting for clarity about how much they will owe and when their next payments will be due, as the Supreme Court decides if it will rule on whether to allow President Joe Biden's student debt relief program to proceed.

The loan forgiveness program, which Biden announced in August, is under attack from six Republican-controlled states, which sued Biden, his secretary of education and the Department of Education on September 29 in an attempt to block the program. A federal district judge ruled against the GOP-led states, but the 8th Circuit Court of Appeals reversed the lower court decision and issued a nationwide injunction halting the program.

In response, on November 18, the Department of Justice went to the Supreme Court asking it to permit the student debt relief program to take effect while the lower courts consider the legal challenges to it. U.S. Solicitor General Elizabeth Prelogar wrote that blocking the program "leaves millions of economically vulnerable borrowers in limbo."

The Supreme Court ordered the states to respond to the Justice Department's request by noon on November 23. The high court will then decide whether to review the case and lift the injunction while the lower courts consider the legal merits of the states' contentions.

Without eliciting a response from the Biden administration, Amy Coney Barrett denied two prior requests by opponents of the debt relief program to block it.

The Justice Department's request will first go to Brett Kavanaugh, who considers emergency appeals to the 8th Circuit. He could act on it himself, the way Barrett did, or refer it to the entire court — which is the more likely scenario.

## **The Back Story on the Student Debt Relief Program**

The Biden administration promulgated the student debt relief program that is now set to come before the Supreme Court, in an effort to shield lower-income borrowers from the impending end of the COVID-era pause on student loan repayment obligations that the Trump and Biden administrations had approved since March 2020. Both administrations had justified the ongoing pause on loan repayment obligations by declaring a "national emergency" due to COVID-19 and invoking the Higher Education Relief Opportunities for Students Act of 2003 (HEROES Act).

In August 2022, however, the secretary of education directed that loan repayments resume at the end of the year. But after determining that lower-income borrowers would face a heightened risk of delinquency and default due to the continuing financial hardships caused by the pandemic, the education secretary authorized up to \$10,000 in federal student loan relief for borrowers with an annual income of less than \$125,000 (or \$250,000 for borrowers filing jointly). For Pell Grant recipients, who face an even greater risk of default, the secretary directed that they receive up to \$20,000 in relief.

On September 29, the states of Nebraska, Missouri, Arkansas, Iowa, Kansas and South Carolina filed their challenge in federal district court, asking for an injunction against the debt forgiveness plan. They argued that the secretary didn't have the statutory authority to implement the program.

U.S. District Judge Henry Autrey, a George W. Bush appointee, dismissed the lawsuit after finding that the states lacked "standing" to bring the suit since they couldn't show they had suffered a concrete, particularized and actual or imminent injury.

On November 14, a three-judge panel of the 8th Circuit, composed of two Trump appointees and one George W. Bush appointee, disagreed with the district court and granted the states' request for a nationwide injunction which halted the loan forgiveness program while the case works its way through the lower courts.

The 8th Circuit found that the states had standing, but it didn't analyze the merits of their claims even though one of the requirements for issuing an injunction is a finding that the claimants are likely to prevail on the merits.

### **The Biden Administration Appeals to the Supreme Court**

On November 18, the Department of Justice filed an emergency appeal in the Supreme Court asking it to vacate the injunction and permit the loan forgiveness program to proceed while the lower courts review the merits of the legal challenges.

Solicitor General Prelogar wrote that "the entire purpose of the HEROES Act is to authorize the Secretary to grant student-loan-related relief to at-risk borrowers because of a national emergency — precisely what the Secretary did here."

Prelogar added that if the Supreme Court refuses to freeze the 8th Circuit's order, the high court should consider the merits of the case on an expedited basis with oral arguments early next year.

### **Trump-Appointed Judge in Texas Blocks Debt Forgiveness Plan Nationwide**

Meanwhile, four days before the 8th Circuit issued its injunction, U.S. District Judge Mark T. Pittman, a Trump appointee in Texas, blocked the debt-forgiveness program nationwide, concluding that it was "a complete usurpation of congressional authorization implicating the separation of powers required by the Constitution."

The Texas lawsuit was filed by the right-wing Job Creators Network Foundation, which was created by Home Depot co-founder Bernie Marcus, on behalf of two plaintiffs who claim they

were excluded from the program and didn't have an opportunity to comment on it before it was promulgated.

Since the plaintiffs did not have standing to file the lawsuit, "Judge Pittman clearly had no jurisdiction even to hear the merits of the plaintiffs' claims, much less to dismantle the program," Harvard Professor of Constitutional Law Emeritus Laurence Tribe wrote in *Verdict*. "By doing so, he usurped the power of both Congress and the Executive Branch."

Pittman "stepped completely outside [his] judicial role as constrained by the Supreme Court's standing doctrine," according to Tribe. "He thereby not only injured the many lower-income and middle-income borrowers who have justifiably relied on the administration's program of debt relief but also — and more importantly — further undermined the already frayed rule of law in the United States and contributed to the erosion of the indispensable role of the independent federal judiciary in preserving our constitutional republic."

The Biden administration has asked the 5th Circuit Court of Appeals to stay Pittman's ruling. If the appeals court refuses to grant the stay, the administration will appeal to the Supreme Court, which is likely to consolidate it with the 8th Circuit case if it agrees to consider the issue.

There are two other pending lawsuits challenging the debt-relief program, one from Arizona's Republican attorney general and another from the libertarian Cato Institute.

In September the nonpartisan Congressional Budget Office determined that the debt forgiveness program would eliminate \$430 billion of the \$1.6 trillion in outstanding student debt and more than 40 million borrowers would be eligible to receive the benefits.

"The AFL-CIO is extremely disappointed in the partisan legal effort to shut down the Biden administration's life-changing student loan relief. Borrowers who have filed for forgiveness should not have to wonder if they will once again be forced to live with crushing student loan debt as a result of a court challenge," Bill Samuel, director of government affairs for the AFL-CIO, which represents 12.5 million U.S. workers, said in a statement. "With the payment pause end date of Dec. 31 rapidly approaching, the AFL-CIO will continue to advocate for the full implementation of the Biden administration's student loan debt cancellation plan."

On November 21, a coalition of 225 labor, academic, community and civil liberties organizations sent a letter to Biden, urging an extension of the pause on federal student loan repayments. The groups called on Biden "to immediately extend the payment pause until your Administration is able to fully implement debt relief for all eligible borrowers and to continue to use every legal authority at your disposal to make this relief real." They wrote, "We cannot allow these blatantly political lawsuits to throw millions of borrowers into financial catastrophe. Throwing millions of borrowers back into repayment as the state of debt relief remains uncertain is a recipe for disaster and will result in widespread confusion and set borrowers up for failure."

Since the issue is so significant and there is disagreement among the lower courts, the Supreme Court will likely decide whether the Biden administration's loan-forgiveness program is legal. The law and the equities say yes. Hopefully the high court will agree.