



Student Loan Forgiveness Lawsuits: What to Know About the Legal Challenges

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Well, that was fast. Within weeks of President Biden announcing [federal student debt relief](#), lawsuits started rolling in to block the plan. For as long as activists and advocates have been pushing the Biden administration to cancel federal student loan debt, experts have been debating the achievability and legal viability of different strategies — whether Congress could or would pass legislation and whether the president could or should use his executive powers to grant relief. The one thing that the majority of them agreed on? If Biden bypassed Congress to pass student debt cancellation, lawsuits would undoubtedly follow.

So far, the suits are mostly giving post-2020-election-Trump-lawsuit-frenzy, legal-free-for-all vibes. None of the experts and advocates *Teen Vogue* spoke to for this article expressed any serious concern over those lawsuits. “Most of the cases, I would say, are frankly just frivolous,” says Persis Yu, deputy executive director and managing counsel of the Student Borrower Protection Center. The Debt Collective’s legal strategist, Sparky Abraham, said the most viable lawsuit was “the closest to not being a joke.”

Still, on Friday, October 22, less than a week after the application portal went live, a federal appeals court temporarily blocked the program, preventing loans from being canceled until the court reviews one of the legal challenges. The Biden [administration](#) is urging people to continue submitting applications, noting that 22 million Americans have already done so.

How Biden used the HEROES Act for debt cancellation

“The main issue here,” says Chris Geidner, [contributing editor](#) for Grid News and editor and author of the legal newsletter, Law Dork, “is how much power the president and executive agencies have to take action that isn’t specifically, explicitly laid out in laws passed by Congress?”

The [Biden White House](#) has decided that the answer to that question is best supported by the Higher Education Relief Opportunities for Students Act ([HEROES Act](#)), a George W. Bush-era law that allows the secretary of education to, in Bush’s words, “waive or modify federal student aid requirements to help students and their families” impacted by national emergencies. Because the COVID-19 pandemic has been [declared](#) a national emergency, the administration argues that this piece of legislation grants it those special powers.

“The Biden administration's response is, well, even Betsy DeVos thought that the HEROES Act gave her enough authority to pause all student loan repayment,” says Geidner. “So where were your challenges to that? [Biden] looked at what has been done over the past three years since DeVos started the pause and looked at what would happen to the borrowers if you restarted payments. A lot of them would default because they are still dealing with the fallout from the pandemic. So the federal government's response is, no, this is exactly what the HEROES Act was about.”

Some supporters of broad student debt cancellation think basing the plan’s legality on the HEROES Act wasn’t Biden’s best choice because they take issue with the policy’s emergency-specific justification. The pandemic certainly exacerbated how much financial burdens weighed on student debtors, cancellation advocates like Abraham argue, but the core failing of the student debt crisis is separate and apart from the COVID-driven economic crisis.

“It all hinges on whether there is, in fact, an emergency and whether that grant of powers under exceptional circumstances is legal,” says Marshall Steinbaum, senior fellow in Higher Education Finance at the Jane Family Institute and assistant professor of economics at the University of Utah. “These *aren’t* exceptional circumstances. I think that's my policy point about student debt. It's gonna have to be canceled anyway. It's in the nature of the program that a lot of loans were issued that are never going to be repaid. And so it's not really a one-time pandemic emergency necessity that the student debt is canceled. It's the fact that our student loan policy has failed and that has nothing really to do with the pandemic.”

Here's an overview of the suits filed so far

So far, at least seven suits have been filed in an attempt to pause or entirely overturn student debt relief. One of the earliest suits, filed on September 12 by an Oregon resident representing himself, is still awaiting a hearing date. The plaintiff argues that U.S. education secretary Miguel Cardona doesn’t have the legal authority to enact the relief plan via the HEROES Act. In another suit, filed on September 27 by the Pacific Legal Foundation on behalf of one of their employees who lives in India, the claimant argues that having his debt canceled now would actually *cost* him money. According to the lawsuit, he only has a few more years of payments in his income-driven repayment plan before qualifying for full relief through the Public Student Loan Forgiveness (PSLF) program (which is exempt from Indiana’s state income tax). The suit claims that having a portion of his debt canceled under Biden’s plan wouldn’t erase his debt and wouldn’t change his monthly payments — but it would be considered taxable income under Indiana’s state tax laws. The Biden administration responded by amending the policy to allow debtors like the plaintiff to opt out of the plan and the case was subsequently dismissed.

Yet another lawsuit was filed on October 4 by the Wisconsin Institute for Law and Liberty (WILL) on behalf of the Brown County Taxpayers Association (BCTA). The suit argues that Biden’s plan has an “improper racial motive” because of its estimated impact on the racial wealth gap and that it’s unconstitutional to cancel the federal debt that the BCTA claims taxpayers would end up paying. The case was dismissed within days. WILL filed an appeal, but rather than wait for a decision they elevated the case to the U.S. Supreme Court and filed an

emergency injunction pending appeal. Supreme Court justice Amy Coney Barrett denied the injunction a day later.

Another suit was filed on October 10 by the Job Creators Network, the same organization that Gen Z for Change coders targeted with spam applications when they initially announced an open call for comments from people who considered Biden's plan unfair. The suit argues that the administration made procedural errors in enacting its policy. It alleges that the relief plan has "harmed" its two plaintiffs (alongside "millions of Americans") — one person who is only eligible for \$10,000 in relief instead of the \$20,000 offered to Pell grant recipients and a second person who isn't eligible for any cancellation because she has non-defaulted, commercially held loans. The latest lawsuit was filed on October 18 by the Cato Institute. It argues that broad cancellation dilutes the benefits of participating in the PSLF program. Weakening that advantage, the suit claims, will hurt the nonprofit sector's ability to attract employees.

There were two suits filed by Republican attorneys general

Of the six lawsuits that have been filed, there are two with major plaintiffs. Both suits were filed on September 29. One, filed by Arizona attorney general Mark Brnovich, challenges Biden's use of the HEROES Act and claims that Biden's student debt relief would negatively impact the state of Arizona. The case doesn't have a hearing date yet. One of the suit's main arguments is that the state relies on the select relief provided by the Public Service Loan Forgiveness program to make certain government jobs more appealing for potential hires. Student debt cancellation reduces that incentive, which harms the state of Arizona, Brnovich argues.

"That's a really interesting claim that I can't imagine will win a lawsuit," says Geidner. "This idea that relieving debt is going to take away the coercive effects that debt has [in terms of] being able to recruit people to other jobs? I'm not sure we're going to see that succeed in any court."

A separate multistate suit was jointly filed by the attorneys general of six Republican-led states: Nebraska, Missouri, Arkansas, Iowa, Kansas, and South Carolina. Like other cases, this suit challenges the president's reliance on the HEROES Act. It also argues that debt cancellation would have a negative financial impact on at least two state-run student loan servicing agencies — loan servicing giant Missouri Higher Education Loan Authority (MOHELA) and the smaller Arkansas Student Loan Authority — and individual states themselves. A Missouri judge held a hearing for this case on October 12 and dismissed it for lack of standing on October 20. The U.S. Eighth Circuit Court of Appeals subsequently issued a block on the program while it considers the Republican officials' legal challenge. The White House is encouraging people to continue submitting applications for relief.

"The order does not reverse the trial court's dismissal of the case, or suggest that the case has merit," White House press secretary Karine Jean-Pierre said in a statement. "It merely prevents debt from being discharged until the court makes a decision."

For most of the experts *Teen Vogue* spoke to, the fact that the case hinges on alleged "ongoing financial harms" felt by state-run student loan servicing agencies is a glaring red flag. "We have a politically motivated lawsuit about whether or not MOHELA's right to make money is more

important than the borrower's right to get relief," says Yu, a sentiment echoed by many student debt cancellation advocates, including Missouri congresswoman Cori Bush. It puts the financial interests of entities like MOHELA ahead of the interests of student loan borrowers, says Yu.

The suit argues that cancellation deprives these entities of "interest payments that those loans generate" and "ongoing revenue it earns from servicing those loans," with a specific emphasis on a now-outdated type of student loan called Federal Family Education Loans (FFEL). The Biden administration responded almost immediately, making unconsolidated FFEL loans ineligible for student debt relief with zero notice for those who hadn't yet applied for consolidation prior to the announcement. The move impacts at least 770,000 people.

"When people's balances go to zero, they lose customers," Yu explains. "But is that not the goal? If that's really true, isn't that really concerning that it's against the interest of the company that services public service loan forgiveness that's supposed to help borrowers get out of debt [and] help borrowers forgive their loans, that it's going to hurt them financially? Regardless of this lawsuit, that is an exceptionally concerning statement for a student loan servicer to make about its portfolio."

"We knew that the lawsuits were coming and they're here," Yu adds. "I think as just a matter of public policy, we can't *not* do public policy because people who don't like it are going to sue. It's important to remember that this is just a part of the process, as we knew [it] would be."