



Why Is Everyone Suing Over Student Debt Cancellation?

Neal McCluskey

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Last week the Cato Institute, the think tank for which I work, filed a lawsuit against the Biden administration to halt its mass student debt cancellation order. Cato's suit joins at least six others, with plaintiffs making various claims of harm. The ultimate aim of all the suits, though, is the same: To stop a move that is not only patently unconstitutional, but will inflict many painful costs on society.

The constitutional issue is straightforward: The Constitution gives the power of the purse to Congress, but in declaring that it would forgive up to \$20,000 in loans for households making below \$250,000 a year, the Biden administration essentially created about \$400 billion in new spending.

The administration points to a law — the 2003 HEROES Act — to assert that Congress empowered it to cancel student loans for anyone affected by a “national emergency,” and everyone in the country was affected because COVID-19 was everywhere. This is a severe twisting of the law, which was enacted not to authorize mass cancellation but primarily to keep members of the military from facing negative student loan ramifications if called to active duty.

That said, even if the law envisioned mass cancellation it still would not apply. HEROES says the secretary of Education can “waive or modify” loan provisions if the national emergency leaves borrowers worse off with regards to their loans than they were before the emergency. But according to data the administration included in its own filing in one of the court challenges, most borrowers do *not* feel financially worse off now than before the pandemic.

This should be no surprise, since HEROES was also invoked to justify a freeze on student loan repayment that has been in place since March 2020. Not only have borrowers not had to repay, but the nearly three years their loans have been frozen have counted toward eventual forgiveness under several repayment plans.

Biden's order is flat-out illegal. But that is far from its only problem.

Most directly, taxpayers today or in the future will have to pay for the hundreds-of-billions in lost federal revenue if this "jubilee" goes forward. And with the national debt exceeding \$31 trillion, Washington cannot afford to leave nearly half-a-trillion – about the total it spent on children through all programs in 2020 – on the table.

This is especially troubling because this is help for those who generally need it least.

There are, of course, people who struggle with their debt. But this order is not targeted to them.

Overall, the average bachelor's degree holder is expected to make \$1.2 million more over their lifetime than someone with just a high school diploma. Someone who completes medical or law school — and debt is disproportionately used for graduate study — is expected to make around \$3.1 million more.

College grads also have very low unemployment rates. Even at the height of pandemic lockdowns their rate was only 8.4 percent, versus 17.6 percent for high school grads and 21.1 percent for adults without a high school diploma. Today the unemployment rate for degree holders is only 1.8 percent.

Then there is the huge threat to future college affordability.

There is powerful evidence that student aid enables colleges to raise their prices. A recent Federal Reserve Bank of New York study, for instance, found that for every one dollar increase in maximum "subsidized" federal loans (in which Washington pays the interest while the borrower is in school and for six months after graduation) schools raise their prices 60 cents. Colleges can charge more because taxpayer assistance enables students to pay more.

If mass cancellation stands, the dangerous precedent will be set: complain enough and the president will bend to your wishes. That would encourage colleges to raise their prices even faster because, well, how could anyone justify mass cancellation today but not for borrowers "saddled with debt" tomorrow?

Finally, there are moral concerns. Cancelling up to \$20,000 for student debtors seems unfair to anyone who economized on college to avoid debt, diligently repaid their loans, or chose a different path than college.

Why are there so many lawsuits to stop President Biden's mass student debt cancellation? First and foremost, because it is a brazen assault on the rule of law. But it is also terrible policy.

Neal McCluskey directs the Cato Institute's Center for Educational Freedom.