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## Different student loans plan, same problems for Biden

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The Biden administration is facing yet another lawsuit over its student loan forgiveness plans.

After the Supreme Court struck down its \$430 billion cancellation policy, President Joe Biden announced a smaller plan affecting 800,000 borrowers at a cost of \$39 billion. Now that, too, has been hit with legal challenges.

"The one-time account adjustment is substantively and procedurally unlawful," according to the suit, filed on behalf of the Cato Institute and the Mackinac Center for Public Policy. "The court should declare this forbearance-credit scheme unlawful, set it aside, and enjoin any cancellation of student loans based on it."

The White House says its latest plan is an "adjustment" to existing federal programs to correct past mistakes, resulting in \$39 billion of loan forgiveness, though it says more borrowers could become eligible later on.

"President Biden continues to fight for student loan borrowers on all fronts," a White House official said at the time.

But the lawsuit claims the plan doesn't follow a notice and comment period required by law, instead being created via press release, and violates the apportionment clause of the Constitution by circumventing Congress. These were some of the same complaints made against the original plan.

"The president and the Department of Education do not have authority to unilaterally change the terms of student loans in order to cancel them," said Neal McCluskey, the director of the Cato Institute's Center for Education Reform. "This is the executive branch essentially making law by changing what Congress created."

If successful, the lawsuit would stop the smaller program in much the same way that previous lawsuits stopped the larger one.

McCluskey argues that changes to federal student loan programs must be made by Congress. He says there are legitimate problems with errors made in the accounting of some student loans, but that the program goes far beyond that by partially forgiving hundreds of thousands of student loans that will go unpaid.

According to the lawsuit, the program could ultimately affect more than 3.5 million borrowers at a price tag of \$175 billion.

"Taxpayers are the ones who have to make up for the lost revenue," he said. "You're hurting somebody in order to try and benefit somebody else."

Biden promised to cancel student loans during his successful 2020 presidential campaign and then announced loan forgiveness of up to \$20,000 per borrower six weeks before the 2022 midterm elections. That plan was halted shortly after the election, and the administration has promised to keep fighting for it while implementing the smaller program.

The Biden administration also has plans to transform how student loans are structured that it hopes to implement next year.

Forgiving student loans is popular with younger voters, and several leading Democrats, including Senate Majority Leader Chuck Schumer (D-NY) and former presidential candidate Bernie Sanders (I-VT), spoke at a rally when the Supreme Court heard oral arguments about the forgiveness program.

But in addition to being politically popular with Democrats, the new program has its defenders on the legal side as well. Persis Yu, the managing counsel of the Student Borrower Protection Center, says it's on solid legal footing.

"The Department of Education is within its rights to do a remedy to something that reverses past bad behavior," she said. "We've been hearing from nurses who have paid more on their loans than they ever took out who are stuck on this hamster wheel because servicers were never telling them the most beneficial path for them."

She describes the lawsuit as a "sad and desperate ploy to score political points by keeping people in debt."

While a lawsuit could halt the program the same way it upended the larger one, that hasn't stopped the Biden administration from moving forward. It is already accepting applications from people hoping to see their loans written off.

"These are borrowers who had been making payments for decades but were never given the relief they were promised," White House press secretary Karine Jean-Pierre said on July 18. "These borrowers are owed this relief, yet Republican-elected officials, including those who had no problem with the government forgiving billions of dollars in business loans, are still objecting to including their own constituents."