



Biden Can Still Counter the Bogus Right-Wing Student Loan Lawsuits

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Maybe you are one of the 26 million people who have applied to have their student debt reduced or eliminated entirely. You probably breathed a sigh of relief when you hit “Submit,” knowing that, in the new year, you’ll have an easier time paying rent, buying food, or maybe saving to buy a home or for retirement.

Now that relief you are counting on is in jeopardy. In recent months, there has been a slew of bad-faith right-wing lawsuits seeking to block cancellation. While multiple cases have been dismissed for lack of standing, a few appear to be having better luck. While all is not lost, these proceedings are alarming. They speak to some of the challenges now inherent in progressive policymaking and the need for Democrats to play hardball from the start.

Above all, the public needs to understand that the issue is not the merit of these cases—the president’s authority to cancel federal student loans is not in doubt. The problem is the partisan nature of our judiciary and the fact that right-wing saboteurs, with their endless cash reserves, can afford to throw everything at the wall and see what sticks.

As of last week, the White House reported that 16 million applications have been approved for cancellation. But the White House cannot hit the button and deliver the relief these people are entitled to because six Republican states decided to sue. Though their case was initially dismissed, the states appealed the decision. A higher court immediately issued a stay while it considers the appeal, which means the Education Department must refrain from canceling any debt until the court says it can (the Department of Education can still accept and review applications in the interim).

But as of last Thursday, the case has a gaping hole in it. Central to the states’ complaint was the contention that student debt cancellation negatively impacts the profitability of a company called MOHELA, a student loan servicer based in Missouri. But after prodding from Missouri Congresswoman Cori Bush, MOHELA publicly distanced itself from the case and challenged the states’ assertion.

MOHELA’s comments completely invalidate the plaintiff’s already weak arguments. In light of this development, the case should—once again—be dismissed. But the fact that it hasn’t been sends worrying signals.

The second case of concern is the legal brainchild of the Job Creator’s Network, a right-wing front group funded by the billionaire co-founder of Home Depot Bernie Marcus and the notorious Mercer Family Foundation, which purports to speak for small-business owners (Rebekah Mercer is Steve Bannon’s buddy). They lined their case up with a Trump-appointed judge named Mark Pittman, who sits in (where else?) Texas and who looks poised to toe the party line, no matter that the case is laughably weak.

The Job Creators case involves two Texas-based plaintiffs, Myra Brown and Alexander Taylor, who claim to be harmed by Biden’s cancellation plan. Little is known about them, and they have not spoken to the media; both filed a few sparse sentences about their lives and motivations. Brown, who appears to own a sign-making business, is ineligible for relief because of the specific kinds of loans she holds (she has FFELP loans, which are backed by the federal government but were originally funded by private companies). Alexander Taylor, who appears to be a graduate student at the Catholic University of Dallas, is ostensibly upset because he will only get \$10,000 of cancellation and not the \$20,000 that former Pell Grant recipients can receive.

In other words, they are claiming to be harmed because they are not eligible for cancellation, or enough of it. But instead of suing to expand the program, which would make sense, they are party to a reactionary lawsuit seeking to block relief for everyone. We can’t know their private motives—astonishing pettiness, far-right conservative ideology, or something else—or whether their lawyers misrepresented their agenda. But whatever the truth there, the fact is that Brown and Taylor are poised to make life much harder for tens of millions of people without improving their own lives one bit.

A third case worth watching, brought about by the libertarian Cato Institute, is equally absurd. For example, the organization objects to Biden’s plan because student loan cancellation will make it hard for it to recruit and retain indebted employees. (Big government has a role to play after all, it seems.) It also teed up its litigation with a Trump-appointed judge.

If you were counting on Biden’s debt relief and don’t get it, these are the people who will deserve your ire—the greedy billionaires, selfish plaintiffs, conservative “think tanks,” and corrupt judges.

But we can’t let the Democrats entirely off the hook. The president and his advisers at the Domestic Policy Council, among them Susan Rice, ignored the advice of activists, experts, and even their own officials at the Department of Education. Advocates implored them to cancel student debt immediately and automatically—something wholly within their power. Their refusal to listen may turn out to be the program’s Achilles’ heel.

Instead of canceling debt swiftly, they took their time and pursued a bureaucratic approach. President Biden announced his plan to cancel up to \$20,000 for all borrowers who make under \$125,000 a year in late August. The Department of Education then took more than six weeks to make the application public—even though it was hardly more than a glorified Google form. Last week, at long last, it finally released the paper version. No one has seen a single penny of relief, despite Herschel Walker’s delusional claims to the contrary.

It didn't have to be this way. Dilly-dallying aided their enemies' cause. By means-testing relief and requiring an application, the White House enabled Republicans and billionaires to cook up lawsuits that, no matter how weak on the merits, just need a sympathetic judge to succeed.

But it also *doesn't* have to be this way. Those activists and experts the Biden administration ignored? We've been saying all along that Biden has the legal authority to cancel debt thanks to the Higher Education Act of 1965, an authority he chose not to lean on. Instead, he relied on the 2003 Heroes Act, which is more limited in scope.

This is a critical moment. Democrats desperately need to boost public morale and send a clear message to potential voters that they have their backs, particularly on economic matters.

The clock is ticking, but the administration could still pivot and come out ahead. Imagine if today, the day before the critical midterms, President Biden took decisive (and legal) action, thus both invalidating these bogus lawsuits and proving to the public he's a fighter who keeps his word, doing loan cancellation right this time. Over 16 million people could see their balances drop or disappear in an instant—something guaranteed to send out shockwaves of jubilation and appreciation, right when the Democrats need it. The alternative is to imperil one of the administration's signature popular policy moves and to risk alienating everyone who is depending on the life-changing relief President Biden promised.