



Conservative Groups' Lawsuit Could Stop Student Loan Relief Even if It Loses

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A lawsuit by conservative advocacy groups could defeat President Joe Biden's latest plan to forgive student loan debt even if it doesn't ultimately win in court.

Loan forgiveness opponents filed a lawsuit this week in a federal court seeking to stop an action by the Department of Education that would forgive \$39 billion worth of student loans for 800,000 borrowers.¹ The suit could succeed either by getting courts to block the program or by putting it on hold past next year's election, when Biden could be replaced by a president who opposes student loan forgiveness, according to Charlton Copeland, a law professor at the University of Miami.

If the Department of Education's action is struck down or delayed, it would be another financial setback for federal student loan borrowers reeling from the Supreme Court's decision to overturn President Biden's plan to forgive up to \$20,000 of student loan debt per person. Copeland had some advice for borrowers who the department is currently notifying will receive forgiveness.

"Don't don't go making other plans about what to do with your money."

The lawsuit is targeting an action announced in April 2022 focusing on decades-old income-driven repayment (IDR) plans, which forgive the debts of student loan borrowers who make monthly payments for 20 or 25 years. Last year, the Biden administration said it was adjusting the payment counts of borrowers to correct past recordkeeping errors on the part of student loan servicers.²³

The one-time payment count adjustment gives borrowers credit for having made payments under certain circumstances including if they were enrolled in a repayment plan that isn't normally eligible for IDR; or even if their loan wasn't being paid because it was in forbearance or some kind of deferment, giving borrowers repayment credit for up to 36 months in forbearance.

The latter provision is meant to help borrowers who were improperly put into forbearance by the private companies that the government hired to collect payments and manage student loans.

The lawsuit challenges the Biden administration's authority to give borrowers credit for payments they never made. It was filed by the New Civil Liberties Alliance, an advocacy group that seeks to reduce the power of federal regulators, on behalf of the Cato Institute, a libertarian think tank, and the Mackinac Center for Public Policy, a pro-business lobbying group.⁴

"Non-payments are not payments," Mark Chenoweth, president of the NCLA said in a statement. "No amount of nonsense changes the essential fact Congress required debtors to make payments *before* receiving debt relief."

The Biden administration said it would fight the suit.

"This lawsuit is nothing but a desperate attempt from right-wing special interests to keep hundreds of thousands of borrowers in debt, even though these borrowers have earned the forgiveness that is promised through income-driven repayment plans," a Department of Education spokesperson said in an e-mailed statement. "We are not going to back down or give an inch when it comes to defending working families."

In Copeland's opinion, the lawsuit could make its way through the court system, potentially all the way to the Supreme Court. If it does, the issue of "standing" will likely be a point of contention.

As a general legal principle in U.S. courts, people filing lawsuits must show that they have a standing—a direct stake in the issue at hand. The NCLA argues the think tanks have standing because, as nonprofit groups, they benefit from the federal Public Service Loan Forgiveness program (PSLF), which forgives loans for people who work for governments or nonprofits if they make income-driven repayments for 10 years.

Biden's plan hurts the think tanks by cutting down that 10 years to as little as seven, reducing the incentive for people to work for them under the PSLF program, the NCLA contends.

Copeland said there are holes in this argument.

"A kind of indentured servitude of 10 years is sort of what they expected," Copeland said. "But no individual public service employer might have expected to receive 10 years of employment from any particular employee. That employee could, in fact, move from employer to employer within the nonprofit sector."

However, Copeland said it's a stronger standing argument than the one that allowed a group of six states to successfully sue to overturn Biden's student loan forgiveness plan.

The states successfully argued that the state of Missouri would be damaged by loan forgiveness because it would hurt MOHELA, an independent student loan servicing company established by Missouri, even though MOHELA itself declined to participate in the lawsuit.⁵

“I think that the Supreme Court has invited these kinds of lawsuits,” Copeland said. “The court—a conservative court—is interpreting the standing requirements fairly liberally.”

It’s also possible that a federal court might order the Department of Education not to go through with the adjustment while the case is decided. If it’s a long enough pause, that might prove just as fatal to it no matter the final outcome, since if Biden loses in 2024, the Republican victor is likely to be hostile to student loan forgiveness.

Indeed, Donald Trump, the leading contender to challenge Biden, called Biden’s broad student loan relief plan “very unfair” to those who had paid off their loans already.⁶

“Executive policymaking can be quite fragile when power changes hands, and this has become a real target,” Copeland said.