# Biden's Latest Student Debt Plan Braces for Potential Legal Challenges

To fulfill a key campaign promise of providing comprehensive debt relief to student loan borrowers, President Joe Biden is expected to face a fresh wave of lawsuits challenging his authority to take action without the approval of Congress. The legal experts warn that despite the president's claim of a "legally sound" alternative plan, the new proposal may still be vulnerable to legal attacks on the basis of executive powers and statutory authority.

Following the US Supreme Court's rejection of Biden's initial attempt at debt forgiveness on June 30, the president swiftly announced a new plan that he believes offers the best remaining option to deliver significant relief to millions of borrowers as quickly as possible. However, even under the best-case scenario, the implementation of the new plan is not expected until after October, when loan payments are set to resume after a three-year pause. Moreover, it relies on the authority granted by the Higher Education Act, which governs financial assistance in post-secondary schooling, thereby exposing it to potential legal challenges.

Steven Schwinn, a professor at the University of Illinois John Marshall Law School, anticipates a barrage of lawsuits challenging any relief provided under the Higher Education Act, alleging that the administration exceeded its statutory authority. The recent Supreme Court ruling stated that the administration had overstepped its authority by implementing a broad and costly debt forgiveness program based on the Heroes Act, a 2003 law granting the Education Secretary special powers in response to national emergencies. The court determined that such drastic actions were not permissible under the Heroes Act, despite the unprecedented nature of the pandemic.

In the court's majority opinion, Chief Justice John Roberts indicated that a plan based on the Higher Education Act would likely face similar challenges. Roberts outlined that the act could only be utilized to cancel or reduce loans under limited circumstances, such as for public servants, bankrupt borrowers, those with severe disabilities, or victims of institutional fraud.



Although the court's ruling was centered on the Heroes Act, legal experts suggest that the opinion implicitly signals that the Higher Education Act's language would not be considered a valid basis for the extensive student-debt relief sought by President Biden. Jed Shugerman, a professor at Boston University School of Law, believes the court's decision was intended to discourage the administration from pursuing similar waivers under the Higher Education Act, sending a clear message of "Don't try this again."

While the Higher Education Act does contain a provision granting the Secretary of Education the power to compromise, waive, or release various rights and claims, including those related to student loans, some Democrats, such as Elizabeth Warren, have advocated for utilizing this act instead of the Heroes Act to pursue debt forgiveness. However, Education Secretary Miguel Cardona cited the quicker regulatory process of the Heroes Act, which does not require a comment period, as the reason for initially choosing that avenue. The administration was able to announce and initiate applications for its original student-debt relief plan in a matter of weeks last year, just prior to a significant midterm election.

Biden cautioned that his new proposal will require more time for authorization, but the administrative procedures have already commenced. The Department of Education has scheduled a public hearing on the matter for July 18. However, these necessary processes will likely take at least a year, delaying the announcement of a final rule until the fall of 2024, just before the presidential election.

Legal experts anticipate that the program will face further challenges once announced. Schwinn suggests that while the Higher Education Act may provide more flexibility to the Biden administration for debt forgiveness, recent Supreme Court rulings curbing federal authority indicate that "the administration will face strong headwinds in defending any relief under any authority that doesn't explicitly grant federal student loan forgiveness."

Biden would need to be re-elected to sustain a legal defense of the plan, potentially thrusting the issue back into the spotlight during the campaign season. Shane Wu, a former federal prosecutor, highlights the trend among the conservative-leaning Supreme Court justices, including Justices Amy Coney Barrett and Neil Gorsuch, of restricting the authority of federal agencies in recent rulings. The outcome of potential court challenges to the new plan will depend on the administration's approach, with the White House yet to release specific details about eligibility criteria or the extent of debt cancellation.

Advocates, such as Santiago Mayer of progressive Gen-Z group Voters of Tomorrow, urge Biden to pursue student debt forgiveness through any means necessary.

However, the legal uncertainty surrounding the plan raises questions about its ultimate viability and realization of the promise made to borrowers burdened by student loans.

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