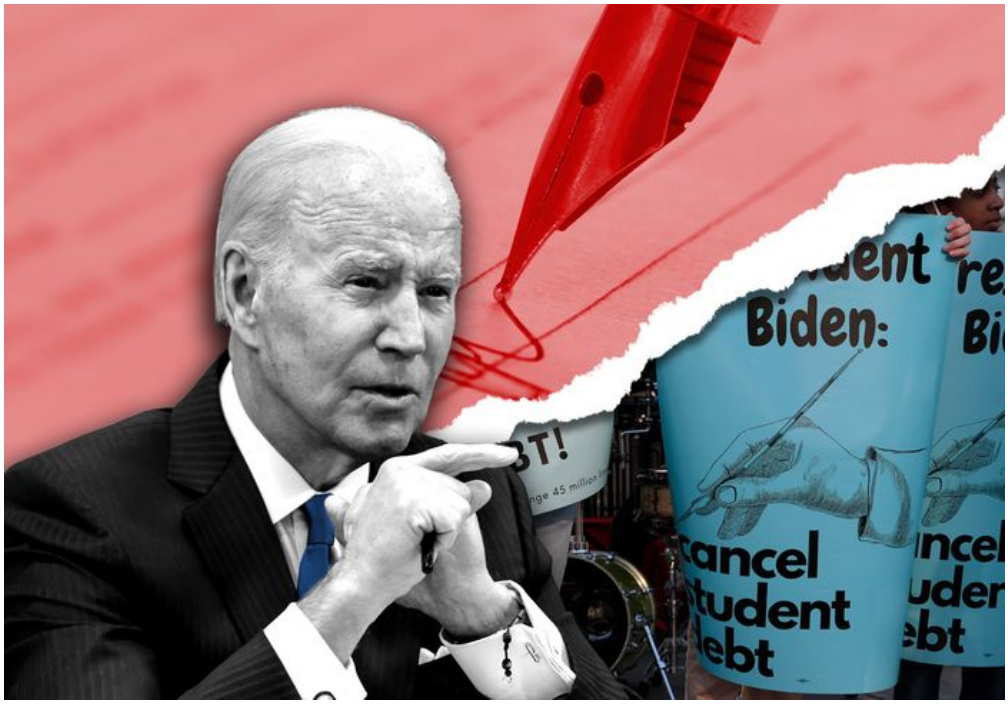
WHY WE SHOULD CHALLENGE BIDEN'S BID TO ELIMINATE STUDENT LOANS



When my kids were in college and complaining about their workload, I was unsympathetic. I reminded them that, to pay for college, I lived at home, commuted 30 hours a week, and worked 20 hours a week, as well as working full time during the summer. I also worked my way through law school. I took out small loans I was able to pay off within a few years of graduating. Count me among the people who deeply resents Biden's plan to cancel $1.6 trillion in outstanding student loan debt. Not only is Biden's plan offensive, but he also has no legal authority and, I believe, no constitutional authority to do so.

There's no question about why Biden is planning to cancel student loan debt: college graduates are his base, especially college graduates who spent four, five, six, or more years in college, while incurring tens or hundreds of thousands in debt, to get that degree in Womyns, Queer, or Africana Studies. These are not useful skills, and they confer no practical benefit on the graduates or America as a whole.

The crazy loans started when the government took over the student loan program. Colleges and universities knew what that meant: in terms of tuition, the sky was the limit because suddenly there was free money to be had. Neither colleges nor banks had to pursue unpaid loans. The government was the heavy now.

Some have been wondering how Democrats can go from the government backing the loans to a

president unilaterally erasing all debt obligations. I certainly wondered, so I was grateful when John Hinderaker wrote "The Student Loan Scam." He points to a Wall Street Journal article that identifies the statutory authority:

> *Progressives claim that the Higher Education Act of 1965 grants the President sweeping authority to "compromise" — i.e., modify — student loans. Since Congress granted the Education Department the power to create student debt, they argue, the Biden Administration also has the power to cancel it.*

Hinderaker correctly concludes that this is a ludicrous argument. Under Secs. 432(a)(5) and (6), the education commissioner has the power to sue to enforce student loans, and students can sue the commissioner. This litigation-related power includes the right to "compromise" claims, something that, in context, clearly means the power to settle individual claims. "The idea that this entitles the Commissioner (or the president) to simply cancel all outstanding loan obligations is ridiculous." Exactly!

Aside from the fact that the law on which Democrats rely does not hand to the president the power to erase $1.6 trillion in debt, I see two other possible problems, although I may be stretching here.

If Biden "cancels" $1.6 trillion in debt obligations, that debt doesn't magically vanish. Instead, the $1.6 trillion become a new obligation imposed on taxpayers, one that Congress did not previously authorize. In other words, it's a tax. Last I looked, the power to tax rested exclusively with Congress:

> *Constitution, Section 8, Clause 1: SECTION 8. The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.*

Biden's responsibility is limited to using the money raised from taxes in the ways that Congress authorizes. There's nothing in his constitutional authority to create what's effectively a vast new tax obligation on the American public.

Likewise, if Biden erases $1.6 trillion in debt in a single swoop, he is effectively creating a new law in America: government-paid college and university education of the kind seen in Europe. Why do I say that? Because Biden cannot cancel currently existing debt without going forward and canceling future acquired debt. After all, he's claimed that he's not pandering for votes; there's a principle involved here.

Biden's executive order, if allowed, will magically achieve what Democrats have always craved, which is the European system. It doesn't matter to Democrats that a much smaller percentage of Europeans go to college than Americans do. (I'd love it if a smaller percentage attended here, too.)

What should matter to all of us is that, just as canceling $1.6 trillion in debt will create a backdoor tax, it will also create a piece of backdoor legislation that will see the government pay for all higher education. Again, Biden doesn't get to do that. His job under the Constitution is to enforce, not enact, the laws of the land.

Yeah, maybe I'm pushing things a bit with these theories. However, Biden's plan — something no president has ever dared to do before — demands understanding the actual effect of his plan at a governmental level and seeing how it intersects with, and violates, the constitutional limits on presidential power.

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