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FEW Washington Legislative Update April 16 - 30, 2023

In Congress:

On Monday, April 17, 2023, a bicameral group of Republican lawmakers called for key House and Senate committees to take [action to prevent lawmakers from using TikTok](#) for government-related purposes, citing privacy and national security concerns about the popular app's ties to the Chinese government.

On Wednesday, April 26, 2023, the House passed a measure to avoid a debt default. [The 2023 Limit, Save, and Grow Act](#) would slash discretionary spending at domestic agencies to its fiscal 2022 levels, leading to significant reductions of more than 20 percent in fiscal 2024. It would also cap annual spending growth to just 1 percent for the next decade.

In the Senate: (ERA) Equal Rights Amendment Ratification Blocked ***A Joint resolution came five years after 38th state legislature, Virginia, voted to add to Constitution***

On Friday, April 27, 2023, the Senate Minority members blocked a procedural measure on a joint resolution to remove an expired deadline for states to ratify the Equal Rights Amendment, which has never been added to the Constitution, a century after it was first introduced to Congress.

Fifty-one senators voted to take up the measure, with 47 voting against doing so. The procedural vote Thursday needed 60 in support for the Senate to formally take up the measure.

Sourced From: [\(Roll Call\)](#)

Diversity, Equity, and Inclusion:

A New Report Highlights Procurement Innovation Hubs That May Help Achieve White House Equity Goals

The federal government must transform its procurement practices and focus on improving collaboration to deliver on the White House's goal of leveraging agencies' buying powers to advance racial equity, modernize infrastructure and address climate change, according to a new report.

The Partnership for Public Service report, released Wednesday, identified specific examples across the federal government of agencies employing innovative procurement and acquisition initiatives to "deliver more effective services and better outcomes to the public."

Those examples included the Department of Justice Civil Rights Division's Disability Rights Section contracting with the General Services Administration's technology consultancy, 18F, to improve the Americans with Disabilities Act website.

The report said 18F employed open-source and pre-approved tools like cloud.gov and the U.S. Web Design System, which gave the team more time to better understand the needs of the site's 3.5 million annual visitors.

The report also recommends specific steps agencies can begin taking to advance White House goals on equity, modernization and sustainability, from interdisciplinary approaches to procurement and building external partnerships, to leveraging government programs like 18F for guidance on the digital service acquisition lifecycle.

The Partnership for Public Service also explored how the U.S. Digital Service has redesigned its procurement processes with a focus on cross-agency collaboration and including the product, engineering, design and procurement offices on projects from start to finish, rather than having those teams work in more traditional silos.

"The U.S. Digital Service's team-based model of procurement brings together experts across the agency, which can result in faster, cheaper and more sustainable procurements," the report said.

President Joe Biden announced a commitment to double the number of federal contracts going towards small, disadvantaged businesses in 2021 as part of an effort to

close the racial wealth gap in the U.S. The White House said the commitment would amount to nearly \$100 billion in additional contracts for SDBs through 2026.

The president also signed an executive order in December 2021 which aimed to leverage the federal government's purchasing powers to achieve net-zero emissions for federal procurement and government-wide operations by 2050.

To meet those ambitious goals, the Partnership for Public Service called on federal agencies to explore implementing new procurement initiatives like the Department of Homeland Security Procurement Innovation Lab.

The lab provides acquisition professionals across the federal government access to digital information technology training, tests experimental procurement conventions and shares insights with the federal acquisition community. The Procurement Innovation Lab supported 20 projects in fiscal year 2022 that resulted in a cumulative cost savings of \$814 million, the report said.

The Partnership also identified NASA's Acquisition Innovation Launchpad as another recent example of a federal initiative that promotes industry collaboration and strengthens program management practices.

"To tackle complex societal challenges and better serve the public, government agencies must collaborate internally, across agencies, with the public and with industry to take advantage of diverse expertise as well as the lived experience of the people they serve," the report said.

Sourced From: [\(Government Executive\)](#)

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Tier I

Lawmakers Introduce Bipartisan Bill That Would Cover IVF For Federal Employees

One in every eight couples face challenges while conceiving, according to survey data from Resolve, the National Fertility Association. With more than 9 million people eligible, the Federal Employees Health Benefit (FEHB) Program, administered by the government, is the largest employer-sponsored health insurance program in the world.

Yet, there is not a single FEHB carrier that offers a nationwide plan covering assisted reproductive technology, which includes all fertility treatments in which eggs or embryos are handled.

Sen. Tammy Duckworth of Illinois, Reps. Gerry Connolly of Virginia, Eleanor Holmes Norton of Washington, D.C., and Debbie Wasserman Schultz of Florida, all Democrats, and Rep. Nancy Mace of South Carolina, a Republican, are seeking to address that with the introduction of the Family Building FEHB Fairness Act on Tuesday, marking National Infertility Awareness Week. Nationally, about 2 percent of all infants born in the United States were the result of assisted reproductive technology.

“I think it’s important that federal employees have access to fertility treatments as an option in their health care,” Duckworth told The 19th. “I would not have my two girls without it. Without the miracle of IVF, I wouldn’t be a mom today, and there’s so many other people like me who might never have been able to start a family without IVF. ... We’re starting to think of infertility as a condition that deserves treatment.”

Connolly said the new bill presents an opportunity for the federal government to lead by example in modernizing health care coverage to become the employer of choice for millions of Americans.

“Federal employees, like every American, should have the right to start and build a family,” Connolly said. “Yet right now, the FEHB program offers only limited and inconsistent coverage for assisted reproductive treatment. This must change.”

Duckworth and Connolly began their push in August 2022, when they wrote to the U.S. Office of Personnel Management — the chief human resources agency for the federal government — and demanded more be done to expand access to these services and treatments.

Since then, there has been incremental progress. The agency recently announced that in 2024 all FEHB carriers will be required to cover artificial insemination, drugs associated with artificial insemination and IVF-related drug costs for three cycles annually.

Duckworth said the proposed legislation would cover other IVF-related costs and expand coverage to all the different forms of assisted reproductive technology. The most common type of assisted reproductive technology by far is IVF, but there is also gamete intrafallopian transfer, zygote intrafallopian transfer and frozen embryo transfer.

The new legislation would also be a tool to help retain government employees, Duckworth said.

“This bill is going to help us keep our workforce,” Duckworth said. “Private companies, civilian and non-governmental institutions are providing this as part of their health care. So, we are losing government employees who would normally stay because they want to start a family and they’re suffering from infertility. They’re having to make this very difficult choice of leaving a life in the civil service to this country that they love and having to go work for companies that provide this treatment.”

Barbara Collura, the president and chief executive of Resolve, said the proposed bill is “long overdue,” particularly given that the U.S. government is the country’s largest employer. Collura said the National Infertility Association has been working with federal employees for years to advocate for change within their agencies and departments.

“We see this legislation as a response to the demands of employees today,” Collura said. “We’ve seen over 2 million people get insurance coverage through their employer because they asked for it over the last four years. So, this is definitely a trend, a positive trend. We’re seeing large employers adding benefits, and it’s incredibly gratifying to see the federal government do the same. It’s a big deal.”

Sourced From: [\(Government Executive\)](#)

FEW Washington Legislative Update – April 16 - 30, 2023 Tier II

Here's How the Hatch Act Applies, With Biden Running for President Again

Now that President Biden is running for reelection, the agency that oversees civil service law released updated guidance on how federal employees can avoid violating the Hatch Act.

The act limits the political activity—meaning activity directed at the success or failure of a political party, partisan political group or candidate for partisan political office—of civilian federal employees while on duty or in a federal building. “This prohibition is broad and encompasses more than displays or communications (including in-person and via email or social media) that expressly advocate for or against President Biden’s reelection,” the Office of Special Counsel (OSC) said in an advisory opinion released on Wednesday.

Therefore, “while on duty or in the workplace, employees may not: wear, display, or distribute items with campaign slogans, including from the 2020 Biden/Harris campaign or any other of President Biden’s past campaigns, or with the phrase, “Let’s Go Brandon”; or use hashtags such as “IStandWithBiden”, “BidenDisaster”, or “lets gobrandon” in social media posts or other forums,” the advisory opinion said. “In addition, employees generally may not wear or display items with the image of President Biden, unless it is the type of official or personal photograph described in this advisory opinion.” “Let’s Go Brandon” has become a slogan to mean “[expletive] Joe Biden.”

The advisory also notes that employees are still considered “on-duty” when they are teleworking and references OSC’s guidance for more specifics. As for social media, OSC referred to another set of guidance.

Under the Hatch Act, “less restricted” employees have more ability to take part in partisan political activity when they’re off duty as opposed to “further restricted” ones. Also, some agencies that would fall under the less restricted category have more stringent rules, as Government Executive reported back in the fall. The act does not apply to the president and vice president. Military service and U.S. Public Health Service Commissioned Corps members aren’t subject to it either but have their own set of rules.

White House commissioned officers, the highest-ranking White House staff members, and certain presidential appointees with Senate confirmation are the only categories of employees “to which the advisory opinion does not apply the same,” said Zachary Kurz, OSC spokesperson.

“Those individuals are not subject to the prohibition against engaging in political activity while on duty or in a federal building, as long as the costs associated with their political activity are not paid by the U.S. government,” Kurz said. However, he noted that even White House commissioned officers and presidential appointees with Senate confirmation “are still prohibited at all times from, for example, soliciting political contributions or using their official authority to interfere with or influence elections.”

Debra D’Agostino, founding partner of the Federal Practice Group, gave “kudos to OSC” for including telework and social media in the advisory.

Also, “most federal employees may not find themselves in a position to host political events or speak in their official capacity,” she added. “But they may see a ‘Let’s Go

Brandon' tag on Facebook and wonder whether it's okay to like or dislike the post, especially now that campaigns seem to be happening almost continuously.”

Sourced From: ([Government Executive](#))

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Tier III

Women's Health

Supreme Court Maintains Abortion Pill Access For Now As Legal Fight Continues

Access to a widely used abortion pill will remain at current levels for the time being, the Supreme Court ruled Friday, April 21, in a decision staving off sweeping restrictions ordered by lower courts.

The high court's decision keeps the drug, mifepristone, available for now, but the legal battle over the drug, which has become the most common method of abortion nationwide, could drag on for months if not years to come.

Justices Samuel Alito and Clarence Thomas dissented from the Supreme Court's action, which prevents earlier rulings from a Texas-based judge and a federal appeals court from taking effect.

Those rulings would have suspended several policies the FDA enacted since 2016 to make mifepristone more accessible — including telemedicine prescription, mail delivery, retail pharmacy dispensing and the approval of a generic version of the drug. The lower-court action also would have scaled back the federally approved use of the drug from 10 weeks of pregnancy to seven weeks — before many patients know they are pregnant.

The Supreme Court's unsigned order on Friday keeps those rulings blocked while litigation continues — first at the 5th Circuit Court of Appeals and then, perhaps, back at the Supreme Court. As a result, the status quo for access to mifepristone will likely remain in place through the fall and perhaps well into next year.

The case could return to the justices for full briefing, oral arguments and a final decision in the summer of 2024, just as the presidential campaign gets into full swing.

President Joe Biden cheered the brief Friday ruling for “preventing a lower court decision from going into effect that would have undermined FDA's medical judgment and put women's health at risk.”

“As a result of the Supreme Court’s stay, mifepristone remains available and approved for safe and effective use while we continue this fight in the courts,” he said.

As is often the case when acting on requests for emergency relief, the court’s majority did not explain its reasons for granting the stay.

Thomas also offered no explanation for opposing the stay, but Alito wrote a four-page opinion detailing his reasons for rejecting it, often echoing arguments made by the anti-abortion challengers in the case.

Alito wrote the majority opinion last June in *Dobbs v. Jackson Women’s Health Organization*, which ended the federal constitutional right to abortion. But no other justice signed onto his dissent on Friday.

He argued that his colleagues should have allowed an April 12 preliminary ruling from the 5th Circuit to be implemented because the Biden administration and Danco Laboratories, the drug company that makes the brand-name version of mifepristone, didn’t show that they would “suffer irreparable harm” under that ruling.

The restrictions on the drug ordered by the appeals court, Alito wrote, “would not remove mifepristone from the market” but “would simply restore the circumstances that existed (and that the Government defended) from 2000 to 2016 under three Presidential administrations.”

Alito also speculated that, if the high court had allowed the 5th Circuit’s ruling to take effect, the Biden administration might have used “enforcement discretion” to avoid implementing the restrictions.

Danco and another drug company — GenBioPro, which makes the generic version of the drug — had told the Supreme Court that the restrictions ordered by the 5th Circuit could amount to a nationwide ban of the drug, at least temporarily. GenBioPro would lose its federal approval for the generic version, and Danco would have to revise its product labels, recertify providers, apply to the FDA for a new regulatory framework and jump through other time-consuming administrative hoops, potentially cutting off access to the pill for months.

Attorneys for anti-abortion groups dismissed these claims, urging the high court to “restore a modicum of safety for the women and girls who use the drug” by reimposing the FDA’s pre-2016 restrictions.

The fight over mifepristone now returns to the conservative-leaning 5th Circuit, which will review briefs from both sides beginning next week and is set to hear oral arguments on May 17.

Mifepristone has been used for decades as part of a two-drug medication regimen to induce abortion early in pregnancy. These medication abortions have become increasingly popular, particularly as patients have availed themselves of the newer options for access, including drugs prescribed via telemedicine and sent through the mail. In the wake of the Dobbs decision, which allowed states to ban abortion within their borders, the pills have also become a key way patients have circumvented those laws.

Last year, anti-abortion medical groups sued to revoke the FDA's original 2000 approval of mifepristone as well as the agency's policies expanding access to the drug over the past seven years. A federal district judge appointed by former president Donald Trump, Matthew Kacsmayk, issued a preliminary ruling earlier this month largely siding with the challengers. The 5th Circuit Court of Appeals narrowed Kacsmayk's ruling, keeping the drug on the market but suspending the policies that broadened access.

Numerous studies have found mifepristone to be safe and effective — whether dispensed in-person by a doctor or sent by mail. The country's leading medical groups, including the American Medical Association, have petitioned courts to uphold FDA approval of the pill, vouching for the agency's rigor and warning that siding with the challengers would open the door to a wave of cases going after everything from vaccines to birth control. The pharmaceutical industry has also cautioned that companies will hesitate to seek approval for new cures if they fear FDA approval could someday be second-guessed and overturned by courts.

While the Supreme Court's decision maintains access to mifepristone at the federal level for now, Democratic state officials and medical groups are bracing for the possibility that judges could implement restrictions in the months ahead. Legislatures in some red states are also moving to enact state restrictions on the drug, on top of existing laws restricting abortions more generally.

Several blue states have recently moved to stockpile doses of either mifepristone or misoprostol — the second pill commonly used with mifepristone for medication abortions. Misoprostol can also terminate a pregnancy on its own, but it carries a slightly higher rate of complication and more side effects than the two drugs together.

Clinics as well as online vendors are preparing their doctors and nurses to pivot to offering misoprostol-only abortions if necessary. The drug, which is also used to treat stomach ulcers, is subject to fewer FDA restrictions than mifepristone.

The Supreme Court's order came one week after the case reached the justices on an emergency basis. Alito, who handles emergency requests emerging from the 5th Circuit, acted twice to place temporary holds on the 5th Circuit's ruling so that the justices could have more time to consider the matter.

Sourced From: [\(Politico\)](#)

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