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1629 K Street NW, Suite 300
Washington, DC 20006
Phone: 202/898-0994
Fax: 202/898-1535

FEW Washington Legislative Update July 16-31, 2023 Congress begins Recess - July 28, 2023

In Congress:

On Thursday, July 20, 2023, The Senate Appropriations Committee approved three more [fiscal 2024 funding measures](#); two of which—those funding the departments of Transportation and Housing and Urban Development, as well as the Energy Department—received unanimous, 29-0 votes. The third, which would set spending levels for the State Department and the U.S. Agency for International Development, received just two dissenting votes.

On Wednesday, July 26, 2023, David Grusch [testified under oath](#) before the House Oversight Subcommittee on National Security, the Border, and Foreign Affairs. He stated that the federal government has misappropriated funds to retrieve and reverse engineer technology from crashed unidentified flying objects and has “non-human” remains in its possession from these recovery efforts. He further alleged that the federal government has relied on intimidation, budgetary trickery, and classified reporting to conceal its decades-long awareness of extraterrestrial aircraft.

On Monday, July 28, 2023, Reps. Jamie Raskin (D-Md.) and Nancy Mace (R-S.C.) introduced the [Cannabis Users Restoration of Eligibility \(CURE\) Act](#), which would prohibit agencies from denying someone a security clearance or finding them unsuitable for federal employment due to “current or past use” of marijuana.

Diversity, Equity, and Inclusion:

The Senior Executive Service is Becoming Less White and Male, but Still Lags Behind the Rest of the Federal Workforce

The highest-ranked career federal employees are getting older and more diverse, a new analysis has found, though they remain disproportionately white, and male compared to the larger civil service.

While the Senior Executive Service (SES) has grown by 20 percent over the last 25 years, it has remained steady at around 0.4 percent of the federal workforce. The employees are getting older, however, creating the potential for an upcoming wave of retirements. The data was compiled by the nonprofit Partnership for Public Service, which said it was critical to have a better understanding of the trends within the SES due to the “vital part they play in ensuring the federal government achieves its mission.”

“We found that although the SES has grown as the workforce has grown and has become more diverse over time, it still is not fully representative of the composition of the federal workforce as a whole,” the Partnership said.

In 1998, just 20 percent of the SES was female. That figure has steadily grown over time and by 2022, reached 38 percent. That still lagged behind the federal workforce writ large, which is 44 percent female. Most of the growth took place in the late 1990s and 2000s and has slowed down in recent years.

Just 16 percent of the SES identified as people of color in 2007, the first year such data is available. Last year, that climbed to 25 percent. That still trailed the rate of the entire federal workforce, of which 39 percent identified as people of color. In 2011, members of minority groups represented just 18 percent of the SES, which the Obama administration at the time called “unacceptable.”

A lack of diversity within the SES workforce has drawn criticism from lawmakers, auditors, and advocacy groups for more than 20 years. In the intervening time, Congress has held hearings in which administration officials have acknowledged progress was too slow.

Just 12 percent of the SES is Black, compared to 19 percent of the federal workforce. That marks slow progress from 20 years prior, when 9 percent of the SES was Black. The African American Federal Executive Association in 2020 launched a career

development program with the goal of creating a pipeline for Black SES employees, though the rate has only just barely ticked up during the Biden administration.

In 1998, just 12 percent of senior executives in the federal government were at least 60 years old. By 2022, that had grown to 27 percent. As the cadre ages, the number of retirements has increased. More than 900 SES employees separated from federal service in 2022, a 30 percent growth since 2005. Nearly two-thirds of the senior executives on board in 2020 will be eligible to retire by 2025, the Partnership found.

Hiring, meanwhile, has remained fairly stable. It peaked in 2011, when agencies brought on 245 new SES employees. That dipped to a low of just 100 in 2018 but has stabilized to around 200 per year.

Program management is the most common occupation for senior executives. The number working in IT has grown in recent years, while the number working in physical sciences has dipped.

The SES was created in 1978 and the cadre of employees serve as the top career staffers at each agency, sitting just below political appointees and serving as intermediaries between presidential administrations and the rest of the rest of the civil service. They operate on a separate compensation system, earning a base salary and then the rest of their pay based on performance.

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

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Tier I

House Spending Bill for the VA Renews Fight Over Abortion Access and Transgender Care

House Republicans approved their first government spending bill Thursday, July 27, following tense debate about whether the Veterans Affairs Department (VA) should provide abortions in limited circumstances and the GOP's decision to cut military construction funding.

The 219-211 mostly party-line vote on the Military Construction-VA appropriations bill sends the measure to the Senate, where that chamber's spending panel has written its

own bipartisan version of the legislation. The House and Senate will likely begin working out their differences in a conference committee this fall.

But most House Democrats vehemently opposed their chamber's bill, arguing the policies GOP lawmakers added in were extreme and the funding levels too low. The legislation would roll back a rule sought by the VA that would allow taxpayer funding of abortions when the health of a pregnant veteran is endangered, along with other limited circumstances.

The bill also targets the funding of gender-affirming care for transgender veterans, the display of LGBTQ Pride flags and diversity, equity, and inclusion training.

"VA is a place that all veterans should feel welcome, included and cared for," said Florida Rep. Debbie Wasserman Schultz, the top Democrat on the spending subcommittee. "All veterans means all veterans, and what this bill does is shameful."

Wasserman Schultz said the House spending bills for the fiscal year that begins October 1 are on a "collision course" with the Senate, where its version of this bill has broad bipartisan support.

Texas Republican Rep. Kay Granger, chair of the full Appropriations Committee, said the House's Military Construction-VA funding measure "honors" lawmakers' commitment to veterans while reducing some government spending.

"The bill prioritizes our nations' heroes by providing critical funding for military bases and facilities, improving the quality of life of our service members and their families, and ensuring veterans are appropriately honored in our cemeteries and battle monuments," Granger said.

The House bill would provide \$17.5 billion for military construction projects and \$137.8 billion in nondefense discretionary spending for veterans' medical care. Current law provides \$19 billion for military construction and \$135.2 billion in nondefense discretionary spending for veterans' health care.

The House Appropriations Committee released the bill in mid-May and approved the legislation on a party-line vote in mid-June after members on the panel debated and voted on several amendments.

The spending bill includes numerous conservative policy riders, including one that would bar the Department of Veterans Affairs from implementing an interim final rule on abortion access.

That rule says that VA could terminate a pregnancy “when the life or health of the pregnant veteran would be endangered if the pregnancy were carried to term or when the pregnancy is the result of an act of rape or incest.”

In a move that could slightly confuse the VA, Republicans also added in long-standing language on federal funding for abortion access, which says taxpayer dollars can only go toward pregnancy termination when it is the result of rape or incest, or when it would endanger the life of the pregnant patient. That provision — which does not include a provision for the health of the pregnant veteran, like the interim rule — is generally referred to as the Hyde amendment.

The legislation would bar the Biden administration from closing the Guantánamo Bay detention facility in Cuba, where the U.S. military continues to hold about 30 detainees.

The United Nations issued a report last month, after an official visited the facility and garnered access to detainees.

The report said the official “identified significant improvements to the conditions of confinement but expressed ‘serious concerns about the continued detention of 30 men and the systematic arbitrariness that pervades their day-to-day, bringing severe insecurity, suffering, and anxiety to all, without exception.’”

UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, also wrote in the report that “closure of the facility remains a priority.”

The House’s spending legislation does not include any dedicated funding for the Defense Department to clean up PFAS or forever chemical contamination on the more than 700 military sites throughout the country where it has been detected.

Pennsylvania Democratic Rep. Madeleine Dean criticized the GOP for its decision not to include specific PFAS cleanup funding, like the \$200 million Democrats provided in the committee report that accompanied last year’s spending law.

“The service members that call these bases work or home have been continually exposed to these forever chemicals, as have their neighbors in the surrounding area,”

Dean said. "Congress and the White House have a responsibility to protect our current and future service members as well as their neighbors."

Dean said the forever chemicals, or PFAS, can harm people's health in several ways, including possible decreased fertility, increased risk of cancer, obesity, and thyroid hormone disruption.

The bill bars the VA from using any funding "for surgical procedures or hormone therapies for the purposes of gender-affirming care."

It prohibits spending any taxpayer dollars to display any flag at a VA facility or national cemetery other than the U.S. flag, a state or territory's flag, a tribal flag, a department flag, an Armed Services flag, or the POW/MIA flag. The language is intended to prevent flying the LGBTQ pride flag.

The bill bars funding from being used "for any office, programs, or activity for the purposes of diversity, equity, and inclusion training or implementation."

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

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Tier II

Biden Asks Supreme Court to Salvage a President's Right to Issue Federal Workforce Mandates

While President Biden has revoked his mandate that all federal employees receive a COVID-19 vaccine, his administration is asking the Supreme Court to vacate the decision that blocked the requirement.

Biden's withdrawal of the mandate followed an en banc decision by the U.S. Court of Appeals for the Fifth Circuit, which ruled the president overstepped his authorities in mandating "private, irreversible medical decisions." While the pandemic-era health emergency has ended and nearly all federal employees are no longer subject to any COVID-19 vaccine requirement, the administration is now seeking to prevent a wider, precedent-setting ruling that would rewrite presidential authorities by instead having the case dismissed as no longer relevant.

The Biden administration asserted in its request similar arguments it has made throughout the lengthy legal battle, including that the president has long had the power to set policy regarding the conduct of federal employees and that civil servants must take their grievances to the procedures spelled out in the Civil Service Reform Act. The plaintiffs—Feds for Medical Freedom and a union representing some Homeland Security Department employees—have asked the U.S. Court for the Southern District of Texas, where the case originated and now awaits final action, to immediately and permanently kill the mandate.

The Justice Department requested the Supreme Court accept the case—a process known as granting a writ of certiorari—vacate the ruling against the administration and instruct the district judge to dismiss the case as moot. Many of the issues at stake in the appeal to the Fifth Circuit “are no longer the subject of any live controversy,” the Justice Department attorneys said. Put simply, they added, Biden’s order “no longer exists to be enjoined.”

While they recognized the court’s precedent precludes a defendant from claiming a case moot because it ends the aggrieving behavior once sued, the attorneys suggested that logic did not apply in this case because Biden only revoked the order due to the waning impact of the pandemic.

While the plaintiffs previously argued the government could reinstate the mandate at any time, the Biden administration said that was unlikely.

“At this time, no reasonable prospect exists that the government will resume enforcing the same policy challenged here,” the Justice attorneys said. Any change would be responsive to a change in circumstances of the spread of COVID-19, the federal lawyers added.

The Biden administration also expressed concern about the precedent set by the appellate court.

The decision “erroneously resolves important questions of presidential authority and the proper scope of equitable relief,” it said. It also opens the door to employees regularly finding workarounds to civil service laws to instead bring their cases to federal courts.

“This administration’s COVID vaccine mandate is immoral, unscientific, and unconstitutional,” said Marcus Thornton, president of Feds for Medical Freedom. “We applaud the lower courts for blocking its implementation and we look forward to

continuing our advocacy for the rights and liberties of federal workers and all Americans in front of the Supreme Court.”

Prior to the government’s appeal to the Supreme Court, the group was seeking a summary judgment from the court without the need for additional proceedings. Additionally, the group had argued that the government failed to materially address the actual merits of its argument seeking a permanent injunction. There is “ample evidence” the government could someday reimpose vaccine mandates, the group said, as there has been no legislative intervention. An affirmative ruling issuing a permanent injunction would help resolve any future uncertainty regarding the validity of such an executive branch mandate.

Feds for Medical Freedom is pursuing multiple additional cases seeking monetary damages for the alleged suffering endured by its members who were briefly subject to the mandates. By the time Biden’s mandate was enjoined in early 2022, at least 98 percent of the federal workforce was in compliance with the mandate by either proving they received the vaccine or requesting a medical or religious exemption.

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

FEW Washington Legislative Update – July 16-31, 2023 Tier III

Biden’s HIPAA Expansion for Abortion Draws Criticism, Lawsuit Threats

The Biden administration’s effort to wield the nation’s premier health-privacy law to protect abortion rights is under fire from Republicans who accuse the president of overreaching — and from Democrats who call it too weak.

The Department of Health and Human Services is preparing to release a final rule later this year that would expand the protections of the decades old Health Insurance Portability and Accountability Act, or HIPAA, with the aim of shielding people who seek, obtain or provide abortions from red state probes — one of the most concrete steps the administration has taken to defend abortion rights since the Supreme Court ended *Roe v. Wade* a year ago.

But conservatives, including Republican attorneys general and former Trump administration officials, say the move would violate states’ rights as well as the Supreme Court’s *Dobbs* decision — and would be ripe for a lawsuit.

There is “absolutely” a potential for legal challenges, said Roger Severino, who served as the head of HHS’ Office for Civil Rights under former President Donald Trump and is now vice president of domestic policy at the Heritage Foundation. “I would imagine, at the very least, that a challenge would come from state attorneys general, because the administration is interfering with their ability to enforce their own laws.”

Dozens of top Democrats in the House and Senate, meanwhile, say the draft rules are inadequate for a post-Roe environment in which Republican-controlled states are seeking to target abortion providers more aggressively and anyone who helps a patient circumvent state restrictions.

“I get why the administration wants to take this position,” Sen. Ron Wyden (D-Ore.), a leader of the effort, told POLITICO on Tuesday. “But it’s really a mistake, substantively and politically, to just throw in the towel and let the government make a policy that doesn’t come close to dealing with the risk women are facing.”

The attacks from both sides highlight the precarious path the Biden administration has tried to navigate since the Supreme Court overturned *Roe v. Wade* last summer. With no hope of restoring abortion protections through legislation in a divided Congress, the White House has largely leaned on rulemaking and executive orders — many of which are drawing criticism from progressives and the right.

The White House declined to respond to the criticism of the proposed rule. A spokesperson for HHS did not respond to a request for comment.

The proposed HIPAA expansion is one of the most concrete steps the administration has taken to defend abortion rights since the end of *Roe*. If enacted, it would bar health care providers and insurers from turning over information to state officials for the purpose of investigating or prosecuting someone who seeks or provides a legal abortion. It would provide more protections both for people who cross state lines for the procedure and those who qualify for an exception to abortion bans in their home state, such as in cases of rape, incest, or life endangerment.

HHS proposed the rules in April and opened them for public comment through mid-June. Republican officials and conservative advocacy groups say the draft policy goes too far, infringing on states’ abortion bans, while nearly 50 Congressional Democrats say it does not go far enough, and are pressuring the administration to add additional measures before releasing a final rule.

In a letter to HHS Secretary Xavier Becerra shared first with POLITICO, Democrats led by Sens. Ron Wyden (D-Ore.) and Patty Murray (D-Wash.) make several demands, including that the administration require law enforcement to “obtain a warrant before

forcing doctors, pharmacists, and other health care providers to turn over their patients' [protected health information]."

For now, the proposed rule requires only that state officials seeking this information get a subpoena, administrative request, or other kind of court order — a lower bar to clear. And rather than limiting the expanded protections to reproductive health care, as the proposed rule currently does, the senators argue that "HHS should apply this protection across the board, regardless of the illness, disease, or medical issue."

Wyden said he is particularly worried about state agencies and law enforcement demanding information from retail pharmacies that have pledged to stock abortion medications.

"I've been investigating pharmacy chains for the last two months on their privacy practices, and I can tell you that health care providers are turning over Americans' sensitive health records without a warrant every single week," he said. "And, for the most part, the patients are never going to be told that the information was turned over. That is why this rule is so unacceptable. We are talking about uterus surveillance."

Another letter participant, Rep. Jasmine Crockett (D-Texas), told POLITICO after an abortion rights roundtable Monday night that a much stronger rule is needed to block "rogue attorney generals" from going after private health records.

"We need an executive order explicitly stating that under no circumstances, unless a person waives access to that documentation, should this be allowable," she said. "They just think it is everybody's business if somebody has an abortion or if somebody is going through a [gender] transition. So, we have got to rein this in, because at some point in time, if you get the wrong people in control, they may end up trying to get records on Viagra and everything else."

Yet Severino and other conservatives insist the proposed rule already oversteps federal authority, violating both the Administrative Procedures Act as well as the U.S. Constitution.

"If someone says, 'I'm going to kill myself' or 'I'm going to kill somebody else,' medical providers are allowed and in some cases required to disclose that information to law enforcement," he said. "But if there is an imminent threat to an unborn person in a pro-life state, this rule would prohibit the provider from disclosing that information to save that life. They are creating an abortion exception to the HIPAA regime for the sake of pleasing the left base that Biden and Becerra answer to."

Mississippi Attorney General Lynn Fitch — who defended the state’s 15-week abortion ban in the case that overturned *Roe v. Wade* last year — led a group of 19 Republican attorneys general on a public comment that repeatedly called the rules “unlawful” and accused the Biden administration of trying to “wrest control over abortion back from the people in defiance of the Constitution.”

While Fitch’s office declined to say whether she is considering her own legal challenge, her letter argues that the rules defy the core Supreme Court holding in *Dobbs* — that states have the right to enact and enforce their own abortion laws, including the right to seize data from and prosecute doctors they suspect of violating them.

“Suppose that state officials had reason to believe that an abortion provider deliberately performed an abortion in violation of state law, resulting in serious injury to the woman, and that the provider then falsified medical records and referred the woman to an out-of-state provider to cover it up,” the Attorneys General write. “State officials would clearly have a basis to investigate that provider.”

Democratic attorneys general from 23 states and D.C. submitted comment in support of the proposed rule, as did Blue Cross Blue Shield and other health insurance companies, the Unitarian Universalist church and other faith groups, the American Pharmacists Association and other medical groups, and municipal officials from Los Angeles, Cleveland, and other cities.

The conservative groups Concerned Women for America, Catholic Medical Association, March for Life, and the American Association of Pro-Life Obstetricians and Gynecologists — one of the groups currently suing the FDA over approval of the abortion drug mifepristone — were among those that opposed.

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

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