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# FEW Washington Legislative Update
# June 16-30, 2023
# Congress is in Recess

**In Congress:**

On Wednesday, June 21, 2023, Senate Judiciary Chair Dick Durbin announced that his panel will vote on ethics legislation for the high court in July, after he and Sen. Sheldon Whitehouse (D-R.I.) have spent months probing the matter. Durbin said the Supreme Court is in the middle of an "ethical crisis of its own making" and added that Congress will act if Chief Justice John Roberts does not address the issue on his own.

On Wednesday, June 21, 2023, Senate Majority Leader Chuck Schumer unveiled his framework to get Congress on a path toward comprehensive Artificial Intelligence (AI) legislation. The majority leader's "SAFE Innovation framework" builds on his April announcement of a "major effort" to develop federal regulations for AI. On Friday, June 30, 2023, the President signed into law: S. 467, the "Changing Age-Determined Eligibility To Student Incentive Payments Act" or the "CADETS Act," which modifies the age requirement for the Student Incentive Payment Program administered by the Department of Transportation's Maritime Administration.

Also, before adjourning for its two week recess, the House passed H.R. 3564 – Middle Class Borrower Protection Act of 2023 which would roll back changes made by the Federal Housing Finance Agency (FHFA) to the fees charged by Fannie Mae and Freddie Mac for a conventional single-family mortgage. After today, the House will be in recess for the Independence Day Holiday until Tuesday, July 11, when it will return for votes.

The Senate stands adjourned for pro forma sessions only with no business conducted on the following dates and times: Monday, June 26 at 2:00 P.M., Thursday, June 29 at 10:00 A.M., Monday, July 3 at 10:00 A.M. and Thursday, July 6 at 10:00 A.M. When the Senate adjourns on Thursday July 6, it will next convene at 3:00 P.M. on Monday, July 10 and will resume consideration of the nomination of Xochitl Torres Small to be Deputy Secretary of Agriculture.

## Diversity, Equity, and Inclusion:

### Affirmative Action is Done. Here's What Else Might Change for School Admissions

The Supreme Court's gutting of affirmative action on Thursday, June 29, has sparked a new drive among education groups, lawmakers and civil rights advocates who want to unravel other common practices for how applicants are admitted.

Education and civil rights organizations could challenge standardized tests, which they say are barriers for underrepresented students. The leader of the anti-affirmative action movement, Edward Blum, has urged elite colleges to reconsider legacy admissions policies. And Rep. Bobby Scott (D-Va.), ranking member of the House Education Committee, has called on Attorney General Merrick Garland to start investigating schools that use admissions requirements that he believes "have discriminatory impact."

"There are paths forward to ensure racial equity in higher education," said David Hinojosa, an attorney with the Lawyers' Committee for Civil Rights Under Law who argued on behalf of a group of students opposed to the suit against University of North Carolina at Chapel Hill. "And we will pursue every avenue to hold universities accountable under federal civil rights laws, to reinstate a fair admissions process, where students' identities are celebrated, not shunned."

The high court's decision to end race-conscious admissions practices at Harvard University and University of North Carolina at Chapel Hill gives way to a number of legal targets and admissions hurdles that institutions will have to navigate as they aim to diversify campuses. Here are three:

**Legal battles over admissions might not be over:**
Blum, the head of Students for Fair Admissions which successfully sued Harvard and UNC, says he is ready to challenge any school that may try to skirt the law.

He threatened to “initiate litigation should universities defiantly flout this clear ruling and the dictates of Title VI and the Equal Protection Clause.”

“The administrators of higher education must note: The law will not tolerate direct proxies for racial classifications,” Blum said in a statement. “For those in leadership positions at public and private universities, you have a legal obligation to follow the letter and the spirit of the law.”

While Harvard and UNC expressed their disappointment with the Supreme Court’s decision, they recommitted to ensuring students with different backgrounds, perspectives and lived experiences are admitted to their campuses. Both institutions said they will be reviewing the high court’s opinion to ensure their admissions policies comply with the law.

“For almost a decade, Harvard has vigorously defended an admissions system that, as two federal courts ruled, fully complied with longstanding precedent,” outgoing President Lawrence Bacow said in a statement. “In the weeks and months ahead, drawing on the talent and expertise of our Harvard community, we will determine how to preserve, consistent with the Court’s new precedent, our essential values.”

The chancellor of UNC shared a similar message on Thursday. “Carolina is committed to bringing together talented students with different perspectives and life experiences and to making an affordable, high-quality education accessible to the people of North Carolina and beyond,” Kevin M. Guskiewicz said in a statement.

**Legacy admissions and standardized tests under scrutiny:**
Bobby Scott, a graduate of Harvard, called on Attorney General Merrick Garland to investigate colleges that use “racially biased admissions tests, and developmental and legacy admissions.” He said lawmakers must review other college admissions requirements that could be racially discriminatory or have disparate impact on underrepresented students.

“Race-conscious admissions policies provided a counterbalance to these discriminatory factors — such as inequitable K-12 schools, racially biased admissions tests, and developmental and legacy admissions — that all marginalize students of color,” Scott said in a statement. “Now that the Court has invalidated that balance, I call on the Attorney General to start filing cases now against any current school practices that violate the Equal Protection Clause and Title VI of the Civil Rights Act because they have discriminatory impact.”

This is not the first time Scott has scrutinized legacy admissions, which gives admissions advantages to children of alumni, or standardized tests that have long been part of college applications. Scott has said a key problem with the oral arguments in the affirmative action cases was that the justices did not consider how the use of these requirements would affect underrepresented students.

Blum, an unlikely ally, also urged elite universities to end policies that give preference to legacy admits.

“For decades, our nation’s most elite universities have given preferences to the children of alumni, faculty and staff, athletes, and notably, substantial donors,” Blum said in a statement. “The elimination of these preferences is long overdue and SFFA hopes that these opinions will compel higher education institutions to end these practices.”

Blum stopped short of saying he intends to pursue a lawsuit on these factors. At a press conference, in response to a POLITICO question, Blum said that “legacy preferences are not actionable in court,” adding that he will not be challenging standardized tests either.

**Race-neutral admissions policies at high schools could be next:**
The future of race-neutral admissions policies at competitive public schools could also be decided by the Supreme Court as a case involving a highly selective Virginia magnet high school makes its way through the courts.

The 4th Circuit Court of Appeals, in a 2-1 decision in May, ruled that the Fairfax County School Board’s admissions policy for the Thomas Jefferson High School for Science and Technology did not disparately impact Asian American applicants. It reversed a lower court ruling that had found in favor of the parents suing over the policy that revised the school’s rigorous admissions process to improve the potential for underrepresented students to attend.

Asra Nomani, the co-founder of Coalition for TJ, which was founded by parents to fight the school’s new policy, said their case is the next step in eliminating racial preferences in admissions and found the Supreme Court’s ruling to be encouraging for their cause.

“It is such an important message to the country that racism is not acceptable, and we can’t use Asian Americans as a scapegoat,” Nomani said. “Race-neutral admissions is just another word for racism. … That is the next frontier for legal challenges.”

Nomani said the group is expecting to file its appeal in August and hopes to get their case in front of the Supreme Court.

Sourced From: (Politico)

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### Tier I

**A Gender Equity Group Still Wants Better Protections for Feds Who Need Abortion Care**

A federal employee group within the Justice Department revived its call for the Biden administration to take more concrete steps to help federal workers in some states more easily obtain abortion care as the anniversary of the overturning of Roe v. Wade approaches.

Saturday, June 24, marks the one-year anniversary of Dobbs v. Jackson Women's Health Organization, the controversial Supreme Court decision that overturned nearly 50 years of precedent and eliminated the constitutional protection for abortion, allowing states to regulate the procedure as they see fit. Shortly after the decision, more than a dozen states banned the procedure in most cases.

In a letter to President Biden and other members of the administration, the Department of Justice Gender Equality Network, an employee association representing around 1,300 workers at the Justice Department, reiterated its calls for the White House to make it easier for federal workers in states where abortion has been curtailed post-Roe to travel across state lines to receive abortion-related care.

"In the year since the Supreme Court eliminated the constitutional right to abortion in Dobbs v. Jackson Women's Health Organization, countless pregnant employees have relied on their employers to subsidize their travel to other states, cover their medical costs and provide designated paid time off so they can access the abortion care they need," wrote board member Jen Swedish and acting president Colleen Phillips. "But, despite the federal government's efforts to respond to this health care crisis, the administration has provided no support to the nearly 2 million federal civilian employees and their families who live in states where abortion is illegal or likely will be soon."

The group asked the administration to provide administrative leave to cover the time it takes for feds who need to travel for abortion care and to offer allowances to help them pay for the costs of travel. It also asked federal agencies to allow federal employees to opt out of travel or relocation to states that have banned abortion, as well as prevent the use of information related to an employee or job applicant's receiving abortion care during background investigations both in the hiring process and as part of obtaining a security clearance.

And the employees urged the Biden administration to push to end the ban on abortion coverage in the Federal Employees Health Benefits Program via the Hyde amendment, the annual policy rider in appropriations legislation that bars federal dollars from being used on abortion care.

Swedish and Phillips said providing benefits like leave and travel allowances to federal employees to seek abortion care would be a logical next step after the administration moved to perform abortion services on military bases and at the Veteran Affairs Department.

"With the exception of the Department of Justice, our recommendations . . . have been met with silence from the administration," they wrote. "In the meantime, the Department of Defense announced measures to help military service members and their families obtain abortion care, so we know there is more the administration can do for civil servants."

Swedish told Government Executive that the Justice Department has "engaged" with her organization on the issues of leave and covering travel costs, although that has not yet led to a policy change on the issue.

"They've spoken with us about our asks and tried to understand what is within their capacity within the department alone to act, recognizing that some of our asks are limited to other agencies, like the Office of Personnel Management," she said. "But the department has engaged with us and [officials] are thinking through these issues with us. We really appreciate their attention to these issues."

On Friday, June 23, Biden issued a new executive order aimed at improving contraceptive coverage for federal workers, members of the military and Americans enrolled in Medicare, Medicaid, or health care plans on Affordable Care Act marketplaces. But Swedish said that measure still does not address federal workers who require abortion care in states with bans on the procedure.

“The executive order is the first time this administration has addressed the reproductive health needs of federal employees, but it’s limited to contraceptives, while our asks are limited to abortion care,” she said. “It’s a step in the right direction, but it doesn’t reach as far as we’d like them to go.”

Swedish acknowledged that the challenge of eliminating the Hyde amendment is daunting, particularly with Republicans in control of the House. But she said the White House can do more to advocate for its removal from the appropriations process.

“The process starts with the president’s budget,” she said. “[Biden’s fiscal 2024] budget came out excluding the Hyde amendment from Medicaid, but it still included the ban on abortion coverage for the FEHBP, and our letter points out that there is more within the administration’s power to do. So, when the administration is crafting its 2025 budget, it can eliminate that ban for federal employees, although we recognize that in order to implement it, it requires Congress.”

Sourced From: (Government Executive)

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**Tier II**

**Thousands of Feds One Step Closer to a Bigger Raise in 2024**

Almost 33,000 federal civilian employees are a step closer to a bigger pay raise in 2024, after the Office of Personnel Management (OPM) published a proposal to establish four new locality pay areas for the General Schedule.

OPM’s proposed rule, added to the Federal Register, comes after the President’s Pay Agent in December approved recommendations from the Federal Salary Council to establish the four new locality pay areas.

The four new proposed locality pay areas are:

- Fresno-Madera-Hanford, California
- Reno-Fernley, Nevada
- Rochester-Batavia-Seneca Falls, New York
- Spokane-Spokane Valley-Coeur d’Alene, Washington-Idaho

The announcement from OPM is one of the later steps in the process for making changes to locality pay for federal civilian employees. Typically, the President’s Pay

Agent, a panel comprising the OPM director, the Labor Department secretary and the Office of Management and Budget (OMB) director, issues annual reports to decide on pay recommendations from the Federal Salary Council, a larger body composed of labor relations and pay policy experts. Any recommendations that the pay agent approves then go to OPM. The agency writes up the proposal and timeline for implementing the changes.

Beyond approving the four new locality pay areas, the pay agent's recommendations in its 2022 report included expansions of already-existing locality pay areas, as well as an update to the way locality pay is mapped out. OPM outlined plans to start basing locality pay maps on OMB's recently updated geographic definitions of metropolitan statistical areas and combined statistical areas — a change that would adjust or add scores of counties to existing locality pay areas. Notably, though, OPM said no locations would be moved to a lower-paying locality pay area as part of this change.

The proposed rule, once finalized, would also add the following regions to existing locality pay areas:

- Dukes and Nantucket counties in Massachusetts to the Boston locality
- Huron County, Michigan, to the Detroit locality
- Pacific and San Juan counties in Washington to the Seattle locality

Between the new and expanded locality pay areas, OPM said it expects the rule would impact roughly 32,900 federal employees who work in those areas. OPM plans to adopt all of the approved recommendations in time for feds to see the changes reflected in their 2024 pay.

But what federal employees will actually see on their paychecks next year remains undetermined. The fiscal 2024 budget request asked Congress for a 5.2 percent average federal pay raise. Some lawmakers, mostly Democrats in support of the FAIR Act, are pushing for an even bigger pay raise of 8.7 percent in 2024. But several House Republicans have recently pushed in the opposite direction, calling for cuts to feds' pay and benefits.

Locality pay, first established in 1990, is part of the system that determines pay for the nearly two million federal employees on the General Schedule (GS). In most years, the government breaks down the annual federal pay raise between a base pay raise and a locality pay raise. The federal government currently defines 54 different locality pay areas, each with its own independently calculated percentage-based pay raise for

civilian federal employees. Once finalized, the new locality pay areas would bring that number up to 58.

Locality pay was initially designed to counter the growing wage gap between the federal and non-federal job sectors. According to the Federal Salary Council, the overall average wage gap in 2022 between federal and non-federal occupations was 24.09 percent.

And larger problems still loom in the federal employees' pay system as a whole. For years, the President's Pay Agent has called for "major legislative reforms," saying the current structure for determining pay for the 1.5 million federal employees on the General Schedule is "inherently flawed."

The Biden administration's fiscal 2024 budget request included proposals to fix pay compression and reform federal pay, but so far, there has not been legislation introduced in support of these goals from the White House.

There may also be indirect impacts of the new proposed rule as well, potentially impacting locality pay for federal employees on a larger scale, beyond the roughly 33,000 directly impacted.

"Should this proposal be implemented, the larger annual increase's locations might receive as a result of being redesignated to a higher-paying locality pay area would be offset by the annual increases elsewhere being smaller than they would absent such redesignation," OPM said. "These changes would result in geographic differences in federal salaries better reflecting the overall geographic differences in salary in line with statutory goals. In turn, this could affect federal recruitment and retention across the U.S."

OPM is requesting comments on the proposed rule about those larger impacts. The proposal will remain open to public comment until July 28.

Sourced From: (Government Executive)

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**Tier III**

## Supreme Court Will Decide Whether Domestic Can Have Guns

The Supreme Court will weigh in on whether people under domestic violence restraining orders can possess guns. The court announced on Friday that it will hear a case on the issue, United States v. Rahimi, in its next term, which begins in October.

The case will be the next test of how far the court's conservative majority will expand Second Amendment rights after a landmark decision a year ago that declared a right to carry guns in public. That decision, which set forth a new, history-focused test for evaluating gun-control measures, cast doubt on the constitutionality of scores of gun laws.

The defendant in the new case, Zackey Rahimi of Texas, admitted to having guns in his home despite being under a restraining order because of allegedly assaulting his girlfriend. After a local court issued a restraining order, Rahimi was involved in multiple shootings, including firing into the air after a fast-food restaurant declined a friend's credit card, according to The Texas Tribune.

He argued that the federal law banning people under such restraining orders from possessing guns violated the Second Amendment. The Fifth Circuit Court of Appeals agreed and threw out Rahimi's guilty plea and prison sentence.

Last June, the Supreme Court overhauled Second Amendment jurisprudence in New York State Rifle and Pistol Association v. Bruen. The court's conservative majority found that a state law controlling who could carry concealed weapons in public was unconstitutional. In that ruling, Justice Clarence Thomas created a new test for determining the constitutionality of gun restrictions: All restrictions must accord with gun laws during America's founding era.

That new historical test created widespread confusion among the lower courts, as judges reached different conclusions on just how close any particular gun restriction had to be to the gun laws that existed during early American history. The ruling brought into question longstanding federal laws banning drug users, convicted felons, and domestic abusers from possessing guns.

Rahimi will be the court's first chance to clarify just how the new Bruen test should work — and just how closely current gun restrictions must hew to those that existed at the founding era.

David Pucino, deputy chief counsel at Giffords Law Center to Prevent Gun Violence, said his group — which favors stricter gun laws — had expected the court to review Rahimi.

“My hope is that the conservative justices will recognize that what we’re talking about here are the proverbial bad guys with a gun,” he said.

Sourced From: **(Politico)**