

# The Federal Update for October 21, 2022

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Re: Federal Update

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## Legislation and Guidance

### Lawmaker Introduces Constitutional Amendment on Parental Rights

Representative Debbie Lesko (R-AZ) introduced a joint resolution this week to amend the U.S. Constitution that would ensure certain parental rights for their children’s education.  The legislation follows a Republican focus on education issues leading into the midterm elections, including school choice and curriculum content, among others.

The amendment provides parents the fundamental right to direct their child’s “upbringing, education, and care.”  The amendment also provides parents a constitutional right to choose non-public education alternatives for their children and prohibits the federal government or State governments from infringing on those rights.  While many Republican Members of Congress have introduced legislation concerning school choice and other K-12 educational issues, this is the first proposal in the current Congress to amend the U.S. Constitution.

The constitutional amendment is not expected to be adopted, but the resolution signals the interest and focus on K-12 education issues in the upcoming election, as well as for the Republican Party generally should there be a change in majority in the House or Senate after the midterms.  Recent polls have also found that education is top issue for voters with children.

Resources:

Bianca Quilantan, “Lesko introduces Constitutional amendment to codify parents’ rights,” *Politico*, October 18, 2022.

Author: KSC

## News

### Lawsuit Asks Supreme Court to Intervene in Loan Forgiveness Plan

A group suing the U.S. Department of Education (ED) asked the U.S. Supreme Court this week to issue an emergency order halting the administration’s loan forgiveness program.  The group has asked the Court to intervene because, it says, the administration’s proposal will create a “gargantuan increase in the national debt” and burden taxpayers.  In a decision issued late Thursday, Justice Amy Coney Barrett, who oversees appeals for the 7th Circuit, declined to intervene.

The group’s lawsuit was previously rejected by a federal judge in Wisconsin who ruled that they lacked standing to bring the case (the group is suing ED over the impact on taxpayers, but so-called “taxpayer standing” has generally been rejected by federal courts).  The 7th Circuit Court of Appeals also declined to halt the relief effort.  Still, the group argues that the loan forgiveness plan is administrative overreach and an “assault on our separation of powers – and upon the principle that the spending power is vested solely in Congress.”

Previous requests for injunctions against the student loan forgiveness plan have been rejected by courts.  And also on Thursday, a federal judge in Missouri rejected a similar request to halt loan forgiveness. This decision was also based on a lack of standing on the part of the plaintiffs, but there are still several challenges pending in federal courts regarding the student loan forgiveness plan.  Notably, the Missouri judge emphasized that his rejection of the request for an injunction was based on the lack of standing and not a ruling on the legality of the debt relief plan itself.  He called the harms predicted by the plaintiffs “merely speculative,” especially given that the State of Missouri was suing on behalf of its quasi-independent loan servicers, known as MOHELA.

ED has opened its application to borrowers and has said it will try to process as many applications as possible before the pandemic-related loan forbearance ends January 1st.

Resources:
Michael Stratford, “Conservative group asks SCOTUS to halt Biden’s student debt relief,” *Politico*, October 19, 2022.
Michael Stratford, “Judge dismisses GOP states’ lawsuit challenging Biden’s student debt relief,” *Politico*, October 20, 2022.
Author: JCM

### Senators Seek to Hold For-Profit Owners Liable

In a letter to the U.S. Department of Education (ED), a group of Senators, including Elizabeth Warren (D-MA), asked ED to hold owners and executives of certain for-profit colleges personally liable for defrauding borrowers. In August, ED approved the discharge of $3.9 billion in student loans for borrowers who ED found were defrauded by ITT Technical Institute. ED also approved the discharge of student loans for defrauded borrowers from Kaplan Career Institute and demanded that DeVry University pay back $23.6 million in approved borrower defense claims. The Senators argue that school executives and owners should be personally liable for the cost of the relief. As support, the Senators point to a section of the Higher Education Act that suggests owners could be personally liable for financial losses to the government and students under the student loan program to protect the financial interest of the United States. While ED has never found an individual liable under these circumstances, the Senators say this section should apply in this case, and argue that it may act as a deterrent from future misconduct. The letter asks ED to provide an accounting of the total losses to the federal government due to students being defrauded and asks ED to explain its position that it cannot hold executives personally liable.

[A full copy of the letter can be viewed here.](https://www.durbin.senate.gov/imo/media/doc/2022.10.18_Letter%20to%20ED_Personal%20Liability.pdf)

Author: ASB

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