

## REFORM THE CIVIL SERVICE TO CREATE ACCOUNTABILITY IN THE BUREAUCRACY

In theory, the president controls the executive branch of the federal government. But in practice, career federal bureaucrats wield enormous power with little accountability to the president. Civil service protections make removing career employees prohibitively difficult. Federal removal procedures often take 6 months to a year to complete, without counting appeals. And surveys show that most federal supervisors lack confidence that they could remove problematic employees.

Unsurprisingly, agencies rarely fire career bureaucrats. In FY 2020, agencies dismissed fewer than 4,000 out of 1.6 million tenured career federal employees. According to recent surveys, federal employees are widely frustrated that their agencies do not take action against poor performers. The system also prevents agencies from firing bureaucrats who advance their own policy agendas.

For example, during the Trump Administration, career employees in the Department of Justice's Civil Rights Division refused to assist in litigation against Yale University for discriminating against Asian Americans. These employees knew a successful lawsuit would undermine racial preferences in college admissions. Because they supported those racial preferences, they refused to participate in the litigation—despite Yale's clear violations of the Civil Rights Act.

The reformers who created the civil service never dreamed of empowering career staff to undermine elected officials. They wanted to end the spoils system, but they also recognized that removal protections would be destructive. The Pendleton Act of 1883 created a professional civil service by regulating federal

hiring while keeping the federal workforce at-will. Not until the 1960s did the general federal workforce gain the ability to appeal dismissals.

Several states have returned their government workforces to at-will employment, meaning employees can be fired for any non-discriminatory reason, and employees cannot appeal their removal. These states continue to operate highly effectively. They demonstrate that government workforces do not need removal protections to avoid the spoils system, and they show that at-will employment is compatible with a professional merit service.

For America's democracy to function, executive branch employees must be accountable to the president. If the bureaucracy can pursue its own agenda, no matter who voters elect, then the government is no longer accountable to the people. To protect the government's democratic accountability—as well as to remove poor performers from the federal workforce—the federal government should return to at-will employment. State governments that have not already done so should do the same.

The federal and many state governments also pay their employees to work for government unions, while on the clock as public employees. These practices subsidize union activities that make it harder for elected officials to manage the bureaucracy. They are wasteful and counterproductive subsidies.

### THE FACTS

- ★ Non-veteran federal employees were first given removal appeals in 1962.
- ★ It now takes an estimated six to 12 months for federal agencies to dismiss a poor performer.

- ★ This figure does not include subsequent appeals.
- ★ Just 26% of federal supervisors are confident they could remove a demonstrated poor performer.
- ★ Only one-third of federal employees report their agency takes steps “to deal with a poor performer who cannot or will not improve.”
- ★ Fewer than 4,000 out of 1.6 million tenured federal employees were dismissed for poor performance or misconduct in FY 2020.
- ★ 58% of Americans believe it is too hard to fire poorly performing government employees.
- ★ State employees in Arizona, Georgia, Missouri, and Texas serve at-will. So do managers and supervisors in Florida state government.
- ★ Agencies spend \$200 million annually to subsidize federal union operations.

significant portions of the federal workforce at-will.

- ★ Require federal unions to reimburse taxpayers for using agency resources.

At the state level, support policies that:

- ★ Return state employees to at-will employment.
- ★ End “release time” subsidies for government unions.

## THE AMERICA FIRST AGENDA

At the federal level, support policies that:

- ★ Return the federal civil service to at-will employment—the original vision for a professional merit service.
- ★ Agencies should be free to remove employees for any non-discriminatory reason, with no external appeals.
- ★ Include dismissal policies like those outlined in the Lloyd-LaFollette Act, instead of extensive civil service appeals.
  - Under Lloyd-LaFollette, supervisors had to explain in writing why an employee deserved dismissal. Employees could respond in writing.
  - A different agency official decided whether the employee would be removed. Employees could not appeal this decision.
  - This system protected against arbitrary or unfair removals without making justified removals difficult.
- ★ Use executive branch authorities to make

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