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# WHY CONGRESS SHOULD NOT UNDERMINE THE PRESIDENTIAL POWER OF APPOINTMENT

## INTRODUCTION

**H**aving trimmed the size of its own politically appointed staff earlier this year, Congress is moving toward enacting legislation aimed at bringing about a sharp reduction in the number of political appointees in the Clinton Administration. In doing so, however, Congress is not looking closely at the consequences of its action.

Specifically, the budget resolution recently adopted by Congress directs that the number of political appointees in the executive branch be reduced by nearly a third, from the current level of approximately 2,800 to just 2,000. It will be up to the authorizing committees either to implement this change or to find other ways to reduce the budget outlays by the amount this move supposedly will save.

However, there will be two unintended consequences. First, since no overall reductions are made in the size of the executive branch bureaucracy, no money will be saved by eliminating 800 political appointees. Their slots simply will be filled by career civil servants. Second, because these slots will be filled by members of the career bureaucracy, Congress's action will solidify the grip of Washington's "permanent government" on the operation of the federal establishment.

While it is understandable that a conservative Republican Congress would want to see fewer liberal Democratic appointees responsible to a Democratic President, this congressional effort unwisely undermines legitimate presidential authority and the ability of the President to implement his policy agenda—and thus his responsibility to the American electorate.

Paradoxically, the position taken by the Budget Committee Republicans parallels almost precisely the 1988 recommendation of the National Commission on the Public Service to incoming President George Bush that the number of political appointees be re-

duced from 3,000 (the level at that time) to 2,000. Among the members of this commission, which was chaired by former Federal Reserve Chairman Paul Volcker, were such prominent liberals as Robert McNamara, Walter Mondale, Edmund Muskie, Elliot Richardson, and Donna Shalala. In other words, it was dominated by the very people who had held (or, in Shalala's case, soon would hold) top federal positions and had played a decisive role in creating the federal leviathan that exists today: scores of big-government programs and agencies brought to life in the 1950s, 1960s, and 1970s.

The principal rationale for this recommendation was that putting political appointees in positions of authority over career civil servants discourages "talented young men and women" in the career bureaucracy. The commission trotted out the time-worn complaint from Washington's powerful "public administration community": political appointees are not around long enough to learn their jobs well enough before leaving for another slot somewhere else. Therefore, it is better for the President to have fewer of them.

## ARE THERE TOO MANY POLITICAL APPOINTEES?

There is, of course, occasional resentment among longtime career civil servants when political appointees get high-ranking jobs they themselves had wanted. Although it certainly is true that executive branch political appointees tend to have more influence than the average federal jobholder (which is why their positions are defined in law and regulation as "policy-determining or policy-influencing"), their numbers remain minuscule. They certainly are not numerous enough to pose a significant obstacle to ambitious career civil servants looking to advance.

Consider the actual numerical strength of the political appointees targeted by the budget resolution language: non-career Senior Executive Service (SES) members and Schedule C employees. The Civil Service Reform Act of 1979 requires that no more than 10 percent of SES positions be held by non-career appointees. The proportion may be higher in a specific agency but cannot exceed 25 percent. Schedule C slots number fewer than 2,000 government-wide—less than one one-thousandth of the federal government's 2.1 million non-postal civilian workers. Taken together, non-career SES and Schedule C employees represent only a drop in an ocean of career bureaucrats. By contrast, virtually all congressional employees on Members' and committee staffs are political appointees.

Congress clearly should protect the integrity of the career civil service—for example, by ensuring that civil service laws, rules, and regulations are enforced vigorously and that hiring and promotion are fair and equitable. But the existence of a small and well-defined political cadre in the executive branch is not a threat to the system's integrity. Rather, one of the most insidious and corrosive abuses of the career civil service is a direct result of a law enacted by Congress in the 1940s. The Ramspeck Act allows former congressional staff employees to move into career government jobs while avoiding the competitive appointment process. Remarkably, for all its progress in the area of internal reform, the new Congress has left this egregious assault on the career service virtually intact.

To ensure the integrity of the federal civil service system, Congress should recognize and endorse the distinction between, and the importance of, career and political employees. And it should require that whenever highly paid congressional staffers move to the executive branch, they move into positions that are clearly defined as political, rather than into positions reserved for career civil servants.

Congress should not undermine the President's ability to set his own agenda or his right to fill key policy positions with men and women in whom he places particular trust. To do otherwise not only compromises the ability of a President to carry out his responsibilities in a democratic system, but also strengthens the hand of a powerful, entrenched career bureaucracy which tends to resist change and innovation.

## **THE ROLE OF POLITICAL APPOINTEES**

To understand the impact of Congress's proposed cuts in politically appointed positions, one needs to break down the totals into the categories of political appointees. There are three main groups: presidential appointments requiring Senate confirmation (PAS positions) and non-career Senior Executive Service (SES) and Schedule C appointees.

During the Reagan Administration, approximately 540 presidential appointments required confirmation. During the past decade, Congress has created more than 100 additional positions in this category, and the total is now more than 650. These are the top policy-making jobs in the federal government and are held by Cabinet secretaries, deputy and assistant secretaries, heads of independent agencies, and members of independent commissions and similar bodies. No one questions that these should be people in whom a President has personal confidence and who, for the most part, cannot be drawn from the career service.

Non-career SES appointees currently number about 720, and the size of this category is limited by a formula in the Civil Service Reform Act. They also serve in sensitive policy-making or policy-influencing positions, typically with major responsibility for policy development, public affairs, law, and other areas in which they are expected to be strong advocates of administration policy. Because career civil servants must serve administrations of different parties from one term to the next, they obviously should not be required to fill an advocacy role in these areas.

The third category, Schedule C appointees, covers approximately 1,500 individuals in positions requiring a politically sensitive relationship with one of the more senior appointees described above: confidential assistants, personal secretaries, senior policy advisors and assistants, and (in smaller agencies) public affairs directors, general counsels, and so on. The roles they play in supporting key political officials of the executive branch are roughly comparable to those of congressional legislative and press aides. No Member of Congress would dream of giving such responsibility to employees who remained in these jobs regardless of the political or philosophical persuasion of whoever was representing the state or district in question.

## **A SENSIBLE CONGRESSIONAL PERSONNEL POLICY**

Members of Congress have an interest in making sure that the federal government is run efficiently and effectively. Regardless of political party, they have an interest in seeing to it that the President of the United States can manage the government without having to contend with the sorts of institutional disabilities that are caused by not having the right people, or enough of the right people, in the agencies he must operate. Members of Congress also have an interest in making sure that executive branch witnesses who testify before them can speak with authority on the administration's position. It does not help

the legislative process for lawmakers to be second-guessing what the administration really means or really wants in an area of policy. Such a situation advances nobody's agenda—except possibly the agenda of career staff determined to oppose, quietly but strongly, what the President and his advisors are trying to accomplish. This is not good government. It is quite the opposite. In crafting federal personnel policy, Congress should always maintain a clear distinction between political and career staff, respecting the different and equally important missions and functions of both.

Specifically:

- ① **Congress should not compromise the right of a President to pick his own people.** No matter who occupies the Oval Office, a fundamental principle is at stake. A reasonable number of political appointees are crucial to any President's success in carrying out his electoral mandate. The President and Vice President are the only officials elected by a vote of all Americans. They are not beholden to the interests of one state, or of one congressional district. They are elected by all the people and represent the interests of all the people. No President can fulfill his mandate alone or with only a handful of staffers in the West Wing of the White House. Nor can his Cabinet secretaries fulfill their duty to implement his policies without a cadre of like-minded, personally committed political appointees at the agency level.

Conservatives in Congress should learn from and honor the example of President Ronald Reagan's successful experience in personnel management. The managerial watchword in the Reagan White House was "Personnel is Policy." Everyone clearly understood that it was never enough simply to announce a policy, expecting that the plodding, gargantuan federal establishment would respond like a turbocharged V-8. The right people had to be in key positions throughout the government to make things happen. Personnel selections thus were made with great care, with the White House looking not only for management competence, but also for commitment to the President's program and the kind of personal toughness and resolve that would be necessary to lead an agency in the right direction. The fact that not every appointment turned out perfectly does not diminish the crucial importance of making every effort to put the right people in the right jobs and to have enough of them to get the job done.

While conservatives in Congress disagree with much that the Clinton Administration is doing, or trying to do, the way to deal with such policy differences is by confronting them directly in the legislative process, not by trying to weaken the Administration by trimming the number of political appointees. Moreover, conservatives in Congress should realize that this is a double-edged sword: a sharp reduction in political slots today will be difficult, if not impossible, to undo in a few years if a more conservative President takes office. Using political appointees in key policy jobs improves the process of government. Not only is having people in place, regardless of their political party or philosophical orientation, who can speak for, answer for, and defend the President's policy in congressional hearings and other public forums good from a management standpoint; it is a highly desirable feature of America's representative democracy.

- ② **Congress should not compromise the President's ability to carry out his agenda.** Political appointees are selected because they share the President's philosophy and agenda. They serve at the pleasure of the President, can be fired at any time and for any reason, and have no civil service job protection. They thus are acutely sensitive to the political direction set by the President. These appointees give the President the support he needs in crucial congressional hearings, speaking for him in a direct way and pressing his case on Capitol Hill. They also play the key role in making the bureaucracy responsive to the President's wishes. There can be no more worthwhile management goal than ensuring that the federal bureaucracy is responsive to the direction set by the highest elected official in the land.
- ③ **Congress should not strengthen the power of the permanent government bureaucracy.** The real, though largely unspoken, reason for the public administration community's hostility to political appointees, whether liberal or conservative, is both simple and understandable: these appointees represent a force seeking real change, sometimes even upheaval. Regardless of which party controls the White House, the President's immediate staff view themselves as his agents in the struggle to fulfill his campaign promises and other commitments. Thus, their agenda often contrasts sharply with that of the career civil servant, whose loyalty tends to be to the institution and who has spent years (even decades) at an agency, creating and shaping the programs whose direction, size, or very existence may now be under attack.

Without saying so, the Volcker Commission's priority was to structure the civil service so as to preserve and protect the vast bureaucracies that its own members had played such an important role in creating. Those who share this objective view with nearly equal horror both the Reagan Administration's efforts to cut the size, scope, and reach of government and the Clinton Administration's campaign to "reinvent" government in order to make it more efficient.

## MAINTAINING THE LINE BETWEEN CAREER AND POLITICAL STAFF

Congress should recognize the fact that America's representative democracy has long included both political and career employees with distinct and equally important roles to play. Political employees ensure that the will of the people, expressed in quadrennial national elections, is reflected in the way government does its work. These employees, proudly and unapologetically, should be advocates for the President's program. Congress should respect this because only these individuals can fulfill this responsibility. Career employees, on the other hand, provide continuity, administrative expertise, and institutional memory that can help the President and his appointees avoid repeating old mistakes. Wise Members of Congress would not wish to return to a Jacksonian spoils system in which political employees held all the jobs. But neither would they want a federal government in which career employees, who enjoy civil service protection, hold all the jobs except for a few Cabinet posts. A functional, effective executive branch needs both political appointees and career civil servants.

**Abuse.** It is worth noting that the principle of having both political and career officials with distinct roles in the executive branch is being undermined by the Ramspeck Act. Under this law, people who have worked on congressional staffs for at least three years can be selected noncompetitively for career jobs in the executive branch if their Repre-

sentatives or Senators leave office. This happens regularly in both Democratic and Republican Administrations, and it is time to end the practice. Since last fall's wholesale defeat of scores of Democratic Members and the retirement of many others, hundreds of these highly political staff employees have been able to move quietly into jobs that are supposed to be held by career civil servants. A proper respect for the distinction between the roles of political and career officials would place these staffers in political, not career, jobs. It is not the function of a competitive civil service to be a haven for activists with a strong political agenda. Those who do have such an agenda and who insist on trying to advance it should be subject to the risks and responsibilities of political appointment. That is fair to the career civil servant and to the American taxpayer.

## CONCLUSION

Members of Congress considering proposed personnel cuts must realize that reducing the number of executive branch political appointees by 800 simply will mean that those jobs will be taken over by members of the career bureaucracy—the permanent government. Without the guidance and direction of a sufficient number of appointees responsible to the President, the results inevitably will be to frustrate change and innovation and to enhance the power of the government leviathan.

During the 1980s, American public television aired a series imported from Britain called "Yes, Minister." It depicted, in often hilarious fashion, how the British career bureaucracy had raised to a fine art the process of sealing off and co-opting political ministers from the moment they arrived on the job. While amusing, the series was painfully close to the truth, since government ministers in Great Britain at that time were unable to hire any political assistants. Key officials in the Conservative government of Prime Minister Margaret Thatcher made a point of trying to move in America's direction when it came to giving their top political officials the ability to hire like-minded people for their staffs. They recognized clearly that even the toughest political appointee cannot hope to have any real impact if forced to rely exclusively on career bureaucrats. New Members of Congress, swept into office by voters demanding fundamental change and the reining in of the Washington establishment, should not let their opposition to the policies of the current White House blind them to the importance of a President's being able to set policy direction for the executive branch. It would be ironic indeed if a Congress wishing to carry out the people's demand for change were to enact a personnel policy that delivered so much additional power into the hands of Washington's permanent government.

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