



CONGRESSIONAL TESTIMONY

STATEMENT FOR THE RECORD

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PROVIDED TO THE

**SENATE COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENT AFFAIRS**

HEARING ON

**“ENSURING A TRUSTWORTHY GOVERNMENT: EXAMINING THE
NATIONAL SECURITY RISKS OF REPLACING NONPARTISAN CIVIL
SERVANTS WITH POLITICAL APPOINTEES”**

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Chairman Peters, Ranking Member Paul and Members of the Committee: My name is Everett Kelley and I am the National President of the American Federation of Government Employees, AFL-CIO (AFGE), which represents more than 750,000 federal and District of Columbia employees who serve the American people in 70 different agencies across the country and around the world. On their behalf, I thank you for inviting AFGE to share its views on the important topic before the Committee this morning, “Ensuring a Trustworthy Government: Examining the National Security Risks of Replacing Nonpartisan Civil Servants with Political Appointees.”

AFGE cannot overstate our commitment to the apolitical, professional federal civil service. Proposals to reclassify the hundreds of thousands of federal positions currently in the competitive service to the political excepted service are profoundly wrong and should be categorically rejected. The reclassification aimed at politicization would create not only dire national security risks, it would also undermine the ability of executive branch agencies to achieve their missions on behalf of the American people. It is absolutely essential that the executive branch continue to fill the vast majority of its positions on the basis of open competition and assessment solely on the basis of objective criteria such as experience and technical expertise. Candidates for jobs in the federal civil service should and must be assessed exclusively on their ability to perform the duties of the position for which they are competing, not their political affiliation or support for any particular president’s ideological agenda.

Maintaining an apolitical merit-based civil service is as crucial for federal jobs that do not implicate national security as it is for those that do. Partisanship has no place in a workforce charged with upholding the Constitution and faithfully executing the laws of the United States. And it certainly has no place whatsoever in positions that involve our nation’s national security. Since the Vietnam War, and especially since the Iraq War, Americans distrust of agencies connected to national security and suspicions that these agencies routinely politicize intelligence have risen sharply. Given this, AFGE is particularly at a loss to understand why Congress would entertain reclassifying apolitical positions that implicate national security into political appointments.

Before describing why AFGE opposes such proposals, it is important to stipulate from the outset that AFGE supports the right of a president, regardless of party, to appoint officers and senior personnel to federal agencies and departments based on criteria that are consistent with that president's policy priorities, and to remove them when their conduct or performance displeases a president. Presidents are elected to set policy across the federal government, and they cannot do this without senior personnel whom they trust, who subscribe to their political outlook, and who, presumably, possess the administrative competence and policy expertise to translate vision into actual policy.

Just as AFGE supports a president's right to appoint and remove a relatively small cadre of officials and senior personnel, we maintain that successful implementation of an administration's policy agenda depends on its execution by a nonpartisan competitively hired federal workforce. By the deliberate design of Congress in landmark civil service laws enacted in 1883 and 1978, the apolitical merit system has successfully created a federal workforce with the requisite knowledge, skills, and institutional experience. Without these requisites, successful implementation would be impossible. Implementing an act of Congress, an executive order, or a policy directive that is true to both the spirit and substance of the underlying law, order, or directive, complies with existing laws, and accomplishes its purpose as efficiently as possible is a technical challenge to which no workforce hired on the basis of political affiliation or obeisance to a president can rise. It simply would not be able to occur.

AFGE highlights the critical role of expertise, experience, and institutional knowledge in the implementation of presidential policy to push back against the patently false notion that political appointees are a superior alternative to career civil servants when it comes to the execution of presidential policy. No one should be fooled to believe that the zeal and single-minded devotion that political appointees would bring to the implementation of any given administration's agenda, and the constant threat that such appointees could be summarily fired for falling short, would be enough to succeed in carrying out the responsibilities of our federal government. Further, the allegations that federal employees in the competitive service interfere with the achievement of any president's priorities is simply not supported by the facts. Such allegations are purely ideological attacks on the employees of the apolitical service who demonstrate, every

single day, their commitment to the well-being of the American people, our laws and Constitution, and the missions of the agencies that employ them.

Consider the civilian employees of the Department of Defense, a third of whom are veterans of the U.S. military, who come to work every day with one objective: to support our warfighters, maintain military readiness and lethality, and protect the security interests of our nation. What more would those who accuse them of thwarting a president's priorities ask them to do? With their support, our military is the strongest it has ever been; Defense Department civilian employees who procure, maintain and repair weapons and equipment, handle logistics and the multitude of tasks our military leaders require with a solemn commitment to our nation and its Constitution, not to any political leader or ideology, should not be threatened with the loss of their employment rights.

AFGE was relieved when President Trump's October 2020 executive order establishing Schedule F was rescinded in January 2021. That executive order would have stripped hundreds of thousands of federal jobs of the due process rights and protections connected to those positions. The Schedule F regime would have undermined decades of laws and policies designed to ensure that career civil servants are hired, given assignments, appraised, paid, disciplined, and removed solely on the basis of objective criteria.

Under this merit system, federal employees win a competition for the federal job they apply for on the basis of technical expertise, experience, and a demonstrable ability to perform the duties of the job, without regard to their party affiliations. They are given work assignments that have nothing to do with their party affiliation or political beliefs. They receive regular performance appraisals that measure how well they carry out their assigned duties, the duties of their position. They are paid salaries that reflect the duties and responsibilities of their jobs, not their party affiliation or ideological beliefs. And if they fail to perform these duties up to the standards set by their supervisors, they are disciplined or removed. However, federal employees in the competitive service are permitted due process rights of appeal of some forms of discipline up to and including termination. And the appeal is granted or rejected by an objective third party weighing evidence brought forward by both the agency official and the worker. Significantly,

these rights are intended to protect the integrity of the work civilian employees perform from political pressure and arbitrary interference.

Schedule F's excepted service classification, had it gone into effect, would have dispensed with these elements of the apolitical civil service and made every job so classified into an "at will" appointment. Note that "at will" employment means that the employer, in this case the federal government, is permitted to hire and fire for any reason or no reason. The only criterion for success would be demonstration of loyalty to the president's political agenda. That would be a dangerous path for federal agencies to follow.

The Schedule F executive order directed agencies to reclassify jobs that were in any way connected to "federal policy" – mid- to high-grade General Schedule positions broadly identified as 'confidential, policy-determining, policy-making, or policy-advocating.' There are currently approximately 500,000 federal jobs classified in Grades 13, 14 and 15 of the General Schedule, and a politically-motivated personnel agenda could contrive to identify most of them as being connected to policy. That is particularly true in the realm of national security functions, but it is also true in all agencies. The jobs classified as 13-15 involve policy at the Department of Homeland Security, the Departments of Labor, Health and Human Services, Transportation, Education, Energy and Veterans Affairs. They involve policy at the Social Security Administration, the Environmental Protection Agency, the National Science Foundation, the National Institutes of Health and the Federal Communications Commission, the Federal Trade Commission, the Nuclear Regulatory Commission, the Equal Employment Opportunity Commission, and so on. Imagine the entire top stratum of professionals in these agencies serving at the will of a capricious president. What could go wrong?

Designating so many positions in the civil service as at-will positions for which skill, experience, and performance could be ignored would be an unmitigated disaster for our country. What purpose would be advanced by replacing the seasoned and stable federal workforce who are now in the midst of transmitting institutional knowledge and know-how to younger career-focused hires with politicized, inexperienced, and transient individuals who would change with every administration? Far from facilitating the implementation of a president's policy agenda,

Schedule F would have government operations performed by unqualified amateurs whose primary qualifications are political. This national security vulnerabilities that Schedule F would produce are frightening to contemplate.

It is crucial to recognize Schedule F as only the most extreme example of proposals floated by a few so-called experts who have made careers of complaining that “it’s too hard to fire a federal employee.” These would-be civil service reformers generally rejected Schedule F as too crude when it was unveiled, but in truth, the scheme would have been a dramatic extension of existing excepted service hiring practices; had it gone into effect in 2021, Schedule F would merely have expanded the already pernicious growth of excepted service hiring. It bears reminding the Committee that the category of excepted service is supposed to be the *exception* to the default of the competitive service for federal positions. The excepted service enables federal hiring, promotion, pay and firing outside the standard processes of the competitive service. As such, far less vetting is done to make sure that applicants are suitable for a position. The justification is speed – hire faster, fire more easily. Another rationale is the recognition that federal salaries are too low, and the excepted service allows agencies to provide salaries higher than those a General Schedule classification would provide. Expanding excepted service positions, therefore, is most surely not a way to economize and save taxpayer money but rather a license for managers to authorize higher salaries to favored subordinates that is not commensurate with the work they perform – or authorized lower salaries to subordinates whom they disfavor.

For any Member of Congress who thinks the effective implementation of a president’s order, or an act of Congress, or a secretary’s directive, is routinely thwarted by an intransigent and unaccountable civil service, it bears pointing out that only half of the 2.1 million positions in the executive branch are actually occupied by individuals who were hired competitively. Due to the steady erosion of the competitive civil service in recent decades that seems to have been overlooked by Congress and public administration experts, the other half occupy excepted service or direct-hire positions for which criteria other than expertise, experience, and performance can be used in the selection for a federal job.

A parallel strain of reform proposals holds that if the existing civil service system is simply amended to make it easier to terminate federal employees by shortening time frames for appeals, lowering evidentiary standards, and excluding termination appeals from grievance and arbitration articles in collective bargaining agreements, then the best of the competitive nonpartisan civil service system can be preserved while making it “easier to fire a federal employee.” The flaw in these proposals is that they are based on the entirely false premise that federal law makes it too hard to terminate “poor performers” and that the process for terminating an employee accused of poor performance takes too long. As such, they complain bitterly that managers need new authorities that make the task of termination much faster and easier.

Federal managers have ample authority under the current system to discipline and terminate federal employees for poor performance or misconduct. That they must produce evidence of their allegations that can stand up to scrutiny by a disinterested third party and provide the employee full due process is the burden from which they would like to be relieved. They want to be able to say “you’re fired” and not have to prove that there is legitimate cause for the termination. But the absence of these due process rights for employees would be an invitation to hiring and firing for non-merit reasons: politics, personal animus, discrimination and, perhaps, to shift blame away from managers seeking to avoid accountability for their own mistakes.

We must have a system in place where a federal employee is protected from corruption and political pressures, and that is not compatible with instant gratification for managers regarding discipline and/or termination. The due process protections that federal employees possess are meant to ensure that the integrity of the work that federal employees perform cannot be easily compromised by inappropriate pressure exerted on them, by threats made to them, or by adverse actions taken against them by political appointees who are more interested in advancing an administration’s political priorities than complying with the law to which career civil servants swear to uphold in the course of their duties.

As the Committee considers the important topic before it this morning, AFGE urges Members to remember that Congress legislated federal hiring rules starting in 1883 to guard against arbitrary

hiring and firing decisions that are based not on job performance but on political affiliation, personal loyalty tests, and outright discrimination.

AFGE recommends that the Committee remember why the laws regarding the federal civil service system were enacted in the first place – to end the spoils system and ensure that a competent workforce dispassionately and faithfully implements the policies legislated by elected officials – and consider whether all the exceptions that have been legislated to the civil service system in recent decades have contributed to or detracted from the performance of the executive branch. Only then will it have a basis for concluding whether expanding political appointments would, on balance, advance the mission of the civil service.

Thank you for the opportunity to testify and I would be happy to answer any questions the Members of the Committee may have.