



TALES FROM THE SWAMP: HOW FEDERAL BUREAUCRATS RESISTED PRESIDENT TRUMP

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EXECUTIVE SUMMARY

American democracy operates on the principle of government by the consent of the governed. Americans regularly elect the president and Members of Congress. However, difficult-to-fire career employees with entrenched job security—not political appointees who serve at the discretion of the president—perform most federal work. These employees' jobs do not depend on election outcomes. Career employees thus exercise federal power without adequate transparency and democratic accountability.

Most career federal employees honorably serve the American people, diligently following orders and implementing policies of elected officials. However, a significant minority does not. This report documents cases of career bureaucrats resisting presidential policies in the first Trump Administration. Political appointees who served under President Donald J. Trump reported:

- Career staff at the Department of Education (DoEd) assigned to work on politically sensitive regulations, including the Title IX due process regulations, would either produce legally unusable drafts that would never withstand judicial review or drafts that significantly diverged from the DoEd's policy goals. As a result, political appointees had to draft the regulations primarily by themselves.
- Career employees in the Department of Justice (DOJ) Civil Rights Division refused to prosecute cases with which they ideologically disagreed, even when the facts showed clear legal violations. This included Civil Rights Division career staff refusing to work on cases charging Yale University for racial discrimination against Asian Americans and cases protecting nurses from being forced to participate in abortions.
- Department of Health and Human Services (HHS) career staff circumvented President Trump's hiring freeze, which was issued soon after he first took office, by crossing out new hires' start dates on their hiring paperwork. Staff used Sharpie pens to adjust the start dates retroactively to January 19, 2017—the day before President Trump took office.
- Career lawyers at the National Labor Relations Board (NLRB) routinely gave political appointees misleading legal analyses. They would only cite cases supporting their preferred position and omit contrary precedents. Some career lawyers refused to draft documents reflecting positions with which they disagreed.

- Career attorneys at the Environmental Protection Agency (EPA) did not inform political appointees about major cases the agency was involved in or the government's positions in pending cases. To learn what the agency was doing, political appointees had to monitor public court filings.
- Department of Labor (DOL) regulatory staff intentionally delayed producing a departmental priority regulation. A competent private sector attorney could have produced a draft regulation in two to three weeks. The team of about a dozen career staff claimed they needed a year to do so—a pace that amounted to each attorney in the unit writing less than one line of text a day.

Civil service protections enable this policy resistance. They make removing career employees for any reason prohibitively difficult. This is not what the founders of the civil service intended. They wanted to prevent patronage hiring but feared removal protections would protect incompetent or intransigent employees. Thus, after America converted to a merit service, federal employees could not appeal dismissals for more than six decades. Federal employee appeals did not arise until the 1940s.

Congress should return to the original vision for the civil service and make all federal employees at-will. Removal protections shield career bureaucrats from accountability for how they exercise federal power. Government of, by, and for the people should not operate this way.

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America was founded on the principle of government by the consent of the governed. Regular elections keep government leaders accountable to the people. Nonetheless, elected officials rely on career employees to do most government work. These career employees' jobs do not depend on who wins the election.

Many career staff diligently and impartially serve whoever holds office. However, there are those who do not. Some career employees resisted the president's agenda during the Trump Administration. Interviews with former Trump Administration appointees reveal these employees used similar strategies to stymie the president's policies. These included:

- withholding information;
- refusing to implement policies;
- intentionally delaying or slow-walking priorities;
- deliberately underperforming;
- leaking to Congress and the media; and
- outright insubordination.

This report documents how hostile career employees used these tactics during the Trump Administration. Such bureaucratic resistance undermines the government's democratic accountability. Americans do not vote for federal career employees, and those employees should not stymie lawful policies that elected officials support.

Current civil service protections help enable this behavior. The law presumes federal employees deserve their jobs. Agencies face a high burden of proof to demonstrate affirmatively that employees deserve dismissal. Employees can then appeal. The entire process can take years. This makes it difficult for political appointees to address poor performance meaningfully or remove intransigent career staff. In fiscal year (FY) 2020, agencies removed just one-quarter of one percent of tenured federal employees.¹

The civil service's founders did not want the government to operate like this. The Pendleton Act that created the civil service did not allow employees to appeal dismissals. Federal employees did not get this ability until the 1940s—six decades after the spoils system ended. To protect America's democracy, Congress should make federal employees at-will once again. While restrictions on patronage-based hiring are appropriate, agencies should not have to go through a "virtual trial at law" to dismiss an employee. The president should also use his existing constitutional and statutory authorities to make policy-influencing career employees at-will. This would restore the original vision for the civil service. It would also stop intransigent career employees from undermining the democratically expressed will of the people.

¹ Author's calculations based on data released by the U.S. Office of Personnel Management. See footnote 49.

GOVERNMENT BY CONSENT OF THE GOVERNED

In America, governing authority flows, as the Declaration of Independence explains, “from the consent of the governed.” The people elect the president, who appoints senior agency officials. Those officials carry out the law with the assistance of their subordinates. The Constitution thereby gives the American people a role (albeit indirectly) in choosing the officials who govern them ([Erickson & Berry, 2019, p.2](#)).

However, career employees fill almost all federal positions. Political appointees make up about 4,000 of the federal government’s approximately 2.2 million civilian jobs ([U.S. Office of Personnel Management, n.d.](#); [U.S. Government Policy and Supporting Positions, 2020, p. 212](#)).² Career employees constitute more than 99.8 percent of the federal workforce. The president and his appointees necessarily delegate most federal responsibilities to career staff.

This delegation conflicts with the concept of government by the consent of the governed. Career staff keep their jobs irrespective of election results. If the American people do not like the job a cabinet secretary is doing, they can vote against the president who appointed him. Presidents routinely remove underperforming cabinet secretaries for precisely this reason.

Voters, however, have no recourse if they do not like the job a career bureaucrat is doing. Career staff keep their jobs no matter who Americans elect. Anthony Fauci, for example, became the director of the National Institute of Allergy and Infectious Diseases in 1984, when Ronald Reagan was president. He kept this powerful position through the subsequent elections of Presidents George H. W. Bush, Bill Clinton, George W. Bush, Barack Obama, Donald Trump, and Joe Biden. Voters’ views on Fauci’s performance—approval, disapproval, or indifference—did not affect his tenure.

In theory, staffing the executive branch with primarily career employees can be consistent with democratic self-government if those staff neutrally implement the elected president’s policies. Public administration scholars often espouse this vision of the civil service ([Moynihan, 2004](#)). In this framework, career employees are a neutral tool, impartially using their expertise to implement their politically accountable superiors’ directives.

In reality, career federal employees are human beings with opinions and wills of their own. Many career employees joined the federal government because they wanted to make a difference. They often feel strongly about how their agencies should operate. Political scientists have long documented that some career staff pursue their policy preferences over and against those of elected officials ([Johnson & Libecap, 1994, pp. 156-171](#)). Such behavior undermines the government’s democratic accountability.

The author of this report served on the White House Domestic Policy Council from 2017 to 2021. Agency appointees frequently described career staff resistance during his White House tenure. After leaving the White House, the author interviewed numerous political appointees about their time in government. This report documents their experiences with career staff.³

² During the 2021 presidential transition, 3,762 executive branch positions were available for presidential appointees, non-career members of the Senior Executive Service, and Schedule C political appointees ([U.S. Government Policy and Supporting Positions, 2020, p.212](#)). This tabulation does not include several hundred political appointees in the White House Office.

³ This report does not identify political appointees interviewed by name in order to protect sources. However, these appointees are known by the author to have served in senior policymaking positions in the Trump Administration. In many cases they recounted examples of policy resistance that the author heard contemporaneously while serving in the White House.

FAITHFUL PUBLIC SERVANTS

It needs to be emphasized that many career employees are faithful public servants. Almost every political appointee interviewed for this report recounted career employees who did their jobs diligently. Many mentioned career staff who worked long hours and weekends to advance urgent priorities, especially during the COVID-19 pandemic. Not a few liberal career employees would provide their perspective and concerns to conservative appointees, then faithfully implement policies political leadership decided on—even if they strongly disagreed. Those employees are a credit to the civil service. Public administration scholars' vision of career employees setting aside their views to provide neutral expertise is not baseless. Faithful public servants were either a majority or near-majority of career employees in most agencies.

However, an antagonistic minority has caused significant problems. And in some agencies—like the DOJ's Civil Rights Division or the EPA—the vast majority of career staff appeared hostile to Trump Administration policies. Career employees in those agencies treated political appointees not as the representatives of the will of the people but as an occupying army to be resisted. Additionally, many (though not all) non-hostile career staff in agencies dominated by hostile career staff kept their heads down. They knew they could face internal retaliation for helping political appointees implement their agenda. While many career employees are faithful, there are others who undermine the elected president's agenda.

CAREER FEDERAL EMPLOYEES DISPROPORTIONATELY LIBERAL

This problem is exacerbated during conservative administrations. Federal employees are disproportionately liberal and thus are particularly likely to object to a conservative president's policies.

Researchers have repeatedly documented the federal bureaucracy's liberal lean. One recent study found twice as many registered Democrats as Republicans in the federal workforce ([Spenkuch, Teso & Xu, 2023, p. 1184](#)).⁴ Another study examined career employee's campaign donations ([Feinstein & Wood, 2022](#)).⁵ In the 2013-2014 election cycle (the last for which data is available), the donations from the average civil servant in the median federal agency stood 1.19 standard deviations to the left of the average donor.⁶ This means the typical career civil servant gave to more liberal candidates than 88 percent of all Americans.

⁴ The study found that in 2019, about 50 percent of career federal employees were Democrats, while 27 percent were Republicans.

⁵ This study used data on campaign contributions between 1979 and 2014 from the Database on Money, Ideology in Politics. This database calculates a "CF score" that indicates how liberal or conservative political donors are based on the candidates to whom they donate. For example, a donor who gave exclusively to Republicans would be ranked as more conservative than most donors, and a donor who gave exclusively to Democrats would be ranked as more liberal. Further, a Republican donor who gave to prominent conservatives like Sen. Ted Cruz (R-TX) and Rep. Lauren Boebert (R-CO) would be ranked as more conservative than one who gave to moderates like Sen. Susan Collins (R-ME) and Rep. Fred Upton (R-MI). Similarly, a Democratic donor who gave to overtly socialist Sen. Bernie Sanders (I-VT) or Rep. Alexandria Ocasio-Cortez (D-NY) would be ranked as more liberal than one who gave to moderates like Sen. Joe Manchin (D-WV) or Rep. Henry Cuellar (D-TX).

⁶ Feinstein and Wood (2022) have data on civil servant campaign donations from 23 agencies in the 2013-2014 election cycle. Across these agencies, the average civil servant CF score ranged from a high of -0.66 (DOJ) to a low of -1.33 (Environmental Protection Agency). The median agency was the Department of State, with an average civil servant score of -1.19. These figures put EPA career employees in the most liberal 8 percent of campaign donors that cycle, while DOJ employees were in the 25 percent most liberal campaign donors.

Moreover, the average career employee gave to more liberal candidates that cycle than President Barack Obama’s agency heads. In 2013 and 2014, career employees gave to more liberal candidates than agency heads at the Departments of Agriculture, Commerce, Defense, Education, Interior, Health and Human Services, Homeland Security, Housing and Urban Development, Labor, Transportation, and State. They also did so in the Agency for International Development, the Environmental Protection Agency, the National Archives and Record Administration, and the Small Business Administration. President Obama’s political appointees were not as liberal as the career employees they supervised.⁷ While there are many conservative federal employees, the federal workforce as a whole stands well to the left of America’s political center.

One political appointee who served at HHS under the George W. Bush and Trump Administrations recalled a conversation with a counterpart who had served in the same agency under President Bill Clinton. This political appointee had remarked that it must have been easier for his counterpart to work with HHS career staff because they were philosophically aligned. The Clinton Administration official replied that managing the career employees was actually quite difficult—the career employees considered him and his fellow Clinton appointees insufficiently progressive “establishment sellouts.” The Clinton official reported that career staff constantly leaked to Congress and the media to pressure political appointees to be more aggressively liberal.

CAREER STAFF RESISTANCE

Researchers find that agencies take longer to issue policy changes when they are led by conservative appointees with liberal career staff ([Feinstein & Wood, 2022, pp. 764-765](#)).⁸ Similarly, researchers find that career employees are less productive and effective when their political views meaningfully differ from those of their agency’s political leadership ([Spenkuch, Teso & Xu, 2023](#)). In some cases, left-wing career staff do not simply obstruct policies they oppose; they actively move policy in the opposite direction than that desired by political appointees ([Wood, 1988](#)).

Bureaucratic resistance was particularly pronounced during the Trump Administration. While career staff policy opposition usually occurs behind the scenes, it made national news under President Trump. Within two weeks of President Trump’s inauguration, the *Washington Post* ran an article titled “Resistance from within: Federal workers push back against Trump” ([Eilperin, Rein, & Fisher, 2017](#)). Later that year, Bloomberg News reported how “career staff have found ways to obstruct, slow down or simply ignore their new leader, the president” ([Flavelle & Bain, 2017](#)). Several political appointees who served in the Trump and Bush Administrations reported greater career staff resistance when they served under President Donald Trump than under President George W. Bush.

Some federal employees even boasted of their intransigence to each other. For example, President Trump appointed Peter Robb to serve as general counsel of the NLRB. A Freedom

⁷ Feinstein and Wood provided their data to the America First Policy Institute. The figures cited in this paragraph come from an analysis of this data; they are not publicly reported in Feinstein & Wood ([2022](#)).

⁸⁸ Regulation in this context refers to a formal change in agency rules required to go through the Administrative Procedures Act’s notice-and-comment process. APA rulemaking is required for both regulatory and deregulatory actions. Career staff opposition does not simply make it harder for agencies to increase regulatory burdens but also to promulgate regulations that reduce regulatory burdens.

of Information Act request uncovered NLRB regional directors celebrating how their self-described “resistance” stymied Robb’s agenda ([Nelson, 2021](#)). While public administration scholars theorize about impartial career staff providing neutral administrative expertise, many federal employees do not approach their jobs that way.

THE HOSTILE CAREER STAFF PLAYBOOK

Polling shows Americans recognize this. A Monmouth University survey ([2018](#)) found that 60 percent of Americans believe unelected officials have too much influence in determining federal policy. However, there is much less public awareness of how the bureaucracy exerts its influence. Policy resistance usually occurs behind closed doors, and news reports paint only a partial picture.

The former appointees the author interviewed often reported similar experiences; hostile career staff used similar tactics across agencies. This report publicly documents the playbook antagonistic staff used to impede policies they opposed.

WITHHOLDING INFORMATION

Hostile career staff can obstruct political appointees in many ways. Perhaps the most common tactic is simply withholding information. Career staff have agency-specific expertise. They know many things that political appointees need to implement their agenda. It is well known that career employees can frustrate that agenda simply by withholding their expertise or knowledge. Within the first two weeks of the Trump presidency, the *Washington Post* published a veteran federal employee’s advice on how to “subtly subvert stupid orders.” That guide advised resistance-minded civil servants: “Only provide minimal information requested ... Fail to find information ... Keep two sets of data (requires some care!)” ([Davidson, 2017](#)).

Hostile career employees frequently employed these tactics during the first Trump Administration. When political appointees asked questions, antagonistic staff would provide as little information as possible.⁹ They might know where political appointees wanted to go with their questions and how to get there, but they would not volunteer that information. Often, they would only provide information supporting their preferred approach. In other cases, career staff withheld vital information from political appointees entirely. This forced political appointees to waste time gathering information their career employees could have easily provided. For example, political appointees reported that:

- NLRB career staff would only present precedents supporting their preferred case resolution. While they would accurately summarize previous cases, the staff appeared to be—or at least pretended to be—almost incapable of presenting cases that undercut their preferences.¹⁰ Several NLRB subdivisions never presented arguments supporting the employer’s position—only reasons why the union should prevail. This made evaluating cases very difficult. NLRB political appointees had to do their own research to

⁹ Throughout this report the term “political appointees” is used to describe reports from officials at specific agencies, regardless of whether the author spoke to one or multiple former officials at such agency. This approach is used to help protect the confidentiality of the author’s sources.

¹⁰ For example, NLRB career staff would present decisions the NLRB made under the Obama Administration overturning 50 or more years of previous precedent as settled law and would not present cases or precedents the NLRB made under previous administrations, coming to different conclusions.

understand both sides of the legal arguments. Career staff would then fiercely object if political appointees rejected their recommendations. One senior career employee frequently cried when her recommendations were overruled. Unfortunately, this behavior was not atypical. Many other agencies reported that career staff selectively presented only legal precedents that supported their preferred positions.

- DoEd career staff concealed documents political appointees wanted to review. Under the Obama Administration, DoEd alleged that several for-profit colleges were effectively defrauding students. DoEd subsequently denied these colleges access to federal student aid. This bankrupted them almost immediately, as they lost significant numbers of students and associated revenues. The schools had no opportunity to defend against these charges before going under. After President Trump took office, political appointees asked to review the evidence that justified this administrative death penalty.

Career employees refused to turn over the internal documents. They provided various excuses, such as claiming that they did not have the data anymore or that the people involved had left. However, DoEd subsequently had to turn over this evidence during a lawsuit. Career employees then promptly produced memos summarizing the Department's evidence against the for-profit schools. This intransigence was very frustrating to DoEd political appointees. DoEd career staff had precisely the information they had been looking for all along but concealed it until they were legally required to disclose it.

- Career employees in the EPA Office of General Counsel (OGC) routinely failed to keep political appointees informed about significant cases. OGC would have weekly staff meetings about agency litigation. EPA political appointees would subsequently double-check with DOJ lawyers and find out the career staff were not providing updates for critical cases. The career employees were not telling political appointees about significant cases in which the EPA was involved or the legal arguments it was making. Staff omissions were so frequent and significant that political appointees resorted to regularly checking PACER to see what was happening.¹¹

MISREPRESENTING THE FACTS

Some career employees went beyond withholding information—they actively misrepresented the facts about what agencies could or could not do. Political appointees had to do their own research to determine what actions they could lawfully undertake. For example, political appointees reported:

- The Food and Drug Administration (FDA) asserted authority to regulate laboratory-developed tests. By late February 2020, the FDA had authorized only one COVID-19 test—a Centers for Disease Control and Prevention test that proved defective. On February 28, 2020, political appointees in HHS held a conference call with FDA officials. HHS wanted to expand coronavirus testing capacity significantly. FDA officials asserted that the law required them to review all lab-developed COVID-19 tests and that those tests could not be used without their authorization. HHS ordered the FDA to allow tests under an emergency use authorization, with the data to be reviewed by the FDA later. This decision

¹¹ PACER is an acronym for Public Access to Court Electronic Records. It provides electronic access to U.S. federal court documents, such as filings and court orders in ongoing judicial proceedings.

significantly increased America's ability to detect COVID-19 infections. HHS officials subsequently examined the law in detail. They discovered that the FDA had no authority to regulate laboratory developed tests in the first place. HHS appointees concluded that FDA staff had been fighting a turf battle. FDA career employees subsequently leaked their opposition to expanded testing and the legal memorandum, concluding that the FDA lacked authority over laboratory developed tests (Cancryn & Ower Mohle, 2020; U.S. Department of Health and Human Services, 2020).

- Career employees at DOL consistently told political appointees they could not take actions that were, in fact, within their legal discretion. One career employee repeatedly told political appointees that they could not issue Direct Final Rules (DFR)—a method of issuing rules without going through notice-and-comment proceedings. On the first day of the Biden Administration, DOL used a DFR to rescind internal regulations governing DOL's rulemaking process. That DFR was signed by a career staffer who repeatedly told Trump political appointees that "you can never do a DFR."
- NLRB career employees "misstated" the dates the agency's union contract could be reopened for renegotiation. Had political appointees taken their word for it, the deadline would have passed, and they would have been stuck with the contract negotiated under the Obama Administration. Fortunately, they double-checked the contract themselves, found that the career staff had given them the wrong dates, and reopened the contract.

REFUSING IDEOLOGICALLY DISAGREEABLE WORK

Career staff are supposed to implement political appointees' policy directives, regardless of their personal policy views. This is a fundamental obligation for government lawyers. Their profession ethically obligates them to represent their client—the federal government—to the best of their ability, irrespective of their personal views. Many career staff approach their jobs this way. However, a significant minority will not work on projects with which they disagree. Their attitude is that they only do work they believe is good policy, regardless of the administration's policy views.

This approach undermines America's democracy. Career staff who refuse to enforce laws they personally oppose stop the American people from getting the policies they voted for. Political appointees are meant to manage and supervise career staff's general operations; they do not have the time to take over routine enforcement actions. Unfortunately, some career employees refuse to enforce laws with which they disagree. For example, political appointees reported that:

- In 2016, an Asian American advocacy group asked the DOJ to investigate Yale and other Ivy League universities' admissions practices. The advocates suspected racial discrimination against Asian Americans in violation of the Civil Rights Act. DOJ's Civil Rights Division opened an investigation. However, career staff moved slowly—much more slowly than typical. DOJ leadership directed career staff to expedite the Yale investigation in 2018, and they agreed to do so. However, career staff subsequently continued to move at a "snail's pace." In mid-2020, a political appointee was assigned to prioritize the case and move it along. Only then did the case proceed. It was apparent to political appointees that career staff did not want to bring the case and were slow-walking it despite "blatant and appalling" evidence that Yale was racially discriminating against Caucasians and Asian Americans. Winning that case would effectively forbid

racial preferences in higher education—an outcome that career staff ideologically opposed.

In the summer of 2020, political appointees drafted a complaint against Yale and asked career staff to verify the facts. Career staff again slow-walked this process; political appointees had to heavily prod them to get the job done.

DOJ then needed to assemble a team to pursue the Yale case. Political appointees asked the Civil Rights Division's Educational Opportunities Section (EOS) to assemble a team to work on the case. EOS is a DOJ subcomponent dedicated to combatting educational discrimination. The EOS section chief responded that no one in their office was available to work on the case. EOS nonetheless continued to take and litigate additional cases that did not deal with ideologically contentious issues. It was clear to political appointees that EOS career staff had the bandwidth to pursue the case but did not want to because they ideologically opposed it. Ordering EOS attorneys to participate in the case was not practicable; DOJ leadership could not trust that they would not deliberately undermine the case. DOJ instead had to assemble a team from outside EOS, primarily made up of employees borrowed from the DOJ Civil Division, the U.S. Attorney's Office in Connecticut (where Yale is located), and the Civil Rights Division's front office. DOJ had clear evidence of racial discrimination at Yale and a clear legal theory, but no EOS career lawyers would work on the case because it did not support their worldview.

The Biden Administration dropped the complaint shortly after taking office. However, the Supreme Court subsequently vindicated the political appointees' legal arguments in *Students for Fair Admissions v. Harvard* (2023), holding that identical discriminatory conduct by Harvard University was illegal.

- Unfortunately, Civil Rights Division career lawyers often approached their jobs this way. Political appointees had to pursue most religious liberty cases themselves because few career attorneys would work on them. For example, only a handful of Civil Rights Division career lawyers would work on letters warning state and local governments that the First Amendment prohibited applying more stringent COVID-19 restrictions to places of worship than to similarly situated secular facilities.

Similarly, the DOJ sought to protect the rights of girls and young women to compete on a level playing field in high school and college sports. The Civil Rights Division supported parents in Connecticut suing to prevent biological males who identified as women from unfairly competing against girls in track meets and an Idaho law barring biological males from competing against women. The division's career staff opposed these efforts, and political appointees performed all related legal work. So, while the Civil Rights Division has more than 400 lawyers and professional employees, it had only about a dozen lawyers—primarily political appointees—willing to work on certain issues. Political appointees believed these limitations significantly impaired the division's effectiveness.

- Some career lawyers at the NLRB flat-out refused to draft decisions when they disagreed with their conclusions. Political appointees got the impression that these career lawyers were almost daring the political appointees to dismiss them. The lawyers made it clear they would then claim the political appointees were not following the law and assert whistleblower protections. The political appointees were indeed seeking to change

existing NLRB precedents—but this is well within the NLRB’s authority. Under President Obama, the NLRB overruled a cumulative 4,500 years of existing precedents ([Lotito, Baskin, & Parry, 2016](#)). Nonetheless, these career lawyers would not write decisions overturning administrative precedents they supported.

DELAYS AND SLOW-WALKING

Outright refusing to work on a project can be risky; it gives political appointees legal justification to dismiss career staff who refuse orders. While the removal process is complex and time-consuming, it is possible to remove federal employees who refuse to work.¹² Consequently, even hostile staff typically accept assignments they object to. However, many will then slow-walk the project, taking far longer to complete it than the work they supported. This tactic is well known. Shortly after President Trump’s inauguration, the *New York Times* reported that a group of EPA career scientists were strategizing “about how to slow-walk President Trump’s environmental orders without being fired” ([Shear & Lichtblau, 2017](#)).¹³ Political appointees would frequently find that career staff took weeks or months to do work that political employees could do themselves in a few days. For example, political appointees reported that:

- A DOL enforcement agency has a subcomponent whose only job is to write regulatory and policy documents.¹⁴ The unit has about 10 to 15 career employees at any given time. In the fall of 2017, political appointees requested a status update on a draft proposed rule. The unit had been working on this rule since the start of the Trump Administration. It was a DOL priority and this unit’s primary responsibility during this period. Career staff reported that the draft would not be complete until March 2018. Political appointees asked for the draft before the end of the year. Career staff said that the requested pace was impossibly burdensome and would drive staff to quit. Political appointees subsequently calculated the staff’s proposed pace, which amounted to each career employee writing one line of text per day. The appointee estimated that a competent private-sector lawyer could complete the draft in two to three weeks. Political appointees subsequently gave up on these career staff and wrote many policy documents themselves.
- In October 1999, President Clinton directed the U.S. Department of Agriculture (USDA) to issue a rule prohibiting road construction on millions of acres of land under the Forest Service’s jurisdiction. USDA processed this directive quite quickly, issuing a “notice of proposed rulemaking” or NPRM (a required step in issuing most regulations) in May 2000—just seven months later. During the public comment period, USDA received more than 1 million form letters, 60,000 original letters, and 90,000 email messages. USDA processed these comments quickly and issued a final rule in January 2001, just eight months after issuing the NPRM and 15 months after the president told them to act ([Special Areas: Roadless Area Conservation, 2001](#)). Since roads are necessary for mining and logging operations, the roadless rule effectively banned legally permissible development in those areas. No federal law required this “roadless rule,” but courts ruled it was within USDA’s administrative discretion. The roadless rule shut down all but two

¹² Under 5 U.S.C. § 7513(a), federal employees may be removed for such cause as will improve the efficiency of the service. Refusal to perform their duties constitutes one such cause.

¹³ The guide to “subtly subvert[ing] stupid orders” the *Washington Post* published included this advice from a veteran federal employee: “Miss deadline while ‘doing your best’ (after all, we were all overworked). That might get you a poor review next time, but it won’t get you canned” ([Davidson, 2017](#)).

¹⁴ E.g., Notices of Proposed Rulemakings (NPRM) and Final Rules. Such rules can be either regulatory or deregulatory actions.

logging mills in Alaska, badly hurting southeast Alaska's economy and workers and families in the area.

Alaska petitioned the Trump Administration to exempt the state from the roadless rule. Staff briefed President Trump on the policy, and in June 2018, he directed USDA to give Alaska this exemption. This time, the Forest Service moved much more slowly. USDA did not issue an NPRM until October 2019—16 months after the initial presidential decision. USDA received 267,000 comments on this rulemaking, which was significant but substantially less than in the 2000 rulemaking. USDA again took longer to finalize the rule after the comment period closed. The final Trump Administration rule was issued in October 2020, a year after the NPRM was issued and 28 months after the president directed the action ([Special Areas, 2020](#)).

The Forest Service has no political appointees, only career staff. Under President Clinton, Forest Service career employees issued the roadless rule in just 15 months. Under President Trump, the USDA took nearly twice as long to rescind the rule's application to only the state of Alaska. That effort—implementing a directive from the head of the executive branch—also required massive political appointee involvement. Forest Service career staff disagreed with the policy and did not actively support issuing the rule. They knew the steps the National Environmental Policy Act (NEPA) requires to justify decisions affecting the environment. Still, they either would not do them, dragged their feet doing them, or produced unusable work products. Political appointees ultimately had to heavily edit and rewrite the rule to get it issued on a much slower timetable.

- Career lawyers also attempted to slow-walk the DOJ Civil Rights Division's investigation into the Cuomo nursing home scandal. The Civil Rights for Institutional Persons Act allows the DOJ to investigate neglect and mistreatment in publicly run facilities, including nursing homes. This became a pressing concern during the COVID-19 pandemic when some states began requiring nursing homes to admit coronavirus-infected patients. These policies led to mass coronavirus outbreaks within nursing homes that killed many elderly Americans and created widespread public concern. DOJ leadership made investigating these policies a priority.

In April 2020, the DOJ Civil Rights Division publicly opened an investigation into conditions at a nursing home for veterans in Holyoke, Massachusetts ([Department of Justice, 2020a](#)). The nursing home had accepted many COVID-19-positive residents and housed them in close quarters with uninfected veterans—many of whom subsequently became infected and died. At the time, Massachusetts had a Republican governor, Charlie Baker.

In March 2020, then-New York Gov. Andrew Cuomo required nursing homes to re-admit residents who contracted COVID-19. This order exposed many uninfected nursing home residents to the coronavirus, and thousands subsequently died. Nonetheless, the Cuomo Administration initially reported very low nursing home death rates. DOJ political appointees found these reported figures questionable. They knew New York had a high COVID-19 death rate, and the elderly were particularly vulnerable, so the low reported figures for nursing homes seemed odd. DOJ requested additional data from four states, including New York, that had high overall death rates and that required nursing homes

to accept COVID-19-infected patients without testing them.¹⁵ This time, each of these states had Democratic governors.

Civil Rights Division career lawyers tried to block this request.¹⁶ They had not raised any arguments against investigating the Massachusetts nursing home. They now argued that the DOJ should request data from states with Republican governors, like Texas and Indiana, based on historical surveys of how well-run nursing homes had been before the pandemic.¹⁷ However, these states were not forcing nursing homes to admit coronavirus-positive patients. Political appointees overruled these objections, explaining they wanted to focus on the COVID-19 response.

The division's career lawyers dragged their feet and did not draft the letters requesting additional data. Frustrated with the delay, DOJ political appointees drafted the letter and sent it out themselves ([Department of Justice, 2020b](#)).¹⁸ This action helped to expose the Cuomo Administration's cover-up of deaths in New York nursing homes. Subsequent investigations showed New York's official figures underreported nursing home deaths by as much as 50 percent ([New York State Office of the Attorney General, 2021](#)).

UNACCEPTABLE WORK PRODUCT

Hostile career employees can only delay projects for so long. Sufficient delay can become an effective refusal to perform work, which could justify termination. So, hostile career staff unwilling to formally refuse an assignment ultimately need to complete it. However, they often then produce unacceptable work products. Draft regulations are complex documents with many legal facets. Sophisticated career staff can draft regulations that formally comply with their directives but are unlikely to withstand judicial review. This allows them to technically complete their assignment—making it harder to dismiss them—while stymieing the administration's policy objectives. Such obstruction frequently forced political

¹⁵ These states were New York, New Jersey, Pennsylvania, and Michigan.

¹⁶ George & Miller ([2023, p. 13](#)) critique an earlier version of this report and argue it was appropriate for Civil Rights Division career staff to "question investigation requests made for partisan political reasons." This characterization of the Civil Rights for Institutional Persons Act (CRIPA) inquiry is mistaken. DOJ opened an earlier CRIPA nursing home inquiry into a state with a Republican governor. The focus of the summer 2020 inquiry was the effect of policies forcing nursing homes to admit coronavirus-infected residents. The states with those policies all had Democrat governors; had Republican-led states required such policies, they too would have been included. The subsequent investigations validated DOJ leadership's concerns and demonstrated that these policies were leading to many preventable deaths. Moreover, none of the relevant governors were standing for re-election in 2020. Opening an inquiry would have had no near-term political effect.

¹⁷ George & Miller ([2023, pp. 12-13](#)) argue that had "DOJ sought additional information from Texas, an investigation might have shed light on why Texas never disclosed any deaths in nursing homes at the beginning of the pandemic, why Texas refused to release the locations of COVID-19 outbreaks in nursing homes, or why Texas's death rate from COVID-19 in nursing homes was far above the national average at the time DOJ launched its investigation, while New York's was far below." These objections are off point. The first two points, assuming they are true, were not known to either political appointees or career staff in DOJ at the time; career staff never raised these concerns. The final point was precisely the motivation for the inquiry—New York was reporting surprisingly low COVID-19 deaths in nursing homes, despite a high overall death rate and policies that required admitting potentially COVID-19-infected patients. Subsequent investigation revealed that New York was systematically underreporting COVID-19 deaths in nursing homes.

¹⁸ George & Miller ([2023, p. 13](#)) further argue that it was "highly unusual, and improper" for DOJ to publicize a preliminary CRIPA inquiry. They argue that the announcement "seems calculated to insert the considerable authority of DOJ into an ongoing political debate during an election season ... DOJ typical policy is to 'not confirm the existence of or otherwise comment about ongoing investigations.'" This critique belies ignorance of the applicable DOJ policies and practices. DOJ policies expressly provide for disclosing ongoing investigations "[w]hen the community needs to be reassured that the appropriate law enforcement agency is investigating a matter," provided the relevant assistant attorney general authorizes the disclosure ([U.S. Department of Justice, n.d.](#)). DOJ often publicizes investigations for this reason. During the coronavirus pandemic, there was considerable public concern about the safety of nursing home residents. DOJ announced these inquiries—with appropriate authorization—to reassure the public the matter was under review. DOJ similarly publicized the investigation into the veterans facility in Massachusetts ([U.S. Department of Justice, 2020a](#)).

appointees to do work that career staff should have performed themselves. For example, political appointees reported that:

- All politically sensitive regulations at the DoEd had to be written by political appointees. Career employees assigned to produce drafts of these regulations would come back with “completely unusable” drafts that either diverged significantly from Department priorities or would never withstand judicial review. So, political appointees had to do it themselves. For example, DoEd’s Title IX rule (providing due process when students are accused of sexual misconduct) was drafted almost entirely by political appointees ([Nondiscrimination on the Basis of Sex, 2020](#)). Career involvement served only to preview the arguments that opponents of the rule would eventually make in the courts and the public sphere once the rule was published. Political appointees at many other agencies reported similar experiences.
- The USDA participated in the administration-wide effort to reduce the NEPA regulatory burden. The administration wanted to clarify that the federal government simply guaranteeing a loan is not a “major federal action” subject to a burdensome NEPA review.¹⁹ The Council on Environmental Quality (CEQ) was working on the rule and turned to USDA to write that section. USDA career staff included attorneys and experts who were highly competent and well-versed in these issues. However, when it came time to draft the rule, these career staff somehow could not produce anything that political appointees thought passed legal muster. Career staff spent 30 days creating unusable work products for an administration priority. Ultimately, political appointees had to write the analysis themselves. It took political appointees 10 days to do the work and then turn it over to CEQ. Political appointees found it “unbelievable” that capable career employees did such shoddy work.
- Senior leaders at the DOJ wanted to issue guidance clarifying that the law allowed states that modified voting policies during the COVID-19 pandemic to return to their pre-pandemic practices afterward. Career lawyers in the Civil Rights Division instead argued that federal law makes voting policies a one-way ratchet: once states expand them, they cannot revert to previous practices. Political appointees directed a career attorney to write a memo providing legal justification for the guidance. That career lawyer accepted the assignment. His memo, however, argued against the policy and said it lacked any legal justification. The project had to be assigned to political appointees, who found solid legal arguments justifying the memo. In a 6-to-3 decision, the Supreme Court subsequently held that federal law does not make voting policies a one-way ratchet—precisely the opposite position the career lawyer took ([Brnovich v. Democratic National Committee, 2021](#)).

LEAKING

When internal obstruction does not block an initiative, hostile career staff will often leak to the press or Congress. Political appointees find leaks extremely damaging. While they can work around career obstruction—such as having political appointees do tasks career staff would typically perform—leaks consume enormous amounts of time and attention. They can

¹⁹ This proposal would exclude NEPA review when the federal government’s sole action involved guaranteeing the loan and, if necessary, making the lender whole and selling the underlying asset. It kept the NEPA review when USDA itself was making the loan.

create a media or congressional firestorm, especially when career staff misrepresents the policies in question. Political appointees must then respond to the resulting inquiries, taking time away that should be spent advancing their policy agenda. Selective leaking is a deliberate career staff tactic to divide political appointees' time and attention and pressure them to change policy. For example, political appointees reported that:

- The Trump Administration began developing an executive order directing the General Services Administration (GSA)—which oversees most federal building construction—to design buildings that most Americans find beautiful. Surveys show that most Americans prefer traditional architectural styles for federal buildings ([National Civic Art Society, 2020](#)). However, the architectural community, including many GSA career employees, broadly prefers modernist designs. GSA has consequently built a series of federal buildings that local residents find off-putting.²⁰ For example, GSA awarded the design contract for the San Francisco Federal Building to Thomas Mayne, a leading modernist architect. He describes himself as creating “art-for-art’s-sake architecture that only other architects can appreciate” ([Cordeiro, 2009](#)). San Franciscans now rank the San Francisco Federal Building as one of the ugliest structures in their city ([Keeling, 2016](#)).

In December 2019, career lawyers at GSA were asked to review an early draft of the order. To avoid leaks, it was not shared with other GSA components. Nonetheless, a copy of that draft appeared in the press in February 2020 ([McGuigan, 2020](#); [Make Federal Buildings ‘Beautiful Again’?, 2020](#)). The leak created a media firestorm, with many critics comparing support for traditional architecture to Hitler’s Nazi Germany ([Baskin, 2020](#); [Wagner, 2020](#); [Pinto, 2020](#)). GSA subsequently determined that a career lawyer gave a physical copy of the draft to the career chief architect. The chief architect converted it into a PDF using an agency scanner. He then emailed it to several external recipients and his personal email account with the subject heading “For your eyes only ... for now.” A week later, he resigned in protest.

Ironically, the provision that attracted the most criticism—language making classical architecture the default style for all new federal buildings nationwide—had already been cut from the working draft before the chief architect resigned.²¹ The executive order that President Trump ultimately signed instead eliminated GSA’s institutional bias against traditional architecture while directing GSA to seek community input on new building designs and prioritize designs that non-architects appreciate while making classical the default style only for Washington D.C., where it already predominates federal architecture ([Exec. Order 13967](#)). However, the leak made the ultimate executive order controversial. President Biden rescinded it shortly after taking office ([Exec. Order 14018](#)).

- The Department of the Interior (DOI) wanted to revise Obama Administration regulations on preventing well blowouts in offshore drilling. While everyone agreed that regulations were necessary, industry experts reported that the Obama Administration regulations were more costly and cumbersome than necessary to achieve safety objectives ([Oil and Gas and Sulfur Operations, 2018](#)). Political appointees and career staff disagreed on how to implement new safety standards best. The career employees responded by refusing to do the work necessary to draft the new rule. They would also send internal emails

²⁰ The U.S. Federal Court House in Salt Lake City, Utah, is another example. GSA’s career staff selected the architect and gave him broad discretion to choose his preferred design while giving little input to the local community. Locals now derisively refer to this courthouse as a “Borg Cube” or a “gigantic air conditioning condenser” ([SLC Weekly](#)).

²¹ The final executive order made classical architecture the default style for D.C., rather than nationwide.

deliberately mischaracterizing what political appointees requested. After much effort, political appointees were ultimately able to get the rule issued. Career employees promptly leaked their opposition and emails, mischaracterizing the process to the press. Multiple articles have come out about how political appointees have strong-armed these career staff ([Mann, 2020](#)). The career staff used leaks to make it politically costly to overrule their policy preferences.

- NLRB career staff leaked fabricated allegations that the agency was going to close regional offices. On a conference call with regional directors, political appointees were asked if they planned to close or consolidate any regional offices. They told the directors that they had no plans to do so but would look at everything to make the agency run more efficiently. A regional director promptly wrote a letter to a Democrat NLRB member claiming the General Counsel's office planned to close several regional offices. That member shared the letter with Sen. Elizabeth Warren (D-MA) and Bloomberg News. The allegations were entirely false. At no point did the political appointees ever contemplate closing regional offices, even though the Obama Administration had closed regional offices due to a declining caseload. However, the leak damaged political appointees' relations with the regional directors and NLRB employees.

INTRANSIGENCE AND INSUBORDINATION

Some career staff went beyond refusing assignments or doing them poorly: They would flatly disregard political appointees' directions and instead do what they thought best. Such insubordination and intransigence occurred commonly in some agencies and infrequently in others. For example:

- President Trump issued a federal hiring freeze shortly after taking office ([Hiring Freeze, 2017](#)). A few months later, political appointees at the HHS reviewed several HHS advisory committees' human resources records. They noticed that many committee members initially had starting dates after the hiring freeze. HHS career staff had crossed out the initial hiring dates with a Sharpie pen, writing in January 19, 2017, instead—the day before President Trump's inauguration.
- NLRB regional staff commonly tried to avoid implementing policy directives.²² They would also find creative ways to avoid reporting that fact back to political appointees. One way they did so was by manipulating the NLRB's system to track case resolutions. That database only tracked cases for which a decision was recorded. Thus, career staff would avoid recording decisions in cases political appointees might be interested in—hiding those cases from political appointees' view. In one case, political appointees directed a region to dismiss a case. However, the region did not send a letter to the parties notifying them of the dismissal; sending that letter would have triggered reporting a dismissal in the database. Regional career staff tried to keep the case alive until political appointees realized what was going on and ordered them to complete the process. Once political appointees discovered this technique, they directed staff to report all cases where no decision had been made. They accounted for one-tenth of all NLRB cases.

²² Another example of this phenomenon frequently occurs in litigation. Regional directors would not make the legal arguments in cases that headquarters instructed them to make.

- Peter Ohr, an NLRB regional director, refused to implement directives on conducting union elections.²³ During the COVID-19 pandemic, the NLRB ([2020](#)) set protocols to determine when regions should conduct in-person or mail-in elections. The NLRB typically prefers in-person elections, which have higher turnout and are more representative of employee views. During the pandemic, the NLRB expanded the use of mail-in elections, which have lower turnout. Mail-in elections are also seen as easier for unions to win because, unlike employers, unions can campaign at workers' homes ([Morris, 2020](#); [National Labor Relations Board, 2017, pp. 349-50](#)). Ohr disregarded these protocols. He only scheduled mail-in elections, even when protocols called for a higher turnout in in-person elections.
- A DOI coal plant inspector planned to shut down a mine that employed about 30 workers for three months. The mine violated technical DOI protocols, but this paperwork violation did not create any health or safety risks. The mine had the right to appeal and remedy the violation without penalty, keeping the mine open and letting workers keep their incomes through the Thanksgiving and Christmas holidays. Political appointees directed the inspector to allow the mine to stay open while remedying the violation. However, the inspector refused to obey these directives and persisted in driving to the mine to order it to shut down. The inspector only stood down after the Interior Secretary personally ordered him over the phone to let the mine stay open and the workers keep their jobs.

HIRING IDEOLOGUES INTO CAREER POSITIONS

The media often describes career employees as non-partisan. This is sometimes true. However, agencies often hire partisan ideologues into career positions. Sometimes, political appointees hire fellow partisans into these roles. In other cases, ideological career staff hire like-minded applicants. Either way, ideological career staff make implementing a contrary policy agenda very difficult. Examples that political appointees reported of agencies hiring overtly ideological career staff include:

- The DOJ Inspector General (IG) found that, during President Obama's first term, all but one employee hired into a section of the Civil Rights Division had previously worked for left-wing activist organizations or the Democrat Party. The remaining employee had no obvious partisan affiliation. This section did not hire a single Conservative or Republican during this period ([U. S. Department of Justice, 2013, p. 209](#)). The IG criticized the hiring committee for using superficially neutral standards that effectively skewed hiring toward left-wing activists. For example, the hiring committee strongly preferred applicants with experience in public interest or civil rights litigation. The IG found that this requirement had little relationship to employees' actual job duties. However, most of the organizations doing this work—such as the American Civil Liberties Union—are left-wing. Consequently, preferring employees with civil rights litigation experience meant hiring preferences for liberal activists ([U. S. Department of Justice, 2013, pp.219-222](#)).

These problems remained unchanged in the Trump Administration. Career staff continued to apply superficially neutral hiring criteria that effectively screened out conservative or non-partisan applicants. Career staff also appeared to “blackball” anyone whose resume indicated they were Conservative, even if that was not the stated reason

²³ President Biden designated Peter Ohr as acting general counsel shortly after taking office.

for their not getting hired. At the same time, Civil Rights Division career staff hired many overtly liberal and progressive activists.

- Most senior career lawyers hired by the Obama DOL were affiliated with left-wing organizations. For example, the Obama Administration hired a former Service Employees International Union lawyer to run the regional solicitor's office in California. This attorney continued her left-wing activism at DOL, filing weak cases on ideological grounds. Near the end of the Obama Administration, she brought charges alleging Oracle systemically discriminated against women and minorities. A DOL administrative law judge comprehensively rejected her complaint, holding that DOL provided no credible evidence to support its charges ([Kaylin, 2020](#)).

The Obama DOL similarly appointed the head of New York State's Joint Enforcement Task Force on Misclassification to head the Fair Labor Standards Division of the Solicitor of Labor's Office. This task force sought to reclassify workers as employees instead of independent contractors—a longtime priority of left-wing labor activists. This appointee continued that work for the Obama DOL. She is highly ideological and was functionally an Obama Administration political appointee, but she was hired into a powerful career position that she retained throughout the Trump Administration. Trump appointees had to work around her opposition to their policies.

- The Obama NLRB hired highly ideological union activists into career positions. Political appointees believed the Obama Administration did this deliberately to make it hard for a future administration with different policy preferences to get anything done. Senior career NLRB employees openly discussed their opposition to political appointees' policies over internal emails, boasting how their "resistance" frustrated that policy agenda ([Nelson, 2021](#)).

This hiring philosophy has been carried into the Biden Administration. The Biden NLRB recently hired a prominent labor law writer for a career position in a regional office ([Magner, 2021](#)). This writer has extensively written about how the NLRB could radically rewrite longstanding precedents to boost union organizing. He has called for the board to prohibit employers from discussing unionization with employees, order employers to bargain with unions their employees did not vote for, and give unions authority over businesses' capital allocation ([Magner, 2020](#)).

CAREER EMPLOYEE RESISTANCE CHANGES POLICY

Career employee resistance changes policy. While political appointees can often work around hostile career staff, career opposition sometimes changes policy initiatives or defeats them outright. This typically happens for one of several reasons.

Reducing Policy Bandwidth

First, career staff resistance reduces political appointees' bandwidth. When career staff refuse assignments or produce unusable work products, they force political appointees to implement policy reforms on their own. However, agencies do not have enough political appointees to assume all these responsibilities by themselves. Thus, policy resistance forces agencies to triage their agenda, focusing political appointees' efforts on their highest priorities and leaving tertiary projects undone. Career staff opposition prevented agencies

from issuing many rules during the Trump Administration. Political appointees could not delegate these tasks to career employees, and they did not have enough time to do them themselves.

- For example, political appointees reported that the DoEd wanted to roll back Obama-era regulations requiring states to use a standard methodology to determine if a “significant disproportionality” occurs for the purposes of the Individuals with Disabilities Education Act ([Assistance to States for the Education of Children With Disabilities, 2016](#)). Career staff said they could not write those regulations. They claimed the Obama regulations were the only possible interpretation of the statute. Political appointees examined the statute and disagreed. They believed the law allowed DoEd to return to the pre-Obama regulatory state. Nonetheless, DoEd did not have enough political appointees to write the rule rolling back the Obama regulations themselves. Since career staff were unwilling to work on it, the rule was never issued.

Running out the Clock

Second, hostile career staff can defeat policy changes by running out the clock. Stalling tactics like delays and slow-walking usually just postpone policy changes. However, in some cases—especially in the final year of a presidential term—stalling can block policy changes outright.

- For example, political appointees reported that in 2020, the USDA wanted to reinstate regulations reforming the school lunch program. USDA published regulations in 2018, giving states more flexibility to meet the school lunch program’s nutritional standards ([Child Nutrition Programs, 2018](#)). This rule allowed states to serve meals that students would actually want to eat. Opponents sued, and in April 2020, a federal district court judge ruled against USDA on procedural grounds. The court held that the agency had the authority to make those changes but made mistakes in complying with notice-and-comment requirements ([Center for Science in the Public Interest v. Perdue, 2020](#)).²⁴

If a court invalidates a rule for procedural reasons, the agency can bring it back into effect by redoing the rulemaking process and fixing the procedural defect. The first step is to republish the proposal in the Federal Register—this time providing adequate notice of the intended final policy. Putting this notice together is a ministerial task; the agency has previously done almost all the work of creating the rule. It must simply republish that proposal with only slight modifications. The task generally takes only a few days. After the district court ruled against USDA, political appointees directed the Food and Nutrition Service (FNS) to publish a revised notice in the Federal Register.

Career FNS staff pretended they did not know how to put the notice together. The task should have been done by the summer. Instead, hostile staff dragged the process out for months. Political appointees were preoccupied with the coronavirus pandemic and did not have the bandwidth to drive the career FNS team. As a result, the notice was not submitted to the Federal Register in time for USDA to redo the regulatory process, and

²⁴ The Administrative Procedures Act and associated caselaw generally require agencies to issue a Notice of Proposed Rulemaking (NPRM) and give the public an opportunity to comment before finalizing regulatory changes. To finalize the rule, agencies must give a reasoned response to the arguments the commentators make. Agencies can modify the final regulation in response to comments, but any changes must be a “logical outgrowth” of the initial proposal. Agencies cannot make changes in the final rule that commentators could not have logically foreseen from the initial NPRM. In this case, the federal judge held that the changes USDA made between the NPRM and the final rule were significant enough that the agency needed to give the public an opportunity to comment on them before implementing the final rule.

the rule was never issued. FNS career staff ran out the clock on the rulemaking process and killed a policy they opposed.

The same FNS career staff who dragged their feet on this ministerial task rapidly implemented significant policy changes for the Biden Administration. In the first year of the Biden Administration, FNS expanded food stamp benefits by 30 percent while weakening work requirements for able-bodied adults ([Supplemental Nutrition Assistance Program; 2021](#); [Department of Agriculture, 2021a](#); [Department of Agriculture, 2021b](#)).

Weakening Legal Defenses

Third, career staff can also defeat policy changes by undermining their legal defense. The Administrative Procedures Act (APA) requires agencies to follow technical procedural steps to issue new rules. Courts routinely overturn rules if agencies do not follow these steps. Career staff can undermine policy changes by following APA procedural requirements sloppily. Similarly, career lawyers can undermine policies by defending them poorly in court. Political appointees believed this frequently happened.

- Political appointees at the DOI believed that career lawyers in the DOJ intentionally sabotaged the legal defense of their cases, particularly those involving rulemaking or significant policy changes. Career lawyers refused to make strong arguments defending the rules DOI staff suggested, failed to prepare for oral arguments, and did not raise arguments offered by Interior. Instead, the DOJ made much weaker arguments that courts predictably rejected. DOI political appointees considered this legal sabotage a significant problem that blocked or stifled several policy changes. Certain DOJ political appointees were unwilling to reassign staff attorneys who engaged in such behavior. Eventually, new DOJ political appointees were confirmed who were more diligent about having effective counsel assigned to Interior's cases. From that point, DOI prevailed much more frequently.

Legal sabotage was probably the most effective career staff resistance tactic. Agencies typically win about two-thirds of APA challenges to new rules ([Barbash & Paul, 2019](#)). However, under the Trump Administration, opponents overturned most of the new rules they challenged in court ([Institute for Policy Integrity, 2021](#)).²⁵

Constraining Procedural Discretion

Finally, career staff can change policy outcomes by constraining their agency's procedural discretion. The APA requires agencies to provide reasoned justifications for policy changes. Career staff can accordingly influence policy by not doing, or only partially doing, the work necessary to provide such justifications. Agencies cannot simply plow through such resistance, as courts frequently overturn regulations that violate this procedural requirement. This tactic can significantly influence policy when agency political appointees lack the time or technical expertise to create APA justifications on their own.

²⁵ The Trump Administration litigation loss rate was also attributable in part to opponents filing suit in jurisdictions with activist liberal judges appointed by Democratic presidents (e.g., California and the 9th Circuit Court of Appeals). Democratic appointees ruled against the Trump Administration almost 85 percent of the time ([Institute for Policy Integrity, 2021](#)). The Supreme Court frequently overturned these decisions on appeal. See, for example, *Trump v. Hawaii* ([2018](#)), *Trump v. Sierra Club* ([2019](#)), and *Department of Homeland Security v. New York* ([2020](#)).

- For example, President Trump signed Executive Order 13828 ([2018](#)) directing agencies to strengthen work requirements. The USDA helped implement this initiative for the food stamp program. Federal law requires able-bodied food stamp recipients without dependents to work. States can waive these work requirements in counties experiencing high unemployment. Political appointees reported Agriculture Sec. Perdue wanted to raise the minimum unemployment rate necessary to waive work requirements; the previous regulations permitted many individuals in low-unemployment areas to collect benefits without working.²⁶ The APA required the USDA to provide a reasoned justification for the unemployment “floor” it chose. USDA operated in the context of the DOL, defining elevated unemployment as 6 percent or higher. The law automatically waives work requirements for any county with 10 percent or greater unemployment. USDA could thus set the unemployment floor to any rate between 6 percent and 10 percent but had to provide a reasoned justification for its decision. The higher the floor, the stronger the work requirements for able-bodied adults.

USDA Secretary Sonny Perdue wanted to set the unemployment floor to 7 percent—the level Republicans in the House of Representatives supported. USDA needed to find research and studies justifying that decision. Political appointees told career experts to locate the data necessary to support the 7 percent threshold. USDA career staff made no effort to find or generate that data. Consequently, when it came time to finalize the rule, USDA had to default to the lower 6 percent threshold ([Supplemental Nutrition Assistance Program, 2019](#)). USDA did not have enough evidence in the record to justify the higher rate. Career staff hostility forced the USDA to substantially weaken work requirements, which were a presidential and secretarial priority.

Constructive Red Teaming

Not all hostility by career staff undermined policy changes. In some cases, it improved them. For example, many senior career lawyers in the DOL are very liberal. They argued strongly against several Trump DOL regulations, such as those defining joint employment or clarifying the legal test for independent contracting. In some ways, their opposition impeded policy changes; DOL had to involve political staff in the regulation drafting teams to prevent delays or shoddy work products.

In other ways, this career opposition was very constructive. Ideologically hostile experts internally critiqued every controversial DOL regulation. These hostile career lawyers provided political appointees with every substantive legal and policy objection their proposals would face. This “red teaming”—as political appointees described it—enabled DOL to identify and eliminate legal or policy problems before their rules went public. Political appointees believed that—contrary to staff’s apparent intentions—career employee red teaming meaningfully improved DOL’s policymaking.

However, the benefits of red teaming had limits. DOL career lawyers opposed and raised legal objections to almost everything political appointees wanted to do. Many of their legal objections were specious and simply masked policy objections. Consequently, political

²⁶ The regulations allowed states to waive work requirements for counties with unemployment rates 20% or more above the national average ([7 CFR § 273.24\(f\)\(3\)\(iii\)](#)). This relative definition meant that the threshold for waiving work requirements fell in tandem with the national unemployment rate. As the national economy improved, this waived work requirements in many counties with low unemployment rates. For example, the national unemployment rate in 2018 and 2019 fell below 4%. The USDA standards meant any county with unemployment above 4.8% (20% higher than 4%) qualified for work requirement waivers. However, 4.8% is below what economists historically considered the natural rate of unemployment (approximately 5.5%).

appointees sometimes found it challenging to determine when career staff were raising genuine concerns that needed to be addressed. The problem was not that some career employees personally opposed President Trump's agenda. Raising concerns was often helpful. The problems came when career employees actively obstructed policies they opposed.

CIVIL SERVICE REGULATIONS PREVENT MEANINGFUL ACCOUNTABILITY

Federal employees can be terminated for refusing directives or for poor performance. So, in theory, agencies can dismiss intransigent or insubordinate career staff. In practice, civil service protections make dismissing all but the worst employees prohibitively difficult.

Civil service rules presume that tenured federal employees deserve to keep their jobs.²⁷ Agencies must prove that good cause justifies dismissal.²⁸ To establish that good cause exists, agencies must collect evidence and navigate procedural steps, such as providing poor performers a "performance improvement period."²⁹ They must also demonstrate misconduct warranted removal—and not a lesser penalty—by evaluating that behavior through the 12 Douglas Factors.³⁰

These internal agency procedures typically take five months to one year.³¹ Once an agency dismisses an employee, they have multiple options to appeal:

²⁷ Federal employees initially serve a probationary period of one year in most agencies and, until 2023, two years at the Department of Defense. During this probationary period, employees effectively serve at will, and agencies do not have to justify their dismissal.

²⁸ Agencies can use two primary authorities to remove tenured employees: Chapter 43 and Chapter 75. Chapter 43 can only be used to remove employees for unacceptable performance. Agencies must demonstrate that "substantial evidence" shows the employee performed unacceptably ([5 U.S.C. § 7701\(c\)\(1\)\(A\)](#)). Agencies can use Chapter 75 authority to remove employees for "such cause as will promote the efficiency of the service" ([5 U.S.C. § 7513\(a\)](#)). This has been interpreted to cover removing employees for both poor performance and misconduct. Agencies using Chapter 75 authority must demonstrate that the "preponderance of the evidence" justifies removal ([5 U.S.C. § 7701\(c\)\(1\)\(B\)](#)).

²⁹ Before removing an employee for unacceptable performance under Chapter 43, agencies must give the poor performer an opportunity to demonstrate acceptable performance, colloquially known as a performance improvement period or "PIP" ([5 U.S.C. § 4302\(c\)\(6\)](#)). If the employee continues to perform unacceptably at the end of the employee's PIP or the employee improves but relapses to an unacceptable level within 12 months, the agency may remove them. To do so, the agency must first give the employee 30 days advance notice, informing the employee they intend to dismiss the employee and provide the employee an opportunity to respond. The agency must issue a decision within 30 days of the conclusion of the notice period ([5 U.S.C. § 4303](#)). Agencies using Chapter 75 authorities do not need to provide employees with a PIP. They do need to provide the 30-day advance notice period during which the employee may respond to the charges. The agency may remove the employee after considering the employee's response and weighing the evidence ([5 U.S.C. § 7513](#)).

³⁰ The Douglas Factors are named after the seminal MSPB case establishing this framework, *Douglas v. Veterans Administration* (1981). The Douglas Factors include the relationship of the infraction to the employee's responsibilities, the notoriety of the offense, consistency with discipline for similar infractions in the agency, the possibility of rehabilitation, the workers' disciplinary and work records, mitigating circumstances such as unusually high job tensions, and the efficacy of alternative punishments in deterring future misconduct. Managers must show they carefully evaluated each of the Douglas Factors before proposing to remove an employee. If they do not, the MSPB may reduce the penalty upon appeal.

³¹ The Government Accountability Office (2015, p.15) estimates it takes six months to one year to remove an employee for unacceptable performance using Chapter 43 procedures. Removals for poor performance or misconduct using Chapter 75 procedures take about five months. Agencies typically spend about three months gathering evidence to support a proposed removal. They must then provide the employee with 30 days advance notice of their proposed removal, during which time the employee may respond to the charges ([5 U.S.C. § 7513\(b\)\(1\)](#)). Agencies can dismiss the employee at any point after the conclusion of the advanced notice period and the employee's response; 30 days is a not atypical response period.

1. *The Merit Systems Protection Board*. Most federal employees can appeal their removal to the Merit Systems Protection Board (MSPB).³² MSPB administrative law judges (ALJ) hold trial-like proceedings to determine if the agency has enough evidence to justify removal. The ALJ will also decide if the employee's conduct justified removal or if the punishment should be reduced to something less serious, such as a suspension. If the ALJ upholds the removal, the employee can appeal to MSPB headquarters in Washington, D.C. ([5 U.S.C. § 7701](#)). The MSPB shows deference to agency penalty determinations³³ but can reduce most dismissals to a lesser penalty, such as a suspension.³⁴ MSPB appeals take an average of about nine months if the employee appeals to MSPB headquarters.³⁵ Once MSPB appeals are exhausted, employees may further appeal to the Federal Circuit Court of Appeals. However, agencies generally may not appeal decisions that require employees to be reinstated.³⁶
2. *Union Grievance Arbitration*. Federal unions represent approximately three-fifths of the Federal workforce.³⁷ Union-represented employees may file a grievance challenging their dismissal or appeal to the MSPB, but not both ([5 U.S.C. § 7121\(e\)\(1\)](#)). If the employee files a grievance, their union and agency will work through the grievance procedures in the agency's collective bargaining agreement (CBA). At the end of that process, the union can invoke binding arbitration ([5 U.S.C. § 7121\(b\)\(1\)\(C\)\(iii\)](#)). If binding arbitration is invoked, the agency and union jointly select an arbitrator.³⁸ The arbitrator will schedule a hearing and issue a decision either sustaining, overturning, or mitigating the removal. Arbitrators do not give agency penalty determinations the same deference the MSPB does.³⁹ The grievance and arbitration process frequently takes at least a year and often longer. If the arbitrator upholds the removal, the employee can appeal to the Federal Circuit Court of Appeals. Like MSPB

³² Employees in some national security relevant agencies (e.g. the FBI or Central Intelligence Agency) generally do not have MSPB appeal rights.

³³ The MSPB holds that:

Where the Board sustains an agency's charges, it will defer to the agency's penalty determination unless the penalty exceeds the range of allowable punishment specified by statute or regulation, or unless the penalty is so harsh and unconscionably disproportionate to the offense that it amounts to an abuse of discretion. That is because the employing agency, and not the Board, has primary discretion in maintaining employee discipline and efficiency. The Board will not displace management's responsibility, but instead will ensure that managerial judgment has been properly exercised (citations omitted) ([Saiz v. Dep't of Navy, 2015](#)).

³⁴ The MSPB can mitigate penalties for actions taken under Chapter 75 (for either performance or misconduct) but cannot mitigate performance-based actions taken under Chapter 43.

³⁵ The MSPB ([2024, p. 7](#)) reports it took an average of 102 days in FY 2023 to process initial appeals. The MSPB lacked a quorum between 2017 and 2022, and so the MSPB headquarters was not able to process appeals of initial decisions during that period. Average headquarters case processing times, since the quorum was restored, are uninformative because they include an artificial five-year delay that does not reflect the actual pace of agency operations. Prior to the MSPB losing its quorum, the board ([2017, p. 15](#)) reported that it took an average of 185 days for MSPB headquarters to review initial decisions. Thus, it takes the MSPB an average of about 287 days to adjudicate appeals.

³⁶ 5 U.S.C. § 7703(b) Employees to appeal adverse MSPB decisions to the Federal Circuit Court of Appeals. 5 U.S.C. § 7703(d) allows only the director of the Office of Personnel Management (OPM)—not the agency—to seek judicial review of an MSPB order if the OPM director determines “that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive.” Agencies cannot otherwise appeal MSPB decisions ordering employees reinstated.

³⁷ The Office of Personnel Management reports that federal unions represented 1.3 of 2.3 million federal employees in 2024. These figures exclude Postal Service employees.

³⁸ Chapter 71 of Title 5 leaves the selection of arbitrators to unions and agencies to negotiate. CBAs typically require the parties to jointly select an arbitrator from a list of potential arbitrators supplied by the Federal Mediation and Conciliation Service.

³⁹ See the concurring opinion of Member Abbott in *Department of Labor, Office of Workers' Compensation and American Federation of Government Employees* ([2021](#)).

appeals, agencies generally cannot obtain judicial review of arbitral awards ordering an employee reinstated.⁴⁰

3. *Equal Employment Opportunity Commission Complaint.* Federal employees can alternatively allege that their agency has illegally discriminated against them and file a complaint with the Equal Employment Opportunity Commission (EEOC).⁴¹ The employee must first file a discrimination complaint with their agency, which the agency will investigate. The employee can request the agency issue a formal determination about whether discrimination occurred or request a hearing before an EEOC administrative judge (AJ) ([29 C.F.R. §§ 1614.106 et seq.](#)). After the final agency determination or AJ ruling, the employee can appeal to the EEOC's Office of Federal Operations (OFO), which can order the employee reinstated ([29 C.F.R. §§ 1614.401\(a\), 1614.405](#)). The EEOC reports that the average discrimination complaint takes an average of 19 months to resolve, while cases that proceed to an AJ ruling take over two and a half years to resolve ([2024, Table B-10](#)).⁴² Employees can then appeal an adverse OFO decision to federal court. As with MSPB and arbitrator decisions, agencies cannot appeal an OFO decision ordering an employee reinstated.⁴³
4. *Office of Special Counsel Complaint.* Employees can also file a complaint with the Office of Special Counsel (OSC) alleging a prohibited personnel practice, such as termination for exposing misconduct. OSC can obtain an MSPB order preventing an agency from firing an employee while investigating the complaint. OSC aims to complete these investigations within eight months ([5 U.S.C. §§ 1214\(b\)](#)). If the OSC concludes a prohibited personnel practice occurred, they can seek an MSPB order directing the agency not to terminate—or to reinstate—the employee.

These procedures make firing a federal employee a long and challenging process. Between internal agency procedures and external administrative appeals, the process often takes between one and four years—potentially followed by federal court appeals.

Moreover, employees can put their supervisor on trial for trying to remove them. Employees facing removal frequently file meritless discrimination or whistleblower retaliation complaints. This forces the supervisor to prove they did not discriminate or retaliate against the employee. Nearly all federal employee discrimination or whistleblower complaints are meritless.⁴⁴ The EEOC closed 15,549 federal employee complaints in FY 2021. The government found that discrimination occurred in only 221 of these cases ([EEOC, 2024, Table B-10](#)). Similarly, the Office of Special Counsel reports that it substantiates only about 5 percent of whistleblower reports ([2024, p.26](#)).⁴⁵ Career staff use frivolous complaints to make dismissals

⁴⁰ Arbitral awards in removal proceedings are subject to judicial review in the same manner as decisions of the MSPB ([5 U.S.C. § 7121\(f\)](#)).

⁴¹ Federal employees can also appeal their dismissal on the grounds it was discriminatory before a grievance arbitrator and the MSPB.

⁴² The EEOC FY 2021 *Annual Report on the Federal Workforce* shows that government-wide, EEO complaints closed in FY 2021 took an average of 572.3 days to process from the date they were filed. Complaints that proceeded to a final order from an administrative judge were processed in an average of 920.6 days ([EEOC, 2024 Table B-10](#)).

⁴³ See 42 U.S.C. § 2000e-16(c), which allows federal employees and applicants for federal employment to appeal adverse EEOC decisions to federal court but does not similarly allow agencies to appeal decisions they lost. See also *Laber v. Harvey* ([2006](#)), where the 4th Circuit explained agencies have no right to obtain judicial review of EEOC OFO decisions.

⁴⁴ Genuine employment discrimination or whistleblower retaliation is, of course, abhorrent.

⁴⁵ Table 5 in the Office of Special Counsel's FY 2023 Annual Report to Congress ([2024](#)) shows that OSC received a cumulative 4,231 whistleblower disclosures between FY 2020 and FY 2023. After investigation, those disclosures were substantiated in only 204 of those cases—4.8 percent.

against them harder. They also use the complaints to gain leverage, offering to drop a complaint if the agency agrees not to dismiss them.

Firing an employee is also financially risky for agencies. If a removal is overturned, the Back Pay Act (1966) generally requires paying employees back wages they would have otherwise earned. Agencies must also frequently cover any attorney fees, which typically range from \$500 to \$1,100 an hour.⁴⁶ As a result, agencies that discipline rogue employees risk massive financial outlays.

This happened to the DOJ after it disciplined two prosecutors who intentionally withheld exculpatory information from former Alaska Senator Ted Steven's defense during his corruption trial (Schuelke, 2011). DOJ suspended—not dismissed—these prosecutors for 55 days. The prosecutors appealed, and the MSPB overturned their suspensions on a technicality. The MSPB also ordered the DOJ to pay the prosecutors back wages and \$643,000 in attorney fees (Goetze and Bottini v. Department of Justice, 2016).

MSPB (2019, pp. 6, 15) surveys show that only two-fifths of federal career supervisors are confident they could remove an employee for serious misconduct. Only one-quarter are confident they could remove a poor performer.

Political appointees similarly reported it was very difficult to dismiss career employees. They could transfer those employees or move them to a different office. However, they said they could almost never remove them.⁴⁷ Even if the agency had clear evidence justifying removal, dismissing the employee would typically take too much time and effort. Political appointees provided many instances of career employees who deserved removal but kept their jobs. For example:

- An employee in a DOL enforcement agency repeatedly sent sexually harassing text messages to an individual he was investigating. These messages included pictures of his genitals. This happened while he was on duty and using his government phone. The victim's attorney contacted the agency about the matter, at which point political appointees were informed of the situation. Political appointees wanted the employee dismissed immediately. Senior career leadership said that was impossible. They explained that the employee was unionized and the union would defend him. The employee could also appeal and claim the agency discriminated against him because of his political affiliation. They also explained that the MSPB is unpredictable and that there was a substantial chance it would overturn the removal. Political appointees reiterated that they wanted the employee gone. Senior career staff were sympathetic but explained that was not possible. So, the employee was instead put on paid administrative leave indefinitely. This effectively rewarded his misconduct with an indefinite paid vacation at taxpayer expense.
- During the COVID-19 pandemic, HHS directed employees to work from home. Employees' access to the Department's Virtual Private Network (VPN) was monitored.

⁴⁶ Back Pay Act attorney fee awards often use the *Laffey* attorney fee matrix (Laffey Matrix, n.d.). Hourly *Laffey* rates range from \$400 to \$900 an hour, depending on the attorney's experience.

⁴⁷ Some political appointees reported firing career employees for poor performance or misconduct. Those appointees reported this took a lot of time and effort.

Employees need to use the VPN to access agency servers and conduct most agency business.⁴⁸ Only 35 percent of agency employees signed into the network.

- The head of the Department of Homeland Security's (DHS) Intelligence and Analysis (INA) Division was caught spying on journalists who were using information leaked from his office. These leaks made his office look poorly managed. Career DHS lawyers found this behavior very concerning when it came to light. The matter was referred to the DHS inspector general, and the employee was reassigned to a different office while the investigation proceeded. The employee then filed a whistleblower complaint. He claimed he was directed to politicize intelligence reports by downplaying the threat of white supremacy and Russian election interference. The employee became a media golden boy for attacking the Trump Administration ([Kanno-Youngs & Fandos, 2020](#); [Chapman, 2021](#); [Vaillancourt, 2021](#)). Political appointees believed the employee was simply gaming whistleblower protection statutes to protect his job after engaging in serious misconduct.
- A senior career employee simultaneously served as the procurement officer, budgetary official, and authorizer for grants and contracts in an HHS office. Federal contracting guidelines call for different individuals to perform these roles. This employee used her unusual position to distribute funds outside official procedures. For example, in one instance, a grantee ran out of funds. The employee unilaterally cut funds from another grantee and gave them to the first grantee, cutting out the official channels for changing grant amounts. Other career staff flagged this problematic behavior. HHS tried to fire this employee for misappropriating funds. However, the Douglas Factors protected her job. The employee had previously received stellar job reviews and performance bonuses.⁴⁹ HHS concluded that the MSPB would be unlikely to sustain a dismissal. HHS had to transfer this employee to a different position.
- For nearly a decade, a career administrative employee in the Executive Office of the President (EOP) did not perform many of her basic job duties. When her supervisors asked for routine status updates—like checking the status of office furniture moves or verifying new employees received work phones and computers—the employee called those requests harassment. She once nearly cost the EOP \$150,000 because she did not renew contracts in a timely manner (fortunately, other staff intervened after being alerted to the delinquent accounts). Once her supervisors made it clear they expected her to do her job, she filed an EEOC complaint alleging discriminatory treatment. She also began refusing to come to work. This employee was absent from work for four and a half months during a six-month period. She often provided little or no advanced notice of her absences. On the days she came into work, she often remained on the EOP campus for only a few hours.

Eventually, the employee's supervisors met with her to discuss job duties and performance expectations. The employee responded by amending her existing EEOC complaint to include additional examples of alleged discriminatory treatment. That complaint prevented the EOP from removing or otherwise disciplining this employee despite her failure to perform her job duties. EOP Human Resources advised that taking any actions against her would add to her case; if she were removed, she could claim it was in retaliation for her EEOC complaint. The EEO complaint protected her from

⁴⁸ Employees could access their email accounts without using the VPN.

⁴⁹ The Douglas Factors include the employee's past disciplinary record and the employee's past work record.

dismissal. The employee eventually retired, but the EEOC was still processing her complaint when the Trump Administration ended.

Given these obstacles, agencies rarely dismiss federal employees for any reason. In FY 2020, agencies removed just one-quarter of one percent of tenured federal employees.⁵⁰ Civil service procedures shield many federal employees from removal for misconduct, insubordination, and unacceptable performance.

REMOVAL PROTECTIONS UNDERMINE THE VISION OF THE CIVIL SERVICE

The reformers who created the civil service opposed federal employee removal protections. They wanted to create a merit service. They regulated *hiring* to prevent federal jobs from becoming patronage rewards. However, they also feared removal protections would protect incompetent and intransigent employees. As George William Curtis, president of the National Civil Service Reform League and a co-drafter of the Pendleton Act, explained:

[I]t is better to take the risk of occasional injustice from passion and prejudice, which no law or regulation can control than to seal up incompetency, negligence, insubordination, insolence, and every other mischief in the service by requiring a virtual trial at law before an unfit or incapable clerk can be removed ([Frug, 1976, p. 955](#)).

For six decades after the end of the spoils system, the federal civil service implemented this vision. Civil service rules prevented agencies from rewarding political supporters with career jobs. However, they placed only minimal restrictions on removals.

Federal employees could not appeal removals until the Second World War. In 1944, Congress passed veterans' preferences for federal jobs. That legislation also allowed veterans to appeal removals to the Civil Service Commission. This prevented agencies from circumventing veteran hiring preferences through pretextual firings ([Frug, 1976, pp. 959-960](#)).

The general federal workforce did not get removal protections until the 1960s. By that point, veterans made up a large portion of the federal workforce. Allowing only some employees to appeal their removals came to be seen as arbitrary and unfair. So Presidents John F. Kennedy and Richard Nixon extended appeals rights to non-veterans too ([Frug, 1976, pp. 960-961](#)). Congress codified external appeals in the Civil Service Reform Act ([1978](#)), which created the civil service system that largely exists today.

Federal employee removal protections are a modern invention that protects entrenched bureaucracy. They also erode the morale of dedicated public servants, making it difficult for agencies to remove poorly performing or intransigent employees. The annual Federal Employee Viewpoint Survey consistently finds that agencies' failure to address poor performers is one of federal employees' greatest frustrations ([OPM, 2021, pp. 15-16](#)). The original civil service reformers saw removal protections as undermining a merit service.

⁵⁰ The probationary period is one year for competitive service employees and for preference eligible excepted service employees and two years for excepted service employees without veterans preference. FedScope data cubes, maintained by the Office of Personnel Management ([n.d.](#)), show that agencies removed 4,339 permanent full-time employees with at least two years of service for performance or misconduct in FY 2023. This represents approximately one-quarter of one percent of the 1.6 million permanent full-time federal employees with at least two years of service, which OPM reports the executive branch employed during this period ([n.d.](#)).

PROTECTING DEMOCRATIC ACCOUNTABILITY

For the government to be democratically accountable to the people, elected officials must be able to implement their platform and enforce the law. Current civil service procedures weaken this accountability. No one voted for career employees, but these employees can—and some do—substantially impede policies with which they disagree. In some cases, career staff block policy changes altogether or even refuse to enforce laws they personally oppose. This prevents Americans from getting the government they voted for.

The federal government could take two main steps to protect the government's democratic accountability. First, agencies could hire significantly more political appointees. This would enable politically accountable officials to supervise career staff more extensively. It would also give agencies greater ability to have political appointees drive key priorities and take over tasks, like writing regulations, that some career staff refuse to perform effectively. Career staff intransigence would matter much less if political appointees had more bandwidth to do tasks themselves.

Agencies do not need new legislation to hire more political appointees. They have the authority to create as many political appointees as they consider necessary, provided the Office of Personnel Management approves ([5 C.F.R. §213.3301](#)).

Second, Congress could return the federal workforce to at-will employment. Removing employment protections would make career employees much more accountable to the president. They would know that if they attempted to pursue their own agenda instead of the president's, they could be easily removed. This would also return the federal workforce to the reformers' original vision for the merit service.

A return to at-will employment would retain the government's existing merit-based hiring procedures and rules that prohibit dismissing employees because of their political contributions (or lack thereof). However, agencies would enforce those policies themselves; employees could not bring lengthy appeals over dismissals. The merit service operated effectively under similar rules for six decades under the Pendleton and Lloyd-LaFollette Acts.⁵¹ Returning to those policies would protect democratic self-government.

If Congress is unwilling to make the federal workforce at-will, the president can unilaterally make policy-influencing career positions at-will. The president has statutory authority to exempt policy-influencing positions from civil service appeals ([5 U.S.C. § 7511\(b\)\(2\)](#)). Historically, this authority has been applied only to political appointees. In late 2020, President Trump signed an executive order that also removed employment protections from policy-influencing career staff ([Exec. Order 13957](#)). President Biden rescinded this order before it could take effect ([Exec. Order 14003](#)), but nothing prevents a future administration

⁵¹ For more on the history of the civil service, see Sherk ([2021](#)). The Pendleton Act of 1883 placed considerable restrictions on the hiring process to ensure merit-based hiring. However, it placed almost no restrictions on the dismissal process. Rather, it made discharging employees based on their political contributions a misdemeanor. The attorney general could bring charges to enforce the law, but individual employees had no right to appeal or otherwise contest their removal. Under the Lloyd-LaFollette Act of 1912, agencies had to provide a legitimate reason for an employee's dismissal, and the employee had a right to respond, but the agency's subsequent determination to retain or discharge the employee was final—the law gave them no right to appeal. Rather, the Lloyd-LaFollette Act expressly provided agencies were not required to justify dismissals in trial-like proceedings.

from bringing it back. Doing so would make the federal government much more accountable to the American people.

CONCLUSION

Democracy operates on the principle of government by the consent of the governed. When career employees attempt to prevent elected officials from implementing their agenda, they undermine American democracy.

Many federal employees do their best to implement the administration's policies. Unfortunately, many do not. During the first Trump Administration, many career employees refused or defied directives, withheld information, slow-walked projects they opposed, performed unacceptably, and used strategic leaking to undermine the president's agenda. Some career employees even refused to enforce laws they did not support.

Political appointees cannot simply remove intransigent employees. Civil service removal protections make removing federal employees prohibitively difficult. The reformers who created the civil service wanted to avoid patronage hiring, but they also feared removal protections would entrench incompetence and insubordination. Congress can protect American democracy by returning to the original vision for the civil service: merit-based hiring and straightforward removals.

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