

CENTER POINT

A Dialogue on Issues from the ALEC Center to Restore the Balance of Government

Civil Service Reform for the 21st Century: Restoring Democratic Accountability to the Administrative State

BY INEZ FELTSCHER STEPMAN¹ AND JARRETT STEPMAN² / MARCH 2017

INTRODUCTION

During his inaugural speech, newly-elected President Trump declared that “what truly matters is not which party controls our government, but whether our government is controlled by the people.” Many commentators took the President’s statement as a declaration of war against the political establishment of both parties. Once Trump assumed office, however, it became clear what permanent, entrenched establishment most stood in his way: the administrative state. In just the first month of the new administration’s tenure, the fourth branch of government—the so-called “deep state”—has sprung into action to oppose the policies it has tried to advance. While Trump was able to fire some Obama-era political appointees, such as acting Attorney General Sally Yates, numerous lower-level employees—protected by more than a century old laws that have expanded well beyond their original intent—have organized to derail the new president and nearly any policy initiative he attempts to advance.³



KEY POINTS

- Regardless of the merits of any presidential administration’s policies, federal bureaucrats must be held democratically accountable to elected officials and to the American people.
- Federal bureaucrats have created their own elite political class, and stay in office regardless of the results of elections, remaining free to contravene the expressed will of American voters.
- A web of ancient laws, chief among them the Pendleton Act, grant federal employees a level of job security unheard of in the private sector.
- The federal government should follow the states’ lead in moving their civil services towards at-will employment.

The professionalization and stability of the civil service has been assumed by people from all parts of the political spectrum to be an unadulterated good. Many argue that the current system contains numerous legal protections to prevent government workers from being removed from their jobs, bringing detached expertise and efficiency to the administration of government unsullied by partisan politics. America’s earlier system of civil service, which contained fewer job protections and even some assurances of regular employee removal, has been badly maligned. Detractors called this older model the “spoils system,” which conjures up the image of rampant corruption and political nepotism; to most observers, it seems synonymous with dysfunction and administrative failure. The spoils system has even been called “an institution with few friends in law reviews, political histories, or the popular press, where it is portrayed as inherently evil.”⁴ The courts scarcely have a better view of the spoils system. The Second Circuit, for example, has written that “spoils” have had a “devastating effect” on the “orderly administration of government.”⁵

Immediately after denigrating what the people of the time called “rotation in office,” however, many commentators—even on the Left where administrative power is seldom questioned—at least occasionally worry about how the expansion of the “fourth branch” of government has removed many politically-contentious issues from the purview of the elected branches. Yet few are willing

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to link the professional civil service with democratic unresponsiveness or to suggest that the cure for a politicized bureaucracy may have been worse than the disease. But these two subjects are inextricably linked; many elements of the much-maligned spoils system were the lesser of two evils. In many ways, we face a choice between the alleged overuse of political agendas as hiring and firing criteria in the civil service, and the totally democratically-disconnected and unaccountable agency staffing allowed today, where bureaucrats who have never stood before voters for election are free to contravene the express political priorities of the elected President. At-will employment for government employees at all levels will increase democratic accountability in a quasi-branch of government at a time where voters feel that their voices go unheard in the corridors of power.

Untangling the professional administrative state will require layers of action across the executive, legislative and judicial branches. In order for civil service reform to be meaningful, at least portions of the Pendleton Civil Service Act and the Lloyd-LaFollette Act of 1912 will need to be repealed. Additionally, a true overhaul of agency powers would potentially include the restructuring of the Administrative Procedure Act, which has “substituted half-hearted replacements for the constitutional protections the Founders intended Americans to have: procedure instead of a citizens’ vote, administrative review in place of judicial and a voluminous notice and comment procedure (in practice only accessible to the well-connected in Washington) instead of due process.”⁶

Unlike the spoils system of the 1830s, any return to rotation in office among federal employees today would have to respect more recent Supreme Court cases in areas of Due Process and First Amendment jurisprudence, including *Rutan v. Republican Party of Illinois*⁷, *Elrod v. Burns*⁸ and *Branti v. Finkel*.⁹

While this reform cannot be accomplished with the quick stroke of a president’s pen, it is a far-reaching change

that could shake the very nature of the “rigged game” that those concerned about agency and government overreach have been playing for the last century, where the administrative state expands regardless of election results and limited government advocates’ best efforts. The unchecked power of the administrative state and of the nearly three million protected bureaucrats that staff them has meant that recent Presidents have often had to spend political capital and energy enforcing their policy priorities inside their own executive departments.

Today, the brazenly undemocratic nature of the civil service has been laid bare by the public attempts to stymie President Trump’s policy initiatives. Federal employees are so little controlled by their political bosses that they attend workshops on how to oppose the priorities of their employer, the Chief Executive, as well as his cabinet,¹⁰ openly consult with outgoing administrations to hinder incoming ones,¹¹ attempt to embarrass the president by tweeting disparagingly from official and unofficial accounts,¹² and leak classified information to the press.¹³ Regardless of who occupies the Oval Office or the merits of their policies, these are the actions of a permanent class of bureaucrats who are secure in their jobs regardless of whose administration resides in the Oval Office—not from a civil service responsive to the democratic will of American voters and the people they put in office. It is time for the civil service to live up to its name and serve the people, not to exercise undemocratic power to contravene their demonstrated instruction.

A HISTORY OF THE CIVIL SERVICE IN THE UNITED STATES

Debates over how to organize the civil service are hardly new in the United States. From the founding era to recent years, the reform of the civil service has been a constant background buzz in American politics. The “spoils system,” otherwise known as rotation in office, was the system controlling the hiring and firing of public servants from the early 19th century through the 1880s and continued in state governments. Rotation in office permits the at-will hiring and firing of government employees, and

was sometimes used by political parties to reward loyal supporters with jobs, usually at the expense of some of the previous administration’s hires.

THE FOUNDING ERA: NOBLE ADMINISTRATION BY THE “NATURAL ARISTOCRACY”

Revered though they might be, the Founders and those who executed their policy were a tight-knit and relatively undemocratic group of people. The Federalists, who dominated the first two administrations, demanded a very high level of competence from those federal employees whom they hired.¹⁴ The standards for public service administration in the United States were higher than in any other country in the world at the time, and historians recorded few examples of abuse of office or ethical failings related to administration.¹⁵

Despite bitter and deep ideological battles, in the matter of executive administration, Alexander Hamilton’s Federalists and Thomas Jefferson’s Republicans largely relied on the same set of professionals. After the hard-fought election of 1800,¹⁶ the losing Federalists were not summarily turned out of their administrative posts, despite lacking legal or institutional job protection. Instead, newly-elected President Jefferson wanted to “alleviate the bitterness that separated Americans into two hostile camps” by retaining many Federalist employees.¹⁷

Although Jefferson did remove a number of high-profile Federalist officials to great political brouhaha,¹⁸ generally turnover took place slowly and without much antagonism. The Jeffersonian Republicans largely accepted the terms of a gentlemanly agreement not to remove public servants except in cases of gross incompetence or abuse.¹⁹ Even those who were replaced at the incoming of the new administration were not necessarily removed for political reasons.

THE SO-CALLED ERA OF GOOD FEELINGS: ONE-PARTY RULE AND THE RISE OF THE POLITICAL CLASS

“By the late 1820s, the Founding-era system was coming apart at the seams, plagued by corruption and personal squabbles.”

The years from 1816 to 1828, encompassing the nearly-unanimous Monroe election through the end of John Quincy Adams’ administration, are generally referred to by historians as the “Era of Good Feelings” due to the lack of discord in Washington.²⁰ Jefferson’s Republican Party went virtually unchallenged after the ill-timed Hartford Convention and the national implosion of their main opposition, the Federalists.

However, the label for the era is misleading, as the period was also rife with the general attendant sins of one-party rule: “factious bickering” and corruption.²¹ Without the fear of replacement by an opposing party, those making hiring decisions placed more weight on the basis of personal friendship, and ideological fissures were suppressed in order to keep the party together. In sharp contrast to the earlier high-minded character of political service during the Founding era, major scandals began to erupt. In what was among the most publicized of these newly-common scandals, the first president of the Second Bank of the United States resigned, after which his gross malfeasance became public.²²

In addition to the more mundane corruption scandals, an increasing segment of voters began to look askance at the “Congressional Caucus” in which the only real party chose the next president, wondering if their votes actually counted for much when the party nominee was chosen behind closed doors by a group of Washington insiders.²³ The “gentlemen’s agreement” of the Founding

era had devolved into a quasi-permanent political class which moved further and further from responsiveness to the rest of the country. As one newspaper declared, “...that scandalous defalcations in our public pecuniary agents, gross misapplications of public money, and an unprecedented laxity in official responsibilities occurred and been suffered under our government for the past six or eight years are faults not to be concealed.”²⁴

From the perspective of those managing the administration of government, the system appeared no better-functioning. Both Presidents Monroe and John Quincy Adams refused to make use of the Tenure of Office Act of 1820, which allowed employees to be replaced by an incoming administration after four years of service, and their refusal to utilize rotation in office fraught their administrations with managerial and political problems.

President John Quincy Adams, adhering to the old system of retaining employees from previous administrations, began to struggle to implement his policy against fellow Republicans who nevertheless opposed his “faction” of the party.²⁵ Adams refused, however, to remove even those employees who were actively hostile to his preferred policy and retained more than a few plain useless administrators out of principle, because Adams strenuously opposed any effort to politicize the administration system.²⁶

By the late 1820s, the Founding-era system was coming apart at the seams, plagued by corruption and personal squabbles. Federal office had become a form of “holding a ‘respectable’ station in social life,” and those rewarded with that station were essentially set in it for life, with new seekers “held down by the scarcity of vacancies in a stable service.”²⁷ Increasingly alienated from what they viewed as a corrupt and undemocratic Washington, voters swept the Jacksonians—then one of the factions within the Republican Party—into office with a mandate to replace what they saw as an unresponsive and out-of-touch political class. This story should sound familiar to political observers in 2016.

ROTATION IN (BUREAUCRATIC) OFFICE: JACKSONIAN ADMINISTRATION OF GOVERNMENT

Andrew Jackson gave voice to the concerns of those who railed against quasi-permanent Washingtonians. He wrote of the District: “[An] office is considered a piece of property, and government rather as a means of promoting individual interests than as an instrument created solely for the services of the people.”²⁸ The country’s first real “up by his own bootstraps” president, Jackson had once believed in the old Federalist system of non-partisanship and cross-administration retention but changed his mind once he assumed office. The president, he wrote, “must give direction to his administration” and rely on the “party [by] whose suffrages he is elected.”²⁹ In his Annual Message to Congress, the newly-elected President Jackson urged the democratization of “Federal officeholding.”³⁰ In the following years, Jackson set about the task of bringing the executive agencies to political heel under the president, firing those interfering with his policy priorities and appointing trusted friends or colleagues.

Yet many critiques of the Jacksonian spoils system exaggerate its reach. Only about 10 percent of federal personnel were actually dismissed. “Low-level workers were seldom removed, and experienced clerks, auditors, and employees with needed technical skills...were nearly always retained.”³¹ Only about one-third of the federal officers in place before Jackson’s tenure in 1828 were no longer employed towards the end of his first term, a number which includes those officers who retired or chose to leave for other reasons.³² Most of the 10 percent removed from office were higher-level employees who were both more able and more potentially willing to contradict or hobble administration policy. By the end of his eight years in office, Jackson had removed 45 percent of the 610 officials³³ who were directly appointed by the president.³⁴ While Jackson’s many detractors derided this system as raw politicking and corruption, it in many ways simply represented a changing of the guard between competing political philosophies in the

White House. Jackson’s party took aim at the centralizing features of the previous administration and represented a significantly different set of ideas than his predecessors.³⁵ To the Jacksonians, it seemed only natural that the new president would sweep out government employees who intentionally undermined this change. Although the relative appointment frenzy did indeed result in some bad political appointments, it also swept in many of the era’s most able administrators previously kept out of office by often-ineffectual holdovers of the past.³⁶

Jacksonian democracy and the spoils system did not just sweep some of the most able statesmen for decades into office, but also increased democratic participation to levels that seem impossible from the modern perspective. The election of 1840 saw an astonishing 80.2 percent turnout.³⁷ One explanation for the record voter turnout is that voters participated in such high numbers because of promises of office from the parties, but the overall small number of government jobs makes this explanation incomplete at best. More likely, the rotation in office made the will of the voters immediately felt in Washington, and therefore in policy. Observing direct and immediate change as a result of each election may have contributed to high turnout and widespread participation during the Jacksonian era, in contrast with the voter malaise of the past 30 years, where increasing numbers of citizens failed to see much difference between the two parties competing for their votes.

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If the Jacksonians initiated the use of the spoils system, Abraham Lincoln’s administration perfected it. Even as a young politician, Lincoln objected to President Zachary Taylor’s lax usage of the spoils system and believed that it was important for the president to choose the right employees to carry out his policy. The president, in Lincoln’s view, would ultimately have to account for the efficiency and ethics of his administration to the public, and so should take a direct hand in its management. In a letter to Taylor, Lincoln wrote “The appointments need be no better...but the public must...understand...they are the president’s appointments.”³⁸

In Lincoln’s own administration, contrary to the overused “team of rivals” stereotype, he made widespread use of the rotation in office system.³⁹ Even Lincoln’s military generals were preferred for their Republican allegiance.⁴⁰

Yet even in this intensified version of the spoils system, there remained a relatively high level of stability and competence for government workers.⁴¹ The lack of high turnover during the heyday of the spoils system may have been partially due to the general absence of job stability expectations at the time. “Members of the middle class were expected to switch jobs frequently to improve income and status,”⁴² and the rise and fall of the “man on the make” was a fixture of working life in the private sector. Jackson himself had been a soldier, a general, a lawyer, a judge, a businessman, a plantation owner, a territorial governor, a legislator and president.

Government employees at the time would have still regarded their jobs as relatively stable.

But lack of wholesale firings also reflected a newly-found responsiveness on the part of those in political life. By the mid-1800’s, a few decades into the rotation experiment, those working for the federal government knew how to successfully keep their credentials—both technical and political—current through changes of administration. This duty to cultivate relationships and keep skill sets current may have distracted from office work, and probably allowed some incompetent employees to keep their positions through the art of schmoozing. However, it also assured that bureaucrats were forced to be responsive to the changing will of voters and the politicians they sent into office.⁴³

THE “NON-PARTISAN” PENDLETON ACT AND THE RISE OF PROFESSIONALIZED BUREAUCRACY

The end of the spoils system came with a literal bang when President James Garfield was assassinated by crazed office-seeker, Charles Guiteau.⁴⁴ But calls to once again reform the civil service predated the assassination, starting in earnest in the late 1860s. Congressman Thomas Allen Jenckes from Rhode Island became the first to introduce an administrative reform bill attempting to curtail the spoils system.⁴⁵ A year after the initial introduction, a joint select committee was charged with looking into reforming the selection process of government employees.⁴⁶

President Garfield himself was a strong advocate of reform, promising a “thorough, radical, and complete” transformation of the civil service if elected.⁴⁷ Support for reform, though, was not strong enough to ensure substantial change to the system until after Garfield’s death in 1881..⁴⁸ Garfield’s successor, Chester A. Arthur, was a creature of the spoils system himself. Although straight from the New York City political machine, the Pendleton Act became the centerpiece of his administration’s legacy.⁴⁹

The authors of the Pendleton Act, as passed in 1883, attempted to create a more meritorious civil service by introducing the Civil Service Exam,⁵⁰ job protection for government officials through the Civil Service Commission and restrictions on campaign solicitation on federal property.⁵¹ The Act also gave the president the power to extend the classified service “from time to time.”⁵²

Although the Act was passed in a superficially bipartisan manner, its passage was anything but apolitical. Republicans, anticipating an end to their post-war political hegemony in a damaging election, were eager to use opportune civil service reform to “lock in” as many of their appointees as possible.⁵³ Some Democrats, especially those who still worried about losing that same 1884 election, hopped on board in order to stunt the lifeblood of the well-organized Republican machine: friendly appointments.⁵⁴

Implementation of the Act, too, was political. Initially, the Pendleton Act only purported to cover about ten percent of federal employees. The majority of jobs were still intended to be open for rotation when administrations changed. However, because of the “time to time” provision, it became business as usual for each president to “lock in” as many of his political appointees as possible by extending the Act’s coverage.⁵⁵ As a result of this highly-politicized maneuver executed by successive administrations, by the turn of the 20th century, most federal jobs⁵⁶ were covered by the Act.⁵⁷ Today, 90 percent of the country’s almost three million civil service employees are covered.⁵⁸

Although the Civil Service Commission had never made a convincing case to the voters that almost all government administrative jobs ought to be exempt from democratic turnover, the incentives included in the Pendleton Act, coupled with the same political instincts that had driven the spoils system, ensured that the vast majority of public employees have ended up with job protection from their politically-elected superiors.

DETACHED EXPERTS: ADMINISTRATION AND THE PROGRESSIVE ERA

The reforms of the late 19th century, while still reflecting the political battles of the period, at least were sold as anti-corruption measures. It was argued the spoils system had allowed politicians to hand out jobs as rewards for political loyalty, which had led to more corruption and waste of public funds. While acting as Civil Service Commissioner, Theodore Roosevelt summed up the arguments of reformers when he commented that officeholders “must not use their offices to control political movements, must not neglect their public duties, [and] must not cause public scandal by their activity.”⁵⁹ Whether the Pendleton Act and civil service reform generally met these goals, most would agree that public servants should meet high standards of both competency and ethics.⁶⁰ But with the rise of the Progressives in the late 1800s and their ascension to power in the early 20th came a new justification for the professionalization of the civil service.

The Progressive movement pursued a “new, more active role for the government” in the economy and other sectors.⁶¹ Many more agencies and “independent regulatory commissions” were created as the reach of the federal government expanded rapidly.⁶² More than mere expansion, the Progressives sought to replace messy politics with technocratic expertise, bolstered by the new discipline of “political science.”⁶³ The removal of government activities from the “uneducated” political control of the voters and their dunderheaded representatives became the primary goal of the much-expanded administrative state.

The Progressives wanted to sweep away what they regarded as this amateurism in politics. They had confidence that modern science had superseded the perspective of the liberally educated statesman. Only those educated in the top universities, preferably in the social sciences, were thought to be capable of governing. Politics was regarded as too complex for common sense to cope with... Only government

agencies staffed by experts informed by the most advanced modern science could manage tasks previously handled within the private sphere.⁶⁴

The Lloyd-LaFollette Act of 1912 made it even more difficult to fire government employees than previously under the Pendleton Act. This Act, introduced by Progressives, protected civil servants from removal by legislating the “just cause for termination” standards, previously only enshrined administration to administration through executive order and managerial practices. The Act defined “just causes” for termination as any reason for dismissal that was related to promoting the “efficiency of the service.”⁶⁵ The Act included the first protections for whistle blowers, protecting the right of federal employees to “furnish information” to Congress without interference, bringing federal employees at least partially under the management of Congress, rather than under the sole will of the executive.⁶⁶ As the Progressives evolved into New Deal Democrats, their notions of proper administration evolved as well. While the original Progressives had eschewed politics in administration, President Franklin Delano Roosevelt, frustrated by the roadblocks to his agenda put in place by the Supreme Court and Constitutional system of the United States, saw an opportunity to advance his popular ideas through the agencies.⁶⁷

The agencies themselves grew rapidly, and civil service professionalism grew to match. Only under FDR did agencies begin to explicitly re-politicize in a different way. The 1937 Brownlow Committee Report recommended the President take more direct control of the executive departments, without changing the hiring and firing practices. On the recommendation of the Report, the Reorganization Act of 1939 handed FDR the power he had wanted to reorganize the executive departments under cabinet positions and use them as extensions of his political agenda.

Between the New Deal Era and our own, there have been a number of attempts to reassert some kind of democratic

or traditional control over the administrative state. While there have been some improvements, none have been truly successful. The largest of these is the Administrative Procedure Act of the mid-1950s, which put in place an onerous and technical set of guidelines around the agency rulemaking process. More recently, attempts to put Congress back in charge over agency activity, like the Congressional Review Act, allowed Congress to review proposed agency rules. The REINS Act further strengthens the CRA through a modification which forces “major rules” promulgated by the agencies to go through the traditional lawmaking process.⁶⁸ While congressional oversight over agency rulemaking is worthwhile, it does not touch the problem of unaccountable lower-level bureaucrats within the system, who remain accountable to no political officer. If the president does not control the staff of the executive branch, they remain outside of meaningful democratic control.

WHAT THE FEDERAL GOVERNMENT CAN LEARN FROM STATES' MODERN CIVIL SERVICE REFORMS

State governments, previously stalwart in their continuation of the rotation in office, had nearly all “professionalized” their civil service systems by the New Deal era. However, in more modern times, some states have started to experiment with returning to an at-will public employee system. Georgia, Texas, Indiana, Arizona, Colorado and Florida have made some changes in the last 20 to 30 years to move their state employees in the direction of a more Jacksonian system, although they do not call it that.⁶⁹ The modern reform movements have focused their rhetoric on running government more like a business, which of course includes being able to fire employees at will or something close to it. Proponents of modern civil service reform contend that “more effective government results when public and nonprofit organizations adopt or adapt private sector models of productivity and management.”⁷⁰ These “business” reformers see civil service as a “hindrance to good management,”⁷¹ and may find good company in a president whose famous catchphrase on his reality television show was “you’re fired!” For example, in 1996,

Georgia passed the Merit System Reform Act, which made all new hires to its public sector accept at-will employment contracts. The law also made reforms to the structure of promotion and pay grades, basing them more on supervisor discretion than on an automatic timescale. The reform gave leeway to the administrative agencies in the state to create different positions as needed and untethered them from the rigid pay scales that the state had used previously.⁷² In Georgia, “nobody hired by the state after July 1, 1996, is covered by civil service, no matter what their job, period.”⁷³ By 2012, over 88 percent of Georgia state employees were working on an at-will basis, hires and pay had actually increased, as did communication between employees and supervisors.⁷⁴ The result of Georgia’s reform was not a decimation of the civil service, but instead, a more flexible and responsive system that adapted as the needs of the agency changed over time.

In Florida, where reformers’ goals were more modest, the at-will proto-rotation system was not extended to all classes of state employees the way that it was in Georgia. But analysis after even more moderate reforms showed that they have not resulted in a large spike in political hiring or firing, although there were increased levels of high-level, high-salary employee switch-outs.⁷⁵ Indiana passed similar civil service reforms in 2011. These reforms weakened seniority rules and made the hiring and firing options more open-ended. According to the State Personnel Department, there has been no evidence of an increase in cronyism or worker complaints of abuse since the reforms were enacted.⁷⁶

In Colorado and Tennessee, the practice of “bumping,” which allows senior employees to push those with less seniority into lower-level positions automatically regardless of qualification or merit, was eliminated. The result of this civil service reform, like in the other states that have begun to tackle this problem, was far from the apocalyptic predictions of “spoils” run rampant. Instead, government workers’ salaries and satisfaction has actually increased since the reforms, as more qualified candidates compete for better positions.

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These states, as well as others like Wisconsin, have moved towards at-will employment, sometimes taking small steps initially, while also sweeping away many of the Byzantine procedures that have calcified government employee hiring and firing practices. As in so many policy areas, the states have led the way on civil service reform, providing a blueprint of workable reforms for Washington.

EVILS OF THE CURRENT SYSTEM

The story of the last 150 years has been, in many ways, the story of the enlargement of the franchise. The 15th Amendment granted black men the right to vote, later secured *de facto* by the Civil Rights movement and the Civil Rights Act. The 19th Amendment gave women the right to vote in national elections, although they had been voting in many states for decades. The 26th Amendment expanded the franchise to 18-year-olds, on the theory that if a young man was old enough to be killed for his country in war, he ought to have a say in its political decisions.

But this hopeful story of democratic extension, has, in many ways, been offset by the growth of administrative agencies, and of government by unelected bureaucrats. Today, more people can vote than ever before, but fewer and fewer issues are available to be voted on; much of the “people’s business,” both regulatory and adjudicatory, and on both the state and federal level, is conducted by men and women who will never have to stand for office.

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As if by cruel joke,⁷⁷ each time the franchise has added significant classes to its rolls, that expansion has been accompanied by a similar expansion in the administrative state such that the number of issues to be voted on substantially contracts.

The overlarge “fourth branch” of government has many downsides, but chief among them is its unresponsiveness to the democratic will of voters. The Administrative Procedure Act, in an attempt to somewhat rein in bureaucratic power, put outlets in place for quasi-democratic input (the notice and comment period for formal rulemaking, and arbitrary and capricious review, for example).⁷⁸ But these replacements for democratic input are more easily and aggressively utilized by the lobbying or political class than by the average American, and in many ways add to the disjunction between the people and those who are well-connected in Washington; those who are able to utilize the voluminous notice and comment process for rulemaking, for example, rarely tend to be small business owners in Wyoming. As a whole, federal and state agencies are staffed by people whose jobs are, for all intents and purposes, permanent and unsusceptible to changes in democratic fortune.

Additionally, when the government workforce is mostly permanent (other than a few political appointees at the top), presidents have to expend a lot of energy and political capital fighting their own departments. Donald Devine, Ronald Reagan’s appointee for the Office of Personnel

Management, has spoken at length about how he had to go to “war” with his own administration’s agencies in order to effect change.⁷⁹ Republican presidential candidates who promise to cut entire departments may not have the slightest idea of the kind of institutional fight they would have on their hands, even if they were able to convince voters of the need for cuts.⁸⁰ Regardless of how these ideas are received politically, they underscore the need for presidents to be able to take charge of their own executive agencies, especially since, as Lincoln commented to Taylor, they will be the ones held politically responsible for their agencies’ actions.

Theoretically, the executive agencies are responsible to the president, but in practice, presidents must focus on one or two things per department that go against the institutional will of the system. When the voters elect a new president with a different political agenda, from the Left or the Right, that agenda often dies in the president’s own unmovable administration.

Furthermore, the lack of accountability in the professionalized civil service means that competence and ethics—the two values ostensibly served by a professionalized service—suffer under the very system intended to buoy them. The public’s opinion of government administration remains incredibly low.⁸¹ Two modern examples will suffice to show the decline in both efficiency and ethics since the days when Amos Kendall ran the Post Office for Andrew Jackson.

Although it is the rare commentator who lauds the competence of the agency bureaucrat, efficiency recently hit a new low when a congressman found it necessary to introduce the “Eliminating Pornography from Agencies Act,” after a slew of scandals involving federal employees spending hours watching pornography while on the job. The employees in question have yet to be fired.⁸² Similarly, the recent IRS scandal, where IRS agents opened audits of the administration’s political opponents, should disabuse anyone of the notion that the current professionalized civil service is apolitical and is unlikely to abuse the powers of the offices tenured to them for life.⁸³

Though the abolishment of the spoils system was meant to mitigate corruption and incompetence, it has resulted in a toxic combination of enhanced agency power and an entrenched civil servant class with its own institutional—and frequently political⁸⁴—interests, virtually unaccountable to the president or any other elected official.

When looking at the results of the modern professionalized bureaucracy, the words of Internal Revenue Commissioner Green B. Raum, spoken during the debates over the Pendleton Act and civil service reform in the late 19th century, seem prescient, and echo the themes of President Trump’s inaugural address in our own time.

...It is inconsistent with the genius of our government, and contrary to the public sentiment of the people to have the great body of the officers and employees of the executive branch of the government to hold their positions by life tenure, or during good behavior. Such a system would create a privileged class removed from the influences of popular sentiment... It would repress the laudable and honorable ambition of other citizens to serve the government in official positions and would manifestly tend to weaken the hold that our system of popular government has upon the minds of the people.⁸⁵

NO PERFECT SOLUTION: DOWNSIDES OF ROTATION

There was undoubtedly some truth behind the reformers’ allegations of corruption within the spoils system by the 1880s. The infamous Tammany Hall political machine was fed, in large part, by the promise of offices to loyal supporters.⁸⁶ The groundswell of opposition from the voters, like the Jacksonian reform that created the spoils system, did not come from thin air.

However, as we have demonstrated, it is far from a certain historical fact that corruption and scandals were at higher levels when election-winners staffed their offices with political allies. The notion that competence and

political appointments need necessarily be at odds with one another is false. Many Jacksonian administrators developed “pass exams” or merit evaluations to measure quality employees, and promulgated anti-nepotism rules.⁸⁷ Administrators during the spoils system era put in place their own competence-ensuring systems, which they were motivated to do because, with spoils, voters held political officials more accountable for the actions of their administrations.⁸⁸

Additionally, political machines did not disappear with the collapse of the spoils system. Previously reliant on the promise of offices and spoils, political parties began to rely on large donations from businesses for organization and turnout instead. Thus, “big money” in politics to a large degree was birthed by the collapse of spoils.⁸⁹ Political machines have not gone away—they have merely reformed around new lifeblood. Furthermore, unlike big money, “spoils” had the effect of raising voter participation and turnout; the highest voter turnouts in American history came during the height of the spoils system era.⁹⁰ Voters felt that their views were really being heard in Washington, for better or for worse, and felt personally involved in the success of their preferred candidates. In the election of 2016, anti-establishment sentiment factored large in both the Republican and Democrat primaries, with voters expressing anger that traditional candidates from both parties seemed totally remote from the average person’s priorities.

Although the concept of rotating public employees may seem “unfair” or shocking, its actual operation

“The spoils system did breed some incompetence and corruption, but so has the professionalized system.”

resulted in far reduced versions of the harms touted by opponents than they imagine. The spoils system did breed some incompetence and corruption, but so has the professionalized system. The spoils system did not result in massive layoffs or the firing of technical workers during every switch in administration, but was concentrated instead on those at the top, or on those who were uncooperative with the new political mission. No system is perfect, but the spoils system, even at its height in the mid-19th century, presents a less-terrible set of downsides than modern commentators claim.

Modern Improvements on Jacksonian Rotation in Office

Although in the past rotation in office produced some corruption and inefficiency, aspects of the modern political system would counteract these negatives more vigorously than was possible in the 19th century.

First, the 24-hour news cycle can cover scandals and report them in ways that newspaper editors could not have dreamed of in the 19th century. The incentives to corruption are as strong as ever, but today there is a much higher likelihood of public administrators being “caught in the act” – and in an at-will system, probably fired on the spot for creating bad publicity in a way that is not possible under the professionalized system.

The modern system has removed accountability without truly eliminating patronage, which occurs regularly under the current system.

Today’s bureaucracies would likely experience even less turnover in a rotation system than the agencies of the early 1800s. The modern administrative state would seem incomprehensibly large to the Jacksonians who pioneered the rotation system. There would simply be no way to effectively fill as many positions as a modern bureaucracy would require if politicians decided to “clean house.” On top of the sheer number of employees, government today manages many more detailed and technical sectors than it did in 1840, with agencies such as the FCC, EPA and FDA overseeing highly-specialized fields. These employees, like their smaller band of counterparts working in patent offices in Jacksonian times, are unlikely to be fired for political reasons if they are not actively working against executive policy.

The modern system has removed accountability without truly eliminating patronage, which occurs regularly under the current system. Political appointees frequently make it into protected civil service jobs in a practice known as “burrowing.”⁹¹ These borrowed employees frequently cause trouble⁹² for incoming administrations, especially those that aim to reduce the size and scope of government power.⁹³

The states that have acted as true “laboratories of democracy” and forged ahead with civil service reform—usually re-instating rotation in office as part of a new theory of “business management” in government employment—have not seen massive chaos. Texas, Georgia, Wisconsin and others have not experienced massive firings or huge turnover. Instead, in the few post-reform analyses that have been performed, they saw a spike in productivity and a concentrated turnover in management—very similar to what happened under the spoils system during the Jacksonian era.⁹⁴

From parallels both historical and modern, any new spoils system is unlikely to result in massive firings of otherwise-competent employees for the mere fact of their politics. Instead, firings would likely be focused on

top management—many of whom are already political appointees in the current system—and those employees who would actively contravene a new administration’s policy direction.

The main change would not come through massive layoffs, but through the understanding between employees and their political bosses that is the norm throughout the American private sector: if an employee works against his employer’s priorities, he can expect to lose his job. In other words, political responsiveness would again start to guide the careers of government employees.

CONCLUSION

Life, especially in politics, rarely hands out perfect solutions. Rotation as a system of civil service employment had some downsides, which in the modern era would likely be mitigated by the 24-hour news cycle and the realities of our sprawling administrative state. But the current professionalized civil service has serious downsides as well.

Even if a modern shift to at-will employment for federal employees resulted in all the evils that courts and commentators fear, they are preferable in comparison with those of the current professionalized bureaucracy, which in many ways demonstrates the worst of both worlds, bringing neither competence nor political responsiveness to the system.⁹⁵ Under Jacksonian rotation in office, the United States saw political participation rise to unheard-of levels and government react quickly to the democratic direction of voters. The era showcased some brilliant administrators, along with some who are best remembered by their scandal sheet raps.

The modern American citizen has been saddled with an entrenched and unaccountable bureaucracy, with its own institutional interests contrary to those of voters. By contrast, the ills of the spoils system, in many ways, are just the ills of democracy. In his first inaugural address,

Andrew Jackson defended the rotation in office system.⁹⁶ He perfectly summed up the problem of a permanent political class treating office as a species of property and destroying the American voter’s faith in his own government:

The duties of all public officers are, or at least admit of being made, so plain and simple that men of intelligence may readily qualify themselves for their performance; and I cannot but believe that more is lost by the long continuance of men in office than is generally to be gained by their experience...

In a country where offices are created solely for the benefit of the people no one man has any more intrinsic right to official station than another. Offices were not established to give support to particular men at the public expense...

It is the people, and they alone, who have a right to complain when a bad officer is substituted for a good one.

President Trump was swept into office by voters who expect him to change the stagnancy of Washington, buoyed by anger at a permanent political class that has been unresponsive to the realities of most people’s daily lives. He and his cabinet have already experienced the beginnings of a full-scale revolt by job-protected civil servants against the implementation of his policies. On Inauguration Day, Trump’s speech included this declaration: “January twentieth, 2017, will be remembered as the day the people became the rulers of this nation again.”

By stripping the bureaucratic class of their special protections that few other Americans enjoy through comprehensive civil service reform, Trump can fulfill his inaugural promise, and ensure that when the people speak, Washington has to listen.

[ENDNOTES]

1. Inez Feltscher Stepman is the Director of the Education and Workforce Task Force at the American Legislative Exchange Council.
2. Jarrett Stepman's work on Andrew Jackson and the Jacksonians has been published by *Human Events*, *Breitbart News*, *Real Clear History*, *The History News Network*, *The Daily Signal*, *The Federalist* and elsewhere.
3. Inez Feltscher Stepman, Firing Sally Yates Should Only Be the Beginning of Trump's War on Bureaucracy, THE FEDERALIST (Feb. 6, 2017), available at <<https://thefederalist.com/2017/02/06/firing-sally-yates-beginning-trumps-war-bureaucracy/>>.
4. Ronald N. Johnson & Gary D. Libecap, Courts, A Protected Bureaucracy, and Reinventing Government, 37 *Ariz. L. Rev.* 791, 791 (1995).
5. *Alomar v. Dwyer*, 447 F.2d 482, 483 (2d Cir. 1971).
6. Inez Feltscher, Firing Sally Yates Should Be Only the Beginning of Trump's War on Bureaucracy, THE FEDERALIST (Feb. 6, 2017), available at <<http://thefederalist.com/2017/02/06/firing-sally-yates-beginning-trumps-war-bureaucracy/>>.
7. *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990) (holding that it would be violation of the First Amendment to fire government employees for their party registration).
8. *Elrod v. Burns*, 427 U.S. 347 (1976).
9. *Branti v. Finkel*, 445 U.S. 507 (1980).
10. Brooke Seipel, 180 federal employees sign up for 'civil disobedience' class, THE HILL (Feb. 1, 2017), available at <<http://thehill.com/blogs/blog-briefing-room/news/317300-180-federal-employees-sign-up-for-civil-disobedience-class>>.
11. Julliet Eilperin, Lisa Rein and Marc Fisher, Resistance from within: Federal workers push back against Trump, THE WASHINGTON POST (Jan. 31, 2017), available at <https://www.washingtonpost.com/politics/resistance-from-within-federal-workers-push-back-against-trump/2017/01/31/c65b110e-e7cb-11e6-b82f-687d6e6a3e7c_story.html?utm_term=.7de56beb8025>.
12. Kalev Leetaru, What The 'Rogue' EPA, NPS and NASA Twitter Accounts Teach Us About The Future Of Social, FORBES (Jan. 25, 2017), available at <<http://www.forbes.com/sites/kalevleetaru/2017/01/25/what-the-rogue-epa-nps-and-nasa-twitter-accounts-teach-us-about-the-future-of-social/#2864a9095dc0>>.
13. Scott L. Vernick, Every American should be concerned about the Flynn leaks – here's why, THE HILL (Feb. 22, 2017), available at <<http://thehill.com/blogs/pundits-blog/homeland-security/320645-every-american-should-be-concerned-about-the-flynn-leaks>>.
14. Even Alexander Hamilton's Republican successor at the Treasury Department had nothing but complimentary comments regarding Hamilton's administrative practices and how he manned his 23-person department. See *generally* The Federalists, 513.
15. For example, the brother of a statesman and diplomat serving under James Madison's administration was removed from his job as a collector for carelessness bordering on corruption with accounts. See, Leonard D. White, *The Federalists: a Study in Administrative History* 514 (Macmillan 1948).
16. The United States' election of 1800 was arguably the first peaceful transfer of power between political parties in the history of the world until that date.

17. Leonard D. White, The Jeffersonians: A Study in Administrative History 4 (Macmillan 1951).
18. *See, e.g.,* Marbury v. Madison, 5 U.S. 137 (1803).
19. Leonard D. White, The Jeffersonians: a Study in Administrative History 8 (Macmillan 1951).
20. Robert V. Remini, The Life of Andrew Jackson, Kindle Locations 3294-3296 (Penguin 1990).
21. *Id.* at 3294-96.
22. *Id.* at 3311-12.
23. *Id.* at 3312.
24. Nathan Sargent, Public Men and Events (Philadelphia, 1875).
25. John T. Morse, John Quincy Adams 180 (Boston, 1883).
26. John Quincy Adams, quoted in John T. Morse, John Quincy Adams 180 (Boston, 1883).
27. Leonard D. White, The Jacksonians: a Study in Administrative History 301 (Macmillan 1954).
28. *Id.* at 14.
29. *Id.*
30. Frank Freidel and Hugh Sidey, Andrew Jackson WHITEHOUSE.GOV (2006), available at <<https://www.whitehouse.gov/1600/presidents/andrewjackson>>.
31. Robert Martanto, Thinking the Unthinkable in Public Administration: A Case for Spoils in the Federal Bureaucracy, 29 ADMINISTRATION AND SOCIETY 623 (January, 1998) at 625-26.
32. *Id.* at 626.
33. Today, around 4,000 positions out of a civilian civil service of nearly three million are political appointments.
34. Donald B. Cole, A Jackson Man: Amos Kendall and the Rise of American Democracy 124 (Louisiana State UP 2004).
35. Jarrett Stepman, Jacksonian Ideas That Would Make America Great Again, THE DAILY SIGNAL (Feb. 27, 2017), available at <<http://dailysignal.com/2017/02/27/jacksonian-ideas-that-would-make-america-great-again/>>.
36. Leonard D. White, The Jacksonians: a Study in Administrative History 358 (Macmillan 1954).
37. Voter Turnout in Presidential Elections 1828 to 2012 THE AMERICAN PRESIDENCY PROJECT, available at <<http://www.presidency.ucsb.edu/data/turnout.php>>.
38. Leonard D. White, The Jacksonians: a Study in Administrative History 75 (Macmillan 1954) (quoting letter from A. Lincoln to Z. Taylor).
39. Robert Martanto, Thinking the Unthinkable in Public Administration: A Case for Spoils in the Federal Bureaucracy, 29 ADMINISTRATION AND SOCIETY 623 (January, 1998) at 626; see also, Carl R. Fish, The Civil Service and the Patronage 170 (New York N.P. 1905).

40. Allen C. Guelzo, *Gettysburg: The Last Invasion* (Vintage 2014).
41. Robert Martanto, *Thinking the Unthinkable in Public Administration: A Case for Spoils in the Federal Bureaucracy*, 29 *ADMINISTRATION AND SOCIETY* 623 (January, 1998) at 626.
42. *Id.*
43. *Id.*
44. Johnny Cash, *Mister Garfield JOHNNY CASH SINGS THE BALLADS OF THE TRUE WEST* (Columbia Records 1965), available at <<https://www.youtube.com/watch?v=ZPgHm53fLDI>>.
45. Carl R. Fish, *The Civil Service and the Patronage* 211 (New York N.P. 1905).
46. *Id.*
47. *Id.* at 217.
48. John W. Lasky, *Loosen the Shackles on Pennsylvania Local Government's Hiring Authority: An Argument for Banding*, 37 *Duq. L. Rev.* 445, 446 (1999).
49. In fact, President Rutherford B. Hayes had previously fired Arthur as part of an attempt to reform the federal patronage system in New York, run by New York Senator Roscoe Conkling. David M. Jordan, *Roscoe Conkling of New York: Voice in the Senate* 276 (Cornell Univ. Press 1971). Additionally, the Pendleton Act, although seen by historians as the centerpiece of the Arthur administration, turned out to be a political failure and a classic example of the compromise that makes nobody happy. Republican machine politicians were obviously opposed to any law reforming the spoils system, and the Act did not go far enough in the minds of civil service reformers within the party. Arthur ended up losing the party's 1884 nomination, which instead went to James G. Blaine from Maine. *Id.*
50. The Civil Service Exam was tied highly to the methods of education in the newly-blossomed system of common schools. The system highly favored applicants who came from the common school system; 6,053 out of 7,138 applicants – almost 85 percent – came from the common school system. Leonard D. White, *The Republican Era* 348-49 (Macmillan 1967).
51. *Id.* at 302.
52. *Id.*
53. Mark W. Summers, *Rum, Romanism & Rebellion: The Making of a President* 75 (U. of North Carolina 2000).
54. *Id.*
55. John A. Garraty, *The New Commonwealth: 1877-1890* 258 (Harper & Row 1968).
56. The states still held to the established system of patronage through the rest of the 19th and well into the 20th century. During this period, it was actually in expansion, while the federal system professionalized. Leonard D. White, *The Republican Era* 310 (Macmillan 1967).
57. John A. Garraty, *The New Commonwealth: 1877-1890* 258 (Harper & Row 1968).

58. <http://thefederalist.com/2017/02/06/firing-sally-yates-beginning-trumps-war-bureaucracy/>
59. Leonard D. White, The Republican Era 321 (Macmillan 1967).
60. See, e.g., David Schultz, The Party's over: Partisan Gerrymandering and the First Amendment, 36 Cap. U. L. Rev. 1, 36-37 (2007). "Efforts to depoliticize the administrative apparatus of the government can be traced to the late 19th century civil service reform movements that were directed at rooting out the corruption and spoils that had emerged in Andrew Jackson's time and which fully blossomed during Lincoln's and Grant's administrations."
61. James P. Pfiffner and Douglas A. Brook, Government Legitimacy and the Role of the Civil Service (Woodrow Wilson Center Press 2000) available at <<http://mason.gmu.edu/~pubp502/pfiffner-readings-legitimacy.htm>>.
62. *Id.*
63. Ronald J. Pestritto and William J. Atto, American Progressivism: A Reader 16-17 (Lexington 2008).
64. Thomas G. West and William A. Schambra, The Progressive Movement and the Transformation of American Politics THE HERITAGE FOUNDATION (July 18, 2007), available at <<http://www.heritage.org/research/reports/2007/07/the-progressive-movement-and-the-transformation-of-american-politics>>.
65. 38 Mass. Prac., Administrative Law & Practice § 216. The inspiration for this law came from Wisconsin's progressive statesman Robert La Follette, who passed similar legislation in his home state. He wrote of the law, "The public service of the state has been democratized by a civil service law opening it to men and women on equal footing independent of everything except qualification and fitness of office... There is no longer any political pull in Wisconsin." Ronald J. Pestritto and William J. Atto, American Progressivism: A Reader 23 (Lexington 2008).
66. 38 Mass. Prac., Administrative Law & Practice § 216.
67. Beryl Radin and Joshua M. Chanin, Federal Government: A Policy and Management Perspective 114 (Jones and Bartlett Publishers 2009).
68. <http://dailysignal.com/2017/01/04/reins-act-will-make-government-agencies-accountable-to-the-people/>
69. Jonathan Walters, Life after Civil Service Reform: The Texas, Georgia, and Florida Experiences 39 GOVERNING MAGAZINE (Oct. 2002), available at <<http://sites.duke.edu/niou/files/2011/05/Walters-Life-after-Civil-Service-Reform-The-Texas-Georgia-and-Florida-Experiences.pdf>>.
70. Stephen E. Condrey and R. Pual Battaglio, A Return to Spoils? Revisiting Radical Civil Service Reform in the United States 425 PUBLIC ADMINISTRATION REVIEW, available at <<http://academic.udayton.edu/RichardGhere/POL%20305/Fall%202010/Condrey%20and%20Bat.pdf>>.
71. *Id.*
72. Jonathan Walters, Life after Civil Service Reform: The Texas, Georgia, and Florida Experiences 39 GOVERNING MAGAZINE (Oct. 2002), available at <<http://sites.duke.edu/niou/files/2011/05/Walters-Life-after-Civil-Service-Reform-The-Texas-Georgia-and-Florida-Experiences.pdf>>.

73. *Id.* at 41.
74. Heather Kerrigan, Civil Service Reform: Lessons from Georgia and Indiana, GOVERNING MAGAZINE (June 13, 2012), available at <<http://www.governing.com/topics/public-workforce/col-civil-service-reform-lessons-from-georgia-indiana.html>>.
75. Jonathan Walters, Life after Civil Service Reform: The Texas, Georgia, and Florida Experiences 5-6 GOVERNING MAGAZINE (Oct. 2002), available at <<http://sites.duke.edu/niou/files/2011/05/Walters-Life-after-Civil-Service-Reform-The-Texas-Georgia-and-Florida-Experiences.pdf>>.
76. Heather Kerrigan, Civil Service Reform: Lessons from Georgia and Indiana, GOVERNING MAGAZINE (June 13, 2012), available at <<http://www.governing.com/topics/public-workforce/col-civil-service-reform-lessons-from-georgia-indiana.html>>.
77. Or, as has been suggested by legal scholar Phillip Hamburger, not an accident at all, but rather calculated policy. See recorded speech, available at <<http://kirbycenter.hillsdale.edu/events/2014/05/hamburger>>.
78. See generally, Mark D. Shepard, The Need for an Additional Notice and Comment Period When Final Rules Differ Substantially from Interim Rules, 1981 Duke L.J. 377 (1981).
79. Caryle Murphy, “The Boss: Donald Devine: The man federal workers love to hate,” The Washington Post Magazine, April 15, 1984
80. Amanda Terkel, Rick Perry Forgets Which Three Agencies He Would Eliminate as President HUFFINGTON POST (Nov. 9 2011), available at <http://www.huffingtonpost.com/2011/11/09/rick-perry-forgets-agencies_n_1085249.html>.
81. A *Business Week* poll shows that a mere six percent of voters surveyed thought that the federal government performs its administrative tasks well. BUS. WK., Jan. 23, 1995, at 41. Trust in government is at an all-time low. See Trust in government: 1958-2015, PEW RESEARCH CENTER, available at <<http://www.people-press.org/2015/11/23/1-trust-in-government-1958-2015/>>.
82. Mark Meadows, Bill Barring Pornography from Federal Agencies Advances through Committee PRESS RELEASE (Mar. 25, 2015), available at <<https://meadows.house.gov/media-center/press-releases/bill-barring-pornography-from-federal-agencies-advances-through>>.
83. Stephen Dinan, IRS Still Targeting Tea Party: Nine Groups Awaiting Agency WASHINGTON POST (Apr. 30, 2015), available at <<http://www.washingtontimes.com/news/2015/apr/30/9-tea-party-groups-still-waiting-irs-approval-ig-r/?page=all>>.
84. Benjamin Freed, Newt Gingrich Sounds Like He Wants to Turn the Civil Service Back Into a Patronage System, WASHINGTONIAN (Jan. 19, 2017), available at <<https://www.washingtonian.com/2017/01/19/newt-gingrich-sounds-like-wants-turn-civil-service-back-patronage-system/>>.
85. Leonard D. White, The Republican Era 317 (Macmillan 1967).

86. Oliver E. Allen, The Tiger: The Rise and Fall of Tammany Hall 32 (Addison-Westley 1993).
87. Robert Maranto, Thinking the Unthinkable in Public Administration: A Case for Spoils in the Federal Bureaucracy, 29 ADMINISTRATION AND SOCIETY 623 (January, 1998) at 627.
88. *Id.*
89. Carl R. Fish, The Civil Service and the Patronage 211 (New York N.P. 1905).
90. Voter Turnout in Presidential Elections 1828 to 2012 THE AMERICAN PRESIDENCY PROJECT, available at < <http://www.presidency.ucsb.edu/data/turnout.php>>.
91. Fred Lucas, Obama's Influence Could Continue After His Term Through His Political Appointees, THE DAILY SIGNAL (Aug. 3, 2016), available at <<http://dailysignal.com/2016/08/03/how-obamas-influence-could-continue-after-his-term-through-his-political-appointees/>>.
92. Fred Lucas, Rogue Federal Bureaucrats Threaten Trump Agenda, THE DAILY SIGNAL (Feb. 5, 2017), available at <<http://dailysignal.com/2017/02/05/rogue-federal-bureaucrats-threaten-trumps-agenda/>>.
93. Jonathan Swan, Government workers shun Trump, give big money to Clinton, THE HILL (Oct. 26, 2016), available at <<http://thehill.com/homenews/campaign/302817-government-workers-shun-trump-give-big-money-to-clinton-campaign>>.
94. Jonathan Walters, Life after Civil Service Reform: The Texas, Georgia, and Florida Experiences 5-6 GOVERNING MAGAZINE (Oct. 2002), available at < <http://sites.duke.edu/niou/files/2011/05/Walters-Life-after-Civil-Service-Reform-The-Texas-Georgia-and-Florida-Experiences.pdf>>.
95. See, e.g. Ronald N. Johnson & Gary D. Libecap, Courts, A Protected Bureaucracy, and Reinventing Government, 37 Ariz. L. Rev. 791, 823 (1995) "The hiring process can be ponderous, frustrating both managers and highly qualified candidates for government jobs, and at the same time the mechanism for releasing poor performers can be even more daunting. Many managers are so stymied by the process that they would rather promote a poor performer into a new, useless job than initiate termination proceeding."
96. Andrew Jackson, First Annual Message, THE AMERICAN PRESIDENCY PROJECT (Dec. 8, 1829), available at <<http://www.presidency.ucsb.edu/ws/?pid=29471>>.

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2900 Crystal Drive, Suite 600
Arlington, VA 22202

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