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## H.R. 5195 AND H.R. 5196: CIVIL SERVICE CHANGES THAT SET BACK THE CLOCK

### INTRODUCTION

Almost without public comment or attention, Representative Patricia Schroeder, the Colorado Democrat, has introduced legislation that would rewrite the United States Constitution. Her two bills, H.R. 5195 and H.R. 5196, purportedly aim at achieving "excellence in government" by introducing merely "non-controversial" and technical changes in the federal government personnel system. In reality, the bills would strip the President of much of his constitutional authority to govern the executive branch.

According to the constitutional theories apparently underlying the bills, the proper role of the President and the executive branch's cabinet secretaries is not to manage actively the government but instead to show "deference" to career bureaucrats.<sup>1</sup> The Schroeder legislation would instill what it calls "excellence in government" by reducing the power of the elected president and by increasing the power of the non-elected bureaucracy. It also would directly contradict the direction of governmental reform over the past two decades. In particular, the bills would undo the hard-fought efforts of Jimmy Carter to restore "governability and responsiveness" to the executive branch. His efforts culminated in the Civil Service Reform Act of 1978, one of this century's most significant government management reforms.

The main thrust of H.R. 5195 and H.R. 5196 would reduce and straitjacket the authority of the handful of political appointees who are the chief intermediaries through which a President and his cabinet officers govern the enormous non-elected bureaucracy of the executive branch. H.R. 5195 and H.R. 5196 would:

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<sup>1</sup> Patricia Schroeder, "Is the Bridge Washed?" *The Bureaucrat*, Fall 1984, pp. 19-21.

- ◆ ◆ Reduce the already minute number of political appointees in the executive branch;
- ◆ ◆ Eliminate all political appointees from management positions below the assistant secretary level, requiring that virtually all the programs and offices within the federal government be managed only by career bureaucrats;
- ◆ ◆ Effectively reduce the President's authority to choose the political staff who work for him by subjecting over half the high-level appointees to the personnel selection process designed for career bureaucrats;
- ◆ ◆ Give the career bureaucracy a much larger role in determining who their political "superiors" will be; and
- ◆ ◆ Decrease government responsiveness by creating a new caste of bureaucratic elites through an expensive "government service fellowship" program.

## **PRESIDENTIAL AUTHORITY AND THE EXECUTIVE BRANCH**

Article Two of the Constitution vests in the President the "executive power" of government. The President, however, is only one person overseeing a federal staff larger than the population of some nations. If the President's "executive power" is to be more than a hollow phrase, each President must have the tools necessary to manage the gargantuan executive branch bureaucracy.

Indispensable to this task is the minuscule corps of political appointees, directly subordinate to the President, who are the only employees in the executive branch who can be directly hired and fired by him. Today numbering 2,744, only a little more than one-tenth of one percent of the 2.1 million federal civil servants, these political appointees are a unique type of public sector expert moving into and out of government in response to management and policy needs of Presidents elected by the American people.

**Sharing the President's Perspective.** A recent study on American politics by the Brookings Institution finds that political appointments no longer serve the traditional patronage function, but now play an increasingly integral role in managing the executive branch.<sup>2</sup> The unique contribution these appointees bring to the operation of the executive branch is their shared policy orientation with the elected president. Career civil servants, in contrast, are not expected to support or even understand the perspectives and priorities of the President.

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<sup>2</sup> See Terry M. Moe, "The Politicized Presidency," in John E. Chubb and Paul E. Peterson, eds., *The New Directions in American Politics* (Washington, D.C.: the Brookings Institution, 1985), pp. 235-273.

The political appointees are the President's eyes and hands stretched throughout an executive branch of over 2 million career employees. The policy orientation that they share with the President makes them uniquely suited to act as the President's intermediaries to the permanent bureaucracy, communicate presidential priorities to the career ranks, and channel information from the departments and agencies to the White House. If the role of these vital political subordinates is curtailed, as the Schroeder bills would do, the ability of the President to manage and monitor the executive branch is correspondingly restricted.

## A MANDARIN PHILOSOPHY OF GOVERNMENT

Schroeder wrote in 1984 that the attitude of the President and his political subordinates to the career bureaucracy should parallel "the deference shown by reasonable people to prize fighters. It's just not worth it to mess with them."<sup>3</sup> This view apparently assumes the career civil service is too bright and effective to tolerate interference from "politicians."

Excellence in government thus would be achieved, Schroeder writes, if the President would unleash bureaucrats to play a much wider role in public affairs.<sup>4</sup> Schroeder states explicitly that it is unnecessary for the President to manage the executive branch actively, believing that all a President needs to do to govern is to state his preferences and the professional bureaucracy immediately will carry them out. She recommends that Presidents appoint top-level career bureaucrats to head government agencies.<sup>5</sup>

**"Like Punching a Featherbed."** This utopian view of bureaucracy has no basis in fact. It is contradicted by the experience of nearly all Presidents of both parties during this century. Noted Franklin Delano Roosevelt with dismay:

The Treasury is so large and far-flung and ingrained in its practices that I find it almost impossible to get the action and results I want....But the Treasury is not to be compared to the State Department. You should go through the experience of trying to get any changes in the thinking, policy, and action of the career diplomats and then you'd know what a real problem was. But the Treasury and the State Department put together are nothing as compared with the Na-a-vy....To change anything in the Na-a-vy is likely punching a featherbed. You punch it with your right and you punch it with your left until you are finally exhausted, and then you find the damn bed just as it was before you started punching.<sup>6</sup>

Harry Truman encountered the same problems. He warned that Dwight Eisenhower would have trouble controlling the federal bureaucracy. Said Truman:

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3 Schroeder, *op. cit.*, p. 19.

4 *Ibid.*

5 *Ibid.*

6 Quoted in Michael Sanera, "Implementing the Mandate," *Mandate for Leadership II* (Washington D.C.:The Heritage Foundation, 1984), p. 467.

He'll sit here, and he'll say, "Do this! Do that!" and nothing will happen....He'll find it very frustrating.<sup>7</sup>

**Added Responsibilities.** Because Presidents have found the federal departments and agencies increasingly ungovernable, both Republican and Democrat Presidents since World War II have given political appointees a larger role in administering the executive branch.<sup>8</sup> While political appointees have increased the responsiveness of the federal bureaucracy, moreover, there is no evidence that they have caused a decline in management efficiency. Nor is there evidence that the federal government was better managed before the bipartisan reforms gave added responsibilities to political appointees.

Curiously, the magnitude and controversial nature of the Schroeder proposals barely have been examined. While hearings on the original "excellence in government" bill (H.R. 2882) were held, there was virtually no discussion of the bill's actual content. There even was an effort to bring the bill to the House floor using a legislative loophole known as "suspension." This would have limited debate to 20 minutes with no amendments permitted. "Suspension" is supposed to be restricted to minor, non-controversial bills.

Only at the last minute did opponents recognize the sweeping scope of the measure and prevent it from being considered under "suspension." It was then that the original bill was split into two parts — the current H.R. 5195 and H.R. 5196.

## ATTACKING THE ROLE OF POLITICAL APPOINTEES

Of the 2,744 political appointees in the executive branch, some 450 serve in high-level positions subject to Senate confirmation. Another 694 serve in mid-level management positions in the non-career Senior Executive Service (non-career SES). And 1,577 serve in lower level "Schedule C" slots, largely in policy positions at the GS-13 through GS-15 level.<sup>9</sup>

The bills' proponents say that the legislation is needed because under the Reagan Administration the number of political appointees in the federal government has increased enormously. This assertion is flawed on two accounts.

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<sup>7</sup> *Ibid.*

<sup>8</sup> Moe, *op. cit.*

<sup>9</sup> Nearly all full time political appointees belong to these three categories; there are fewer than two dozen full time political appointees in other miscellaneous categories.

First, the number of political appointees has not grown during the Reagan Administration. While the number of Schedule C appointees increased under Jimmy Carter by 71 percent – from 911 to 1,566<sup>10</sup> – the number of political appointees under the Reagan Administration has remained essentially unchanged. In summer 1980, under Carter, there were 2,901 political appointees of all kinds, including Schedule C.<sup>11</sup> At the most, there have been 2,931 appointees with the Reagan Administration; today there are 2,744.

Second, in historical perspective, the current number of political appointees is minuscule. In the early days of the American government, all federal employees were political. The share slipped to 90 percent by 1883, then to 22 percent by 1920. After the last gasp of patronage politics during the Franklin Roosevelt years (when the percentage of political appointees rose to 28 percent of the total), the proportion of the work force comprised of political appointees began a slow and continuous decline. Today, political appointees number only slightly more than one-tenth of 1 percent of a federal civilian work force of 2.1 million. Such a paltry number actually may be insufficient to ensure that a President's policies are strongly and accurately represented throughout the enormous federal work force. Future Presidents will be helped, not hurt, if they can bring into government the political experts they need to ensure a government that responds to the electoral mandate.

## **REDUCING THE NUMBER OF POLITICAL APPOINTEES**

H.R. 5196 attempts to limit the number of political appointees serving at the non-career Senior Executive Service and Schedule C levels. It sets a ceiling of 1,000 on the number of Schedule C employees at grades 13 to 15. Since the number of Senate confirmed and non-career SES appointees already is fixed by legislation, this new ceiling on Schedule C's sets an overall practical limit on the number of political appointees in the executive branch. This would be the first time in U.S. history when the total number of political appointees has been restricted by Congress. The bill thus substantially alters the balance of power between the executive and legislative branches, setting a dangerous precedent.

While the 1,000-person limit exceeds the current on-board strength of Schedule C employees at grades 13 to 15, the direction established by this provision is a dangerous one. Schroeder in effect acknowledges this, saying: "I would have loved to lower the numbers overall. This is a beginning."<sup>12</sup>

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10 Data provided by the Office of Personnel Management. Data on the total number of political appointees at the beginning of the Carter administration are not available; thus it is impossible to compare the overall growth of political appointments in the Carter and Reagan presidencies. Nevertheless, the growth in Schedule C appointments probably is symptomatic of the overall trend under Carter.

11 Any count of the number of political appointees during the Carter Administration must include the 277 political appointees who were legislatively blanketed into the career SES when it was created by the Civil Service Reform Act of 1978. By any practical and functional standard these individuals continued to operate as important political appointees for the Carter Administration. They are included in the 2,901 total given above. The Reagan Administration inherited these "career" officials from Carter in 1981.

12 *The Washington Post*, June 9, 1988.

**Schedule C Training Ground.** Efforts to restrict the number of political appointees at the Schedule C level make little sense. A major argument for reducing the authority of higher level appointees is their lack of experience in government. But the principal way for higher level appointees to obtain executive branch experience is by serving in the lower ranks as Schedule C appointees. The Schedule C appointments provide the training to equip future administrations with experienced higher level appointees. If the intent is to improve the qualifications of future political leaders, then the number of Schedule C and non-career SES appointees should be expanded not contracted.

Currently, the size of the non-career senior executive corps is limited to 10 percent of the total number of allocated SES positions government-wide, which currently number 7,788. H.R. 5196 limits the number of non-career SES positions to 10 percent of the number of actual SES employees on board in the previous fiscal year. On average, this would require cutting the potential number of non-career SES political appointees by 10 percent. This change is billed by proponents as a mere "clarification" of existing law. Current law, however, is quite clear and specifies that percentage limitations are based on "allocated" positions, not the actual number filled.

## **BARRING POLITICAL APPOINTEES FROM MANAGEMENT ROLES**

H.R. 5196 would bar all non-career SES appointees from positions in which "the principal responsibilities of the position relate to managing career employees." This would strip all SES-level political appointees of direct authority to manage the operations of government agencies. Although political appointees at the assistant secretary level would retain some managerial authority, experience has shown that the responsibility of these appointees is so broad that they can provide only nominal oversight of the programs under them. The bill thus would place *de facto* control of government operations and programs in the hands of career staff. This would constitute a major redistribution of power within departments away from cabinet secretaries and in favor of the career bureaucracy.

A second important consequence of this provision is that the promotion and reward of nearly all mid-level career staff would be solely in the hands of permanent career superiors. The near-certain result: the staff would remain loyal and responsive to the interests of the bureaucracy rather than the directives of the President.

## **ABOLISHING THE NON-CAREER SENIOR EXECUTIVE SERVICE**

Currently, agency heads determine whether or not an individual is suitable for a non-career SES position. H.R. 5196 would change this by establishing "qualification review boards" (QRB) to determine whether the President's appointees to non-career senior executive positions are qualified. The bill specifies that individuals selected for non-career SES positions must be evaluated by the same criteria and same lengthy bureaucratic process used to select members of the career SES. This would overturn major principles of the 1978 Civil Service Reform Act.

**Separate Functions.** The bill would erase the distinction between the career and non-career SES and effectively abolish over half of the senior level political appointments available to the President. The "political appointees" in the non-career SES would be no different than career bureaucrats except that they would not have permanent tenure in their employment. This change would damage severely a President's ability to pursue his programs. The reason that there are both political and career officials in the executive branch is that they serve separate functions. The criteria for selecting individuals for political jobs thus must differ from those for selecting to career positions. The primary qualifications of a political appointee are loyalty to the President and a shared policy orientation with the President; neither of these is relevant in the selection of career staff.

Although the bill does not specify the make up of the new qualification review boards, a majority of the members of the existing QRBs (which evaluate candidates for admission into the career SES) are career civil servants. The bill thus is likely to give the career bureaucracy a larger role in selecting who its political "superiors" will be.

## **CREATING A NEW BUREAUCRATIC ELITE**

The centerpiece of H.R. 5195 is a very expensive and unnecessary "government service fellowship program" for college students. Mimicking the ROTC, this proposed program would place individuals on the federal government payroll while they attend college. The fellowship recipients would be selected by the career bureaucracy of specific agencies, and paid the cost of their tuition and study materials plus an annual salary equal to at least grade 2 pay – \$11,032. After completing their studies, they will be given jobs with their sponsoring agencies.

The "government service fellowship program" would push U.S. government in the direction of the French and British bureaucracies where a privileged and often inert corps of top career officials is drawn from selected universities. The French and British bureaucracies are renowned for their elitism, unaccountability, and parochialism.

**Recruiting High School Graduates.** The American career civil service is already criticized for its insularity. What it needs are more individuals with diverse educational backgrounds representing a wide variety of social perspectives. It does not need a cadre of top managers selected for government work fresh out of high school and processed through uniform, shallow training in public administration at taxpayer's expense.

The federal government currently has no difficulty recruiting qualified applicants for most occupations. While the government may have problems filling a few scientific positions, such as engineers, the solution is simply to raise the entry-level salaries in these fields. The "government service fellowship program" is irrelevant to the problem.

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and H.R. 5196 raise serious questions concerning the constitutional separation these bills would create, in effect, a fourth branch of government: a permanent

and powerful bureaucracy largely immune to the results of elections and to presidential leadership. Under this system, the President not only would be unable to hire or dismiss personnel in the permanent bureaucracy, he would be stripped of much of his ability to monitor and manage the operations of the executive branch.

**Undermining True Excellence.** These two bills would not promote "excellence in government." True excellence in government is ensuring that the electorate's mandate gets translated into policy. This can be accomplished only by expanding the President's flexibility to manage the federal work force. The American people should be able to vote for a change and get it.

The proposed legislation would reverse the bipartisan reform of the past two decades, undermining one of the most important achievements of the Carter Presidency: the Civil Service Reform Act of 1978. Following the truth in labelling principle, this legislation should be titled not "excellence in government," but "non-accountability in government."

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