

REVITALIZING THE FEDERAL WORKFORCE

HEARING

BEFORE THE
SUBCOMMITTEE ON GOVERNMENT OPERATIONS
OF THE
COMMITTEE ON OVERSIGHT AND
REFORM

HOUSE OF REPRESENTATIVES
ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

FEBRUARY 23, 2021

Serial No. 117-3

Printed for the use of the Committee on Oversight and Reform



Available on: www.govinfo.gov,
oversight.house.gov or
docs.house.gov

COMMITTEE ON OVERSIGHT AND REFORM

CAROLYN B. MALONEY, New York, *Chairwoman*

ELEANOR HOLMES NORTON, District of Columbia	JAMES COMER, Kentucky, <i>Ranking Minority Member</i>
STEPHEN F. LYNCH, Massachusetts	JIM JORDAN, Ohio
JIM COOPER, Tennessee	PAUL A. GOSAR, Arizona
GERALD E. CONNOLLY, Virginia	VIRGINIA FOXX, North Carolina
RAJA KRISHNAMOORTHI, Illinois	JODY B. HICE, Georgia
JAMIE RASKIN, Maryland	GLENN GROTHMAN, Wisconsin
RO KHANNA, California	MICHAEL CLOUD, Texas
KWEISI MFUME, Maryland	BOB GIBBS, Ohio
ALEXANDRIA OCASIO-CORTEZ, New York	CLAY HIGGINS, Louisiana
RASHIDA TLAIB, Michigan	RALPH NORMAN, South Carolina
KATIE PORTER, California	PETE SESSIONS, Texas
CORI BUSH, Missouri	FRED KELLER, Pennsylvania
DANNY K. DAVIS, Illinois	ANDY BIGGS, Arizona
DEBBIE WASSERMAN SCHULTZ, Florida	ANDREW CLYDE, Georgia
PETER WELCH, Vermont	NANCY MACE, South Carolina
HENRY C. "HANK" JOHNSON, JR., Georgia	SCOTT FRANKLIN, Florida
JOHN P. SARBANES, Maryland	JAKE LATURNER, Kansas
JACKIE SPEIER, California	PAT FALLON, Texas
ROBIN L. KELLY, Illinois	YVETTE HERRELL, New Mexico
BRENDA L. LAWRENCE, Michigan	BYRON DONALDS, Florida
MARK DESAULNIER, California	
JIMMY GOMEZ, California	
AYANNA PRESSLEY, Massachusetts	
VACANCY	

DAVID RAPALLO, *Staff Director*
WENDY GINSBERG, *Subcommittee Staff Director*
AMY STRATTON, *Clerk*

CONTACT NUMBER: 202-225-5051

MARK MARIN, *Minority Staff Director*

SUBCOMMITTEE ON GOVERNMENT OPERATIONS

GERALD E. CONNOLLY, Virginia, *Chairman*

ELEANOR HOLMES NORTON, District of Columbia	JODY B. HICE, Georgia <i>Ranking Minority Member</i>
DANNY K. DAVIS, Illinois	FRED KELLER, Pennsylvania
JOHN P. SARBANES, Maryland	ANDREW CLYDE, Georgia
BRENDA L. LAWRENCE, Michigan	ANDY BIGGS, Arizona
STEPHEN F. LYNCH, Massachusetts	NANCY MACE, South Carolina
JAMIE RASKIN, Maryland	JAKE LATURNER, Kansas
RO KHANNA, California	YVETTE HERRELL, New Mexico
KATIE PORTER, California	

C O N T E N T S

Hearing held on February 23, 2021	Page 1
WITNESSES	

Janice R. Lachance, Executive Vice President, Strategic Leadership and Global Outreach, American Geophysical Union	
Oral Statement	8
Everett B. Kelley, National President, American Federation of Government Employees	
Oral Statement	9
Mr. James Sherk, Former Special Assistant to the President for Domestic Policy, White House Domestic Policy Council	
Oral Statement	11
Anne Joseph O'Connell, Adelbert H. Sweet Professor of Law, Stanford Law School	
Oral Statement	12
<i>Written opening statements and statements for the witnesses are available on the U.S. House of Representatives Document Repository at: docs.house.gov.</i>	

INDEX OF DOCUMENTS

- * Statement for the record by The National Treasury Employees Union; submitted by Rep. Connolly.
- * Statement for the record by The National Active and Retired Federal Employees Association; submitted by Rep. Connolly.
- * Statement for the record by The Partnership of Public Service; submitted by Rep. Connolly.
- * Statement for the record by Professor Nina Mendelson; submitted by Rep. Connolly.
- * Statement for the record by Joseph Sax Collegiate Professor of Law at the University of Michigan Law School; submitted by Rep. Connolly.
- * Statement for the record by Professor David Lewis, distinguished professor at Vanderbilt University; submitted by Rep. Connolly.
- * A series of charts providing data of what happened to Federal Employees that past four years; submitted by Rep. Connolly.
- * The Federal Employees Viewpoint Survey; submitted by Rep. Connolly.
- * The Federal Employees Viewpoint Survey; submitted by Rep. Hice.
- * OPM Federal Employee Viewpoint Survey; submitted by Rep. Hice.
- * Questions for the Record: to Ms. Lachance; submitted by Rep. Connolly.
- * Questions for the Record: to Ms. O'Connell; submitted by Rep. Connolly.
- * Questions for the Record: to Mr. Kelly; submitted by Rep. Connolly.

Documents entered into the record during this hearing and Questions for the Record (QFR's) are available at: docs.house.gov.

REVITALIZING THE FEDERAL WORKFORCE

Tuesday, February 23, 2021

**HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON GOVERNMENT OPERATIONS
COMMITTEE ON OVERSIGHT AND REFORM
*Washington, D.C.***

The subcommittee met, pursuant to notice, at 11 a.m., in room 2154, Rayburn House Office Building, Hon. Gerald E. Connolly (chairman of the subcommittee) presiding.

Present: Representatives Connolly, Norton, Davis, Sarbanes, Lynch, Raskin, Khanna, Porter, Hice, Keller, Clyde, Biggs, and Herrell.

Also present: Representatives Steny Hoyer (D-MD), Donald Beyer (D-VA), and Jennifer Wexton (D-VA).

Mr. CONNOLLY. Welcome, everybody, to today's hybrid hearing. Pursuant to House rules, some members will appear in person and others will appear remotely via Webex. Both the ranking member and I, Mr. Hice, a long time ago agreed that when we're in session, at least he and I are prepared to appear in person. I've kept that commitment to my friend, and I hope we can do this going forward safely.

Since some members are appearing in person, like us, let me first remind everyone that pursuant to the latest guidance from the House Attending Physician, all individuals attending this hearing in person must wear a face mask, Ms. Lachance. Members who are not wearing a face mask will not be recognized.

Let me also make a few reminders to those members appearing in person. You will only see members and witnesses appearing remotely on the monitor in front of you when they are speaking in what is known in Webex as active speaker mode.

A timer is visible in the room directly in front of you. For members appearing remotely, I know you are familiar with Webex by now, but let me remind everyone of a few points. First, you will be able to see each person speaking during the hearing, whether they are in person or remote, if you have your Webex set to active speaker view. If you have any questions or concerns about this, please contact committee staff right away.

Second, we have a timer that should be visible on your screen when you're in the active speaker with thumbnail view. Members who wish to pin the timer to their screens should contact committee staff for assistance.

Third, the House rules require that we see you, so please always have your cameras turned on.

Fourth, members appearing remotely who are not recognized should remain muted to minimize background noise and feedback.

Fifth, I will recognize members verbally, but members retain the right to seek recognition verbally. In regular order, members will be recognized in seniority, unless otherwise designated by the ranking member or myself. Last, if you want to be recognized outside of regular order, you may identify that in several ways. You may use the chat function to send a request, you may send an email to the majority staff, or you may unmute your mic to seek recognition. Obviously, we don't want people talking over each other, so my preference is that members use the chat function or email to our committee staff to facilitate formal, verbal recognition.

We'll begin the hearing immediately enough.

The committee will come to order. Without objection, the chair is authorized to declare a recess of the committee at any time.

Without objection, and I've cleared this with the ranking member, the honorable gentleman from Maryland, Mr. Steny Hoyer, the distinguished majority leader; Mr. Donald Beyer, the gentleman from Virginia; and Jennifer Wexton, the gentlewoman from Virginia, will be permitted to join the subcommittee and be recognized for questioning at the appropriate time.

I now recognize myself for my opening statement.

Almost exactly two years ago, I sat on this very desk for my first hearing as chairman of the subcommittee. It focused on a little known board in the executive branch that ensures our civil service is vested with knowledge and expertise. That board is the Merit Systems Protection Board. At the time, the Board had been without a quorum since January 2017; the longest ever it's been unable to operate since it was created in 1979.

Despite our efforts to highlight the significant role of the Board in adjudicating Federal employee appeals of actions taken against someone when they blow the whistle on waste, fraud, and abuse, and political retaliation, the Board still remains without a single board member confirmed by the U.S. Senate. It has a backlog of, now, of more than 3,000 petitions from employees who claim they've been retaliated against or that their leadership has failed to uphold the merit systems principles that serve as the foundation of civil servants since 1883.

This hearing serves as a critical inflection point—the end of the Trump administration's four-year assault on the Federal workforce—and a celebration of the resiliency of those who served our Nation, despite the constant attacks and degradation. It's also the beginning of a new administration that's highlighted the vital role Federal employees play and will play in making the Nation work, especially during a pandemic.

We will use what we learn here today to better understand weaknesses in the Federal laws that are meant to enshrine merit system principles in perpetuity. We seek to protect the statutory right to collectively bargain. We want to strengthen whistleblower protections, to empower those who see wrongdoing to be able to come forward without fear. We want to prioritize the health and safety of the workforce that continue to serve us in the midst of a catastrophic and deadly pandemic; noting that we reached a tragic

milestone yesterday, that 500,000 fellow Americans have succumbed to this virus in less than a year.

The Trump administration began its attacks on the Federal workforce from the very start with a hiring freeze. President Trump quickly followed that freeze with repeated budget requests to freeze Federal pay. Congress did not agree. It provided at least a one percent increase in each year of the Trump administration in terms of compensation for Federal employees.

President Trump followed up pay freezes with three executive orders that severely undermined Federal employees' rights to bargain collectively. He nominated two individuals who were outright hostile to public sector unions at the helm of the Federal Labor Relations Authority, and stacked the Federal Services Impasses Panel with anti-union stalwarts.

The Trump administration also orchestrated an illegal attempt to abolish the very agency that serves as our Nation's human resources hub. Without legal justification or analysis, the Trump administration began to move components of the Office of Personnel Management into the General Services Administration and the executive office of the President.

This subcommittee held two hearings and sent multiple oversight letters on a bipartisan basis. Congress rejected and defeated the plan to eliminate OPM. This subcommittee led that effort on a bipartisan basis.

Then the Trump administration went even lower. The President released an executive order that asked Federal agencies to strip anyone who could be construed as involved with policymaking or policy implementation of the statutory due process rights. This action known as Schedule F struck at the very heart of what makes our civil service a crown jewel everywhere in the world.

OPM, the Merit Systems Protection Board, and the FLRA, established collectively a statute by the Civil Service Act of 1978, are fundamental components to avoid the corrupt patronage system of our Nation's past. And the Trump administration unleashed an all-out assault on those very foundations.

I led my colleagues in running the clock out on the so-called Schedule F initiative, but damage remains. Clearly, we have a lot of work ahead of us to rebuild our civil service. I'm supporting the Biden administration's laudable effort to reverse many of the previous administration's actions by taking essential steps to revitalize our civil service.

First, today, I'm introducing the Merit Systems Protection Board Empowerment Act, authorizing the Board through 2026 and providing an authority to survey Federal employees to find ways to improve its ability to protect expertise in government.

Today, I'm also reintroducing the National Security Diversity and Inclusion Workforce Act, which requires each national and security agency to provide a public report on its diversity and inclusion efforts, and encourages agencies to expand development in career advancement opportunities for everybody in its workforce.

Over the last—past few weeks, I've reintroduced legislation to prevent any future administration from attempting something like Schedule F from happening again without congressional approval. The bipartisan Preventing of Patronage System Act requires the

executive branch to get explicit statutory authority to establish any categories of Federal employees outside of the General Schedule. I believe that's perfectly consistent with American history.

The Pendleton Act was a legislative act by Congress creating a professional cadre in the civil service, and to create by executive order a new schedule that actually undermines that, I think prevents the very basis of the action taken by Congress back in 1883.

While we overturn the catastrophic policies of the previous era and nourish a Federal workforce starved of resources, we must simultaneously find ways to rebuild our civil service and attract the next generation to public service.

As of December, only 6.8 percent of the Federal workforce was under the age of 30. In the private sector, by contrast, 23 percent of the workforce is under 30. According to OPM data from just last week, 29.4 percent or nearly a third of the Federal workforce is eligible for retirement by the end of 2025. We have an aging workforce and young people aren't attracted to it and don't want to stay if they are.

In terms of the diversity, the workforce needs improvement. While women comprise 43.3 percent of the full-time career workforce, they comprise only 35.5 percent of the senior executive service—the leadership ranks of our career workforce. People of color comprise 38.3 percent of our workforce, but only 22.6 percent of our senior executive service. You can see the visual on the screen.

I want to show you an analysis from Georgetown University that uses OPM data to show the net loss of people of color across several agencies within the Federal Government during the last administration. If you look at the screen, you'll see that the green line represents an exodus of Black, African-American employees from the Social Security Administration, the Bureau of Prisons, and OPM. Note too that people of American Indian descent or Alaskan Natives left the Bureau of Indian Affairs in large numbers during the previous administration.

It's a picture of an aging workforce that's failing to hire, welcome, and promote young people, women, and people of color. Strategic human capital management has been on the GAO High-Risk List presented to this committee every year since 2001.

We're in the midst of record job losses across the Nation. Now is the time to recruit the best and brightest to Federal service. And while we're at it, let's also find ways to reduce the 98.3 days on average it takes to hire a new employee in the Federal Government. We can and must do better.

I'm here to help get the right talent into the right seats to solve the country's most pressing and intractable problems. And I look forward to hearing from the expert panel we have on how best we can get that done.

I now recognize the ranking member for his opening statement.

Mr. HICE. Thank you very much, Chairman Connolly, I appreciate that. And I appreciate this in-person hybrid hearing as well and for you working with us to make this happen for those who want to be here in person. I appreciate you calling this hearing.

Performance in the Federal workforce is no doubt a critical issue, and it's our responsibility here in Congress to ensure that Federal

employees, the workforce, delivers the best that it possibly can deliver for the American people.

And I'd like to begin today really by questioning the premise of this hearing, however, which by the title would suggest that it's in bad shape. It's not. My majority counterparts like to rely on recycled talking points and anecdotes. But the real data, the real information shows that the Trump administration's Federal workforce reforms made a positive difference.

According to the Federal Employee Viewpoint Survey, which is the most reliable and most cited source for data about job satisfaction in the Federal Government, job satisfaction rose during the Trump administration. So, let me put that another way. Federal employees, by their own admission, were happier to work under President Donald Trump than they were under Barack Obama. So, clearly, they did not view the Trump administration as dismantling the Federal workforce. In fact, it's just the opposite.

They finally saw someone who is taking action to deal with the real issues that they have to live with every day at work. They saw someone trying to address the problem of poor performers, for example, an area that consistently ranks as one of the lowest areas on the Federal survey.

The majority of Federal employees are good at what they do. They're proud to do it. And they have chosen the Federal workforce in large part because it's important and meaningful work. But many of them, let's just be honest, have to pick up the slack for poor performers. And managers have little ability to address these types of poor performers and individuals. That is demoralizing. That is difficult for any workforce, and it is difficult for the Federal workforce.

President Trump issued a series of executive orders to bring common sense back into the Federal workforce and the workplace by scraping away some of the obstacles that had been put in place to shield those who are not pulling their weight.

And while the needs of Federal employees are important—we all agree about that. Their needs are important, but the needs of the American people come first. President Trump took action to curtail official time practices. That is a huge thing.

Federal employees on official time spend much of their time doing union-related activities rather than the work for which they were hired to do. And it's all the American taxpayer who pays for that type of thing. And, frequently, at least in my opinion, official time is misused by paying people not to do their job.

Under President Trump, official time actually decreased by over 28 percent between 2016 and 2019. But just as a frame of reference, that still amounted to over 2.6 million hours at a cost of some \$135 million to the taxpayers.

As the chairman knows, I have focused a lot of my time here in Congress dealing with official time. In fact, my bill, Official Time Reform Act, would prohibit Federal employees who spend 80 percent or more of their time doing—on official time rather than the job for which they were hired to do. And, I mean, that's being very generous allowing 80 percent.

But now turning to Schedule F, this was not an attempt to recreate patronage system or politicize the civil service. This is a reflec-

tion of this reality that Feds in policymaking positions wield tremendous power to implement or hinder the administration's agenda, whatever administration that might be. These were privileged positions, and those serving in those positions should be held accountable for their performance to require them to give their best efforts regardless of what their personal views might be. If they don't like that, then perhaps they're in the wrong career. Nobody elected them. But those who were elected and are accountable to the voters, they should be able to rely upon these civil servants to carry out their duties.

If President Trump had been trying to create a patronage system, then all of these positions would have been made political appointments under Schedule C. So, these were commonsense reforms—strengthening the Federal workforce, not weakening it.

Meanwhile, President Biden has given almost no justification for repealing these efforts and rescinding these executive orders. He generically claimed he wanted to encourage union organizing and collective bargaining and that the Trump administration undermined the civil service. But how? On what data is—are those kinds of claims based upon? And President Biden provided none. More importantly, his comments ignored the American people who actually benefited from President Trump's reforms.

Finally, with regard to OPM and the proposed merger with GSA, let's bear this in mind: President Trump inherited an organization recovering from a reputation-shattering data breach in which millions, tens of millions of Federal employees were affected. Congress then shifted a huge portion of its operation, security background checks, to the Department of Defense.

So, while I'm aware that members on both sides of the aisle were concerned about the level of documentation around this proposal, I think this was a defensible effort to ensure Federal employees got the level of human resources that they deserve.

In closing, there were, and, frankly, there are, real issues within the Federal Government. President Trump took action to address some of them, many of them, and I'm not surprised that today he is going to be made and cast the villain. But if you take a—an honest look under the hood, you will see the claim that he attempted to dismantle civil service just does not ring true. In fact, just the opposite is the truth. His reforms improved the Federal workforce, which is vividly, vividly, vividly reflected in the Federal Employees Viewpoint Survey.

Again, Chairman Connolly, thank you for calling this hearing. I look forward to hearing from our witnesses.

Mr. CONNOLLY. I thank my friend.

Just some items for the record, since my friend asked for data, I will, without objection, enter into the record a series of charts providing clear data on what happened to Federal employees during the last four years, prepared by Georgetown University and the University of Southern California. I would also enter into the record the Federal Employees Viewpoint Survey.

As my friend from Georgia indicated, in some cases, there was increased satisfaction in Federal agencies, but the median large agency experienced during these four years, actually, a decline in satisfaction. And, of course, the worst recorded was the Depart-

ment of Education, where satisfaction declined by 16.1 percent. So, I would enter that into the record so we also have that data.

And without objection, so ordered.

Mr. HICE. Mr. Chairman?

Mr. CONNOLLY. Yes.

Mr. HICE. While we're entering some things in the record, I likewise would like to enter the Federal Employee Viewpoint Survey into the record, and along with it, the OPM Federal Employee Viewpoint Survey preview of the highlights that are in this. And I would ask—

Mr. CONNOLLY. Without objection, so ordered.

Mr. HICE. Thank you, sir.

Mr. CONNOLLY. Thank you.

Now, I'd like to introduce our witnesses. We're grateful to have—is Mr. Hoyer on? OK. Can someone find out? Mr. Hice and I are more than willing to invite him to give an opening statement, if he has one. Meanwhile, we'll go for it.

Our first witness today is Janice Lachance, who's with us physically. We're delighted she got through security today. She's the former director of the Office of Personnel Management and currently serves as the executive vice president for Strategic Leadership and Global Outreach at the American Geophysical Union. We'll then hear from Everett Kelley, the national president of the American Federation of Government Employees. We will next hear from James Sherk, who is the former special assistant to the President, President Trump, for domestic policy in the White House Domestic Policy Council. And, finally, we'll hear from Anne Joseph O'Connell, the Adelbert Sweet Professor of Law at Stanford University Law School.

If we can unmute all of our witnesses and ask you all—and, Ms. Lachance, if you can rise and raise your right hand. And if our other witnesses would raise their right hand, please.

Do you swear or affirm that the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Let the record show that all of our witnesses have answered in the affirmative.

And, without objection, your written statements will be made part of the full record. We ask each of you to now summarize your remarks in five minutes.

With that, Ms. Lachance, you're now recognized. Now, I'm pronouncing it the way we would in Boston. Is it Lachance or Lachance?

Ms. LACHANCE. I appreciate it. Over the years, we've anglicized it, so I will answer to anything. I really love hearing the accent.

Mr. CONNOLLY. We can do it in French, though, Lachance.

Ms. LACHANCE. Lachance.

Mr. CONNOLLY. OK. Welcome.

**STATEMENT OF JANICE R. LACHANCE, FORMER DIRECTOR,
OFFICE OF PERSONNEL MANAGEMENT, EXECUTIVE VICE
PRESIDENT, STRATEGIC LEADERSHIP AND GLOBAL OUT-
REACH, AMERICAN GEOPHYSICAL UNION**

Ms. LACHANCE. Thank you.

Mr. Chairman, Ranking Member Hice, members of the subcommittee, I want to open with a thank you for all of the work that you've already done to sustain our impartial, nonpolitical merit system, including your important efforts to maintain the independence of the Office of Personnel Management. The programs and services supported by the Federal workforce impact every American in every congressional district. So, I also want to thank you for holding this hearing today about revitalizing the Federal workforce.

This subcommittee, working with the Biden administration, has a rare opportunity to build consensus, develop a legislative agenda, and leverage our oversight authority to modernize the Federal human resources system. I suggest you start by correcting some of the policies that have been discussed here this morning of the last four years that could have gutted the merit-based civil service.

Two of those misguided efforts were the proposal to dismantle OPM and undermine the foundation of the merit system by reassigning human resources policy to the Executive Office of the President, and to the executive order creating Schedule F, the new accepted service category in the civil service. This subcommittee succeeded in keeping OPM intact for now, and President Biden rescinded Schedule F and restored union organizing rights with his own executive order.

As someone who spent eight years at OPM and who's been a keen observer of the agency ever since, I recognize areas of the agency must improve. However, an independent agency specifically charged with protection of the merit system and the development of impartial, nonpartisan human resources policies and practices is vital to the fair and effective administration of government programs and to the protection of the civil service from political interference.

My written testimony includes a number of recommendations for the subcommittee, and I highlight a few here.

Designate the OPM director as a member of the President's Cabinet. I had the privilege of that status in the Clinton Administration, and it enabled me to raise the visibility of personnel matters and to model practices that were ultimately adopted by the private sector.

Urge the immediate nomination and quick confirmation of the Senate-confirmed positions at OPM and at the MSPB, an agency key to ensuring a fair workplace that has not had a quorum for four years.

Launch a comprehensive assessment of the expertise and resources it would take to enable OPM to operate the way it should and the way we all hope it can, as a world-class human resources operation.

Ensure a strategic whole-government approach to Federal H.R. by giving OPM authority to oversee personnel matters across the entire government, not just the agencies under Title 5.

Pass legislation requiring congressional approval for the creation of any new or expanded excepted service authority. Significant alterations to the merit system should not be in the sole purview of any President.

Beyond these, I offer additional recommendations that will help attract a new generation of workers and those with needed exper-

tise. First, we must ensure the resources needed to continue reducing the time it takes to hire. We must invest in the modernization of *USAJobs.gov*. We should establish partnerships with community, Tribal, and minority serving academic institutions, and union apprenticeship programs to ensure a continuous diverse pipeline. Leverage and expand where appropriate internship programs and direct higher authorities to speed hiring. Consider whether additional compensation flexibilities can be targeted to hard-to-recruit occupations and to agencies and programs with perpetually high vacancy rates.

We should also ask whether the pandemic highlighted needed changes in benefits, such as expanded work-from-home opportunities or the need for additional sick leave.

Constructing a personnel system for today is a complex challenge, even when its foundational elements go back more than a century. I have focused primarily on what can be done in a relatively short amount of time, given the urgency of the societal challenges we face: The pandemic, the resulting unemployment and economic pain, and the climate crisis which is causing irreparable harm to our species and our planet.

I look forward to answering your questions and supporting your efforts going forward.

Mr. CONNOLLY. Wow, a pro. Right on time. Thank you, Ms. Lachance.

Mr. Kelley, you're now recognized for five minutes.

Mr. Kelley, you are muted. If you could unmute.

**STATEMENT OF EVERETT B. KELLEY, NATIONAL PRESIDENT,
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES**

Mr. KELLEY. OK. Thank you so much.

Chairman of the subcommittee, Ranking Member Hice, and members of the subcommittee, I too want to thank you very much for holding this hearing to mark this new moment for our government and its work force.

Like other Americans, I watched the event of January 6 in horror and then sorrow. I'm grateful and I thank God that none of you suffered any physical harm and that you were able to lead in a hearing like this so soon after the Congress and the Capitol were under direct attack.

Like the apolitical, professional of civil service, Members of Congress serve the public and are deserving of the highest level of care and respect. I'm truly sorry that you and your staff members experienced such a terrible ordeal.

The past four years have been traumatic for Federal employees and their union as well. President Biden's executive orders have been a shot in the arm, almost as welcome as vaccines that we prayed for will soon be available to the entire population. But it is now up to all of us to make compliance with these Biden EO's to bring in a top priority because it will be impossible to move forward to revitalize Federal labor management relations if that does not occur. Both the executive orders are protecting the Federal workforce and COVID-19. And the executive order that revoked the previous administration's anti-union executive orders proves a

profound change in labor management relations in Federal agencies.

Once every trace of this previous administration executive orders is eliminated, and at least three executive order contracts are restored, I believe that we'll see a vast improvement in morale, trust, recruitment, and retention.

In addition, to restore of our rights, we're eager to see attention paid to our paychecks. We're extremely grateful to the chairman for this continued support for the economic well-beings of Federal workers with the introduction of, once again, of the FAIR Act.

We intend to make certain that fair play as well as fair pay are achieved in the coming year. Both are necessary for the success of all Federal agencies going forward. Fair play, of course, means requiring Federal agencies to get on board with the Biden's executive order, but to make sure that every agency is held accountable for both the letter and spirit of the President's executive orders and resist to the efforts to make the Federal Government a model employer are not tolerated. To that end, it must immediately come back to the bargaining table to work with us to eliminate the policies and rules imposed on us by the last administration.

Fair play will also entail some reforms of two pieces of legislation that has harmed the VA workforce—the Accountability Act and MISSION Act. Now, these two laws have had serious unintended consequences, and we ask that Congress address the harm that they have done to the VA, its workforce, and the veterans that they serve. Likewise, it will require restaffing at agencies as diverse as the Bureau of Prisons, the EPA, the VA, DOD, and many others.

We're all waiting for the NAPA report on the future of OPM. We are grateful that the previous administration's attempt to dismount the agency failed. But we do hope that the committee will recognize that the people-service model that fund so many of OPM's operations has been a failed experience. Going forward, OPM needs to be strengthened by ensuring that it has direct appropriations to carry out all of the statutory functions.

On COVID-19, I want to make this opportunity—I want to take this opportunity to thank the chairman for his leadership and compassion in ensuring that Federal employees have proper PPE and safety protocols to prevent additional needless deaths with the re-introduction of the Chai Act.

We have all learned through bitter experience how fragile our institutions of democracies are. All were under attack during the past four years, and so many nearly succumbed. Apolitical, professional civil service was one such institution that few outside of this committee and the world of the Federal Government appreciates. We survived, but barely. And I hope that going forward we all understand that we must strengthen, not weaken, the statutory underpinning of the civil service and the union that represent Federal workers.

Thank you for your time, and I'll be happy to answer any questions when appropriate. Thank you.

Mr. CONNOLLY. Another pro. Thank you, Mr. Kelley. You still had 24 seconds. Thank you.

Mr. Sherk, you are now recognized for five minutes.

**STATEMENT OF JAMES SHERK, FORMER SPECIAL ASSISTANT
TO THE PRESIDENT FOR DOMESTIC POLICY, WHITE HOUSE
DOMESTIC POLICY COUNCIL**

Mr. SHERK. Chairman Connolly, Ranking Member Hice, and members of the subcommittee, thank you for inviting me to testify this morning. My name is James Sherk. I'm a formal special assistant to the President for domestic policy in the last administration.

I am speaking this morning only in my personal capacity. As such, while I can discuss the problems the administration addressed, how it addressed them, my personal views, I am not authorized to speak on behalf of other administration officials or to reveal internal administration deliberations.

The Trump administration made the Federal Government better for both the American people and its own employees. There are three essential facts that the committee should understand. First, the government fails to effectively address poor performers, and this frustrates Federal employees themselves. Second, excessive removal restrictions undermine the original vision for the merit service. Third, Federal employees expressed profound satisfaction with the Trump administration's management of the Federal workforce.

The first point identified makes it prohibitively difficult to fire Federal employees for poor performance. The Government Accountability Office estimates that doing so takes between six months to a year and sometimes longer. The MSPB reports that, and I quote, "many supervisors believe it is simply not worth the effort to attempt to remove Federal employees who cannot or will not perform adequately," unquote.

Only a quarter of Federal supervisors are confident that they could remove a poor performer. Consequently, agencies rarely remove employees for poor performance. This frustrates Federal employees. Federal Employee Viewpoint Survey, or FEVS, shows that only a third of Federal employees believe their agency takes steps to deal with poor performers. Federal employees consistently give this question some of the most negative FEVS responses.

Second, removal protections undermine reformers original vision for the merit service. The Pendleton Act replaced the spoils system with competitive examinations and merit-based hiring. But the Pendleton Act did not interfere with the President's general authority to fire Federal employees. The creators of the merit service were concerned that removable protections would, and I quote: seal up incompetence, negligence, and insubordination, requiring a virtual trial at law before an unfit or incapable clerk can be removed, unquote.

To avoid that, their reforms focused on merit-based hiring while leaving the removal process largely unencumbered. As leading civil service reformer George William Curtis put it, quote, "if the front door is properly tended, the back door will take care of itself," end quote.

Federal servants could not appeal removals outside their agency until Congress let veterans do so during World War II, two generations after the Pendleton Act was passed.

Now, uninformed coverage of the Schedule F executive order claimed it broke with the Pendleton Act. Its coverage was precisely backward. Schedule F returns to the foundations of the merit serv-

ice. Apolitical hiring and expeditious removals were necessary. In fact, Schedule F employees would have enjoyed far greater removal protections than the Pendleton Act provided.

Third, Federal employees expressed profound satisfaction with the Trump administration's management of the Federal workforce. The Federal Employee Viewpoint Survey shows Federal employee job satisfaction rose every year through the Trump administration. FEVS job satisfaction rose to the highest level ever recorded last year.

Over the course of the Trump administration, positive responses increased on the FEVS on an incredible 64 out of 71 measures and did not decline on a single measure. FEVS scores matched or reached their all-time high on over 40 measures. These include record proportions of Federal workers who are satisfied with policies and practices of their senior leaders, who agree their agency does not tolerate coercion for partisan political activities, and who say that their supervisors treat them with respect.

Federal employees also specifically approved of the Trump administration's policies making it easier to fire poor performers. A poll conducted by Government Executive showed Federal employees supported these initiatives by a more than 2-1 margin. And the FEVS shows that the proportion of Feds who approve of how their agency addresses poor performers rose every year of the Trump administration.

Industrial and organizational psychologists said OPM designed the FEVS and career experts conduct it. It is the definitive measure of the views of the Federal workforce. It produces hard data used by academics and researchers. To ignore this data is to ignore the views of Federal workers.

Federal employees strongly approved of the Trump administration's workforce policies. These gains must be protected from the assaults of those who seek to return to a failed status quo and to reverse the gains Federal employees enjoyed under the Trump administration.

Thank you. I appreciate the opportunity to explain how the government's failure to effectively deal with poor performers frustrates Federal employees, how excessive removal restrictions undermine the original vision for the merit service, and the profound satisfaction Federal employees expressed with the Trump administration's management of their workplaces.

Mr. CONNOLLY. Thank you very much. Another pro right on time.

Finally, we are going to hear from Professor O'Connell. You're now recognized for five minutes.

**STATEMENT OF ANNE JOSEPH O'CONNELL, ADELBERT H.
SWEET PROFESSOR OF LAW, STANFORD LAW SCHOOL**

Ms. O'CONNELL. Thank you.

Chairman Connolly, Ranking Member Hice, and members of the subcommittee, thank you for this opportunity to participate in today's important hearing on revitalizing the Federal workforce.

In addition to my role at Stanford, I am a proud former Federal Government employee, having served, among other positions, as an honors program attorney at the Department of Justice. In addition, as a then-resident of Fairfax County, Chairman Connolly, I worked

many summers in high school and college for the U.S. Army at Ft. Belvoir's Research, Development, and Engineering Center.

Mr. CONNOLLY. God bless you.

Ms. O'CONNELL. The views I express in this testimony are my own. In the few minutes I have, I want to make four quick points.

Point one, agencies and their career employees play critical roles across the Federal Government. These agencies and their workers regulate and adjudicate and do so much more.

NASA landed a rover on Mars last week for the fifth time. At the State Department, career employees advise on foreign affairs, train diplomats, adjudicate visa applications. FDA and CDC scientists and many other career officials across different agencies have been on the battle lines in addressing COVID.

Point two, our agencies' career workers have been undermined through reorganizations with insufficient buy-in, constrained budgets and pay, government shutdowns, White House directives, and the lack of confirmed leaders of the Merit Systems Protection Board.

In the last administration, the Department of Agriculture sent most of its economic research surveys and its National Institute of Food and Agriculture to the Kansas City area. The Department of Interior moved much of the D.C. headquarters staff of the Bureau of Land Management from D.C. to Grand Junction, Colorado. Well, really the agency sent the positions away, but the people didn't follow. So, at the Agriculture entities, staff, despite a round of hiring last year, decreased by about a third since 2016. At the Bureau of Land Management, close to 90 percent of affected workers quit or found other jobs. Morale at those agriculture organizations plummeted.

Congress has also largely tamped down meaningful growth and agency budgets and employee pay, which has also affected employee morale. The 2011 Budget Control Act with its yearly limits on discretionary defense and non-defense spending through Fiscal Year 2021, which were enforced through sequestration, contributed to downsizing and the freezing of hiring in some entities. President Trump proposed such minor pay increases that Congress overruled his recommendations twice.

In addition, Congress and the White House have increasingly failed to keep the government open. In the most recent government shutdown, from December 22, 2018, to January 25, 2019, 380,000 Federal workers were furloughed. And over 400,000 essential workers had to work despite not being paid.

As already noted, President Trump issued many directives that undermine the career workforce in the Federal Government. And the MSPB, which adjudicates critical disciplinary actions against Federal workers and helps to protect whistleblowers, have been unable to function since 2017 when it lost its quorum.

Now, of course, these interventions have contributed to departures, the lower morale of agency workers, but their consequences go deeper. Governmental operations suffer, and there are effects outside the government as well. The CBO estimated that the last government shutdown resulted in a \$3 billion cut to GDP, and the Partnership for Public Services report on the shutdown detailed in

a variety of ways how the shutdown did lasting and sometimes irreparable harm.

Point three, despite these intentional or unintentional measures of undermining agency workers, the Federal workforce continues to serve the public in critical ways. And there's one way I want to flag that gets less attention. That senior career officials step in, sometimes for long periods of time, sometimes for shorter stints, to serve in acting roles in Senate-confirmed positions that are vacant. The Federal Vacancy Reform Act allows this to occur for certain senior career and political non-confirmed officials.

And we saw that both Presidents Trump and Biden used career agency workers at the start of their administrations for the highest agency jobs, including acting secretaries. We see career workers stepping in in lower level positions as well.

So, the General Counsel at the EPA, there have been 17 acting general counsels, 10 of them came from the career ranks, since 1983. We also see career officials in IG offices also plagued by vacancies, stepping in in critical acting roles. But we did see in the last administration how President Trump used the vacancies act to sidestep career officials in these acting roles and turn to political acting IGs at the State and Transportation Departments.

Finally, point four, there are many efforts, particularly by members of this subcommittee, on retaining and promoting career workers, encouraging younger workers to enter government service, using faster hiring authorities where possible and while maintaining merit principles, and helping to reform the vacancies act to promote expertise and not a workaround to the appointments process.

I look forward to your questions.

Mr. CONNOLLY. Thank you so much. And, Professor O'Connell, I believe your mother is my constituent. Give her my best.

The chair now recognizes the distinguished Congresswoman from the District of Columbia, Ms. Norton, for five minutes of questions.

Ms. NORTON. Thank you very much, Mr. Chairman. Can you hear me?

Mr. CONNOLLY. Loud and clear.

Ms. NORTON. I particularly want to thank you for this hearing on the impact, as you call it, of the failed pandemic response on the Federal workforce.

My questions are for Mr. Kelley of the AFGE. But I do want to know, Mr. Sherk's testimony in which he cited satisfaction of Federal workers. Yes, Federal workers are generally satisfied, but this administration did more to undermine that satisfaction than any administration in recent memory. They are satisfied with being Federal workers. They are certainly not satisfied with the ways they were treated during the Trump administration.

And, Mr. Kelley, I want to begin by going on record to thank Federal employees for the way they have served the public during this pandemic. Federal employees have continued to offer very critical services to—that, frankly, we needed to keep the country running. Some have served on the front line, and some, of course, have been teleworking, like Members of Congress.

Now, the previous administration did not offer clear guidance on COVID-19. As a result, thousands of Federal employees lost their lives. Yet we do have—we don't have a central count of how many

lost their lives, but, fortunately, many individual agencies have publicly reported their infections. And I want to indicate what that was for at least some of those that kept these records on their own.

The Defense Department, with 750,000 civilian employees, had 184 deaths. The Veterans Department had 17,000 cases in its 38,000 employees and 128 deaths. The U.S. Postal Service, who we must remember because our elections themselves depended on them, 14,000 employees contracted COVID, nearly 640,000 employees, and 119 deaths.

Now, last month, the administration issued new guidance to the heads of Federal agencies that implements a new executive order requiring masks and physical distancing—you would think that that would be achieved, but he had to issue an executive order—on Federal land by Federal employees and contractors.

So, Mr. Kelley, this is my question to you. If you look at this guidance, in addition to this guidance, do you have any recommendations for the Biden administration to ensure that the Federal Government adequately protects its workforce? Mr. Kelley.

Mr. CONNOLLY. Mr. Kelley, if you will unmute.

Mr. KELLEY. Can you hear me now?

Mr. CONNOLLY. Yes, we can.

Mr. KELLEY. I think I understood your question. You were a little spotty, but it sounds like—but I think that I would first—I think that—

Mr. CONNOLLY. Mr. Kelley, one second.

Mr. KELLEY. [Inaudible.]

Mr. CONNOLLY. I want to add 10 seconds, please, to Mr. Kelley's response. Thank you.

Mr. Kelley, you may proceed, sorry.

Mr. KELLEY. OK. I think I heard the question correctly. It was a little spotty at times, but I believe that the question is, do I believe that the Federal Government adequately protected its workforce. OK? And the answer to that is this. You know, the guidance that was given was so vague, most of the agencies could not understand it. And so, therefore, one agency would say one thing, another would say another.

As it relates to the deaths of, you know—you know, and I had reports that so many agencies were telling the management officials not to even report certain infections and certain deaths. So, the accuracy of the death toll and the infection rates is absolutely unclear. No one knows what they really are. And it's because there was an underlying effort, you know, to keep that information away from the employees and from, I just say, even Congress.

Mr. CONNOLLY. Thank you.

Ms. Norton, are you done? You've got 20 seconds.

Ms. NORTON. [Inaudible] Sent from Mayor Muriel Bowser of Washington, DC, Governor Lawrence Hogan of Maryland, and Governor Ralph Northam of Virginia to the Acting Secretary of U.S. Department of Health and Human Services, and to FEMA, requesting that the Federal Government provide COVID-19 vaccinations to Federal employees. We must ensure that Federal employees are among those that get some priority in a vaccination.

Thank you very much, Mr. Chairman.

Mr. CONNOLLY. Thank you, Ms. Norton. And I was pleased to join that effort with you.

Mr. Hice, the ranking member, is recognized for his five minutes of questions.

Mr. HICE. Thank you very much, Mr. Chairman.

Mr. Sherk, let me just come directly to you. The OPM Federal Employee Viewpoint Survey that I referenced earlier has consistently showed that Federal employees——

Mr. CONNOLLY. If the gentleman would suspend one second. Could we ask everybody please to mute so that the gentleman can be heard.

Mr. HICE. Thank you, Mr. Chairman. Can I have my 15 seconds back just because it was noisy, and I appreciate you taking care of that.

Mr. Sherk, I'd like to direct my questions to you. The OPM's Federal Employee Viewpoint Survey consistently shows that Federal employees were happier under President Trump than they were under the Obama-Biden administration. Is that fair to say?

Mr. SHERK. That's entirely correct, sir. Last year, in 2020, Federal employee job satisfaction rose to 71.6 percent. That is the highest that the Federal Employee Viewpoint Survey has ever recorded. It goes back to 2002. It used to be called the Federal Human Capital Survey. You've never had that high proportion of Federal employees saying they're satisfied with their jobs.

The FEVS measures 71 different metrics of, basically, work in the Federal workforce. And across 64 of those 71 metrics, these scores improved. There was 7 where they were flat. On no metric did they decline. And on over 40 of those scores, you saw Federal employees recording all-time record high satisfaction under the Trump administration. Simply put, Federal employees liked what we were doing.

Mr. HICE. Thank you, Mr. Sherk. That's amazing. It's really stunning information.

Quite frankly, if there was a war on Federal workers, as is the accusation against President Trump, then evidently someone forgot to mention that to the Federal workers. Because in every category, they gave overwhelming approval with the direction it's going. And why should that be a surprise? They are—many of them having to carry the load of poor performers.

Now, you were heavily involved in drafting President Trump's executive orders on the Federal workplace. Can you summarize the top reasons that those orders were needed, primarily for the purpose of assuring a merit-based Federal workforce system?

Mr. SHERK. Thank you. Yes, the reason—and, again, I can't divulge internal deliberations, but I can discuss my views on why I think the orders were a good idea. And simply put, Federal employees are frustrated with the lack of accountability for poor performers. Survey after survey shows this is one of the most negative scores that Federal employees give their agencies on the Federal Viewpoint Survey, is it doesn't do a good job of addressing poor performers. And right now, it's a third. That's a record all-time high. But only a third of Federal employees saying that is pretty miserable. And it's a huge burden on the Federal workforce.

I am a former Federal employee. I live in Northern Virginia. I'm now one of Chairman Connolly's constituents. A number of my friends and neighbors are Federal employees. And, yes, it's not just the survey data. Anecdotally, you talk to Federal employees, they all know that guy Bob who sits in the office and plays solitaire all day. And they're sick of having to pick up the work that that person's not doing.

New Government Executive magazine did a survey, a scientific survey of Federal employees. I don't know how many Americans they had to survey to get the, you know, two percent who are Federal workers and have a scientifically valid response, but they did it. And they found 2-to-1 support for the Trump administration initiatives making it easier to fire poor performers.

Simply put, if you've got a poor performer in your work unit, it's a drag on morale, it's a drag on the agency's sufficiency, and a lot of Federal employees themselves are really frustrated with it. And we were trying to respond to the voice of the Federal workers and say, Look, you deserve better.

Mr. HICE. Thank you. Now, I've only got about a minute and a half left here, and I've got at least a couple more questions, so if you could be concise here. I want to zero in on President Trump's F schedule, the Schedule F. How significant is that when, particularly in reference to—without these reforms, how easy is it to thwart the implementation of a President's voter-approved agenda?

Mr. SHERK. There are some civil servants who had a tremendous amount of power and ability to either, you know, facilitate the implementation of the President's agenda or to block it. There's only about 4,000 career political appointees in the entire executive branch that add up to 2.1 million. There are some senior civil servants who were given a lot of authority in terms of the drafting and, you know, the writing regulations. And if those guys don't like a policy, they have a considerable amount of ability to stop it.

Now, when it comes to the Senior Executive Service, we already have a fairly high degree of performance accountability, that if you get one negative performance rating, you can be fired. And the SES members can be reassigned more or less at will. But that's not true for the General Schedule employees.

So, what Schedule F was doing is for that very small portion of Federal employees who exercised this pretty substantial policy influence in power, treating them fairly similarly to the way the Senior Executive Service is currently treated.

Mr. HICE. All right. My time has expired. I have one other question that I wanted to get out, but we'll get that to you. If you would answer us in due time.

Thank you, Mr. Chairman.

Mr. CONNOLLY. Thank you, Mr. Hice.

Mr. Davis is recognized for five minutes.

Mr. DAVIS. Thank you very much, Mr. Chairman. And I want to thank you for calling this very timely hearing. I also want to thank all of the witnesses for coming to share their expertise and thoughts with us.

It's a very important hearing, because as I was recollecting a little bit and reading, I noticed that in the Federal Service Labor Management Relations statute, Congress declared that collective

bargaining is in the public interest, contributing to effective and efficient government operation. Yet the Trump administration has repeatedly undermined collective bargaining rights, weakening them unilaterally through executive action.

For example, a series of executive orders in 2018 sought to remove unions from the workplace, allowing managers to dictate contract terms without independent review, impose arbitrary deadlines for the collective bargaining process, and drastically limit the ability of unions to represent employees in discipline and other matters.

Ms. Lachance, several years ago, I had the good fortune to serve as a member of this subcommittee, and I am delighted to be back on it under the leadership of our chairman.

Let me ask you, as a professional in personnel management business—I had a lot of wonderful relations and interactions with OPM back in those days—how important is it for agencies to engage in meaningful, collective bargaining with unions? What does it really do? What—

Ms. O'CONNELL. Well, Congressman, thank you very much for that question. There should be a very strong commitment to working with the unions as they represent the rank-and-file employees across governments, across very important programs.

During the Clinton administration, I chaired the National Partnership Counsel, where we took a more cooperative and open approach to union relations, smoothed things over quite a bit. It does not have to be an adversarial relationship. This is about what our employees need to get the work done and get the work done efficiently. And I think you'll find that if you sit down with any of the leaders of the unions across the government, that will be their concern. Of course, they're going to look out for the people they represent, but that benefits everybody. And having a good solid relationship with your union, with your bargaining unit at OPM, I worked very closely with local 32, it gave me an insight into what was getting in the way of our members and how—our work and helped me solve problems.

Mr. DAVIS. Thank you. Thank you very much.

Mr. Kelley, if I could ask you, how have collective bargaining rights and labor management relations been affected by the Trump administration and his executive order?

Mr. CONNOLLY. Mr. Kelley, if you can unmute.

Mr. KELLEY. OK. Can you hear me now?

Mr. DAVIS. Yes.

Mr. CONNOLLY. Yes.

Mr. KELLEY. OK. Thanks for that question. Let me just say that, first of all, these executive orders, you know, has created such a hindrance for the labor and management to work cohesively to try to resolve issues at the lowest level. I mean, as you all know. You know, it actually, you know, hindered us, didn't give us opportunity to speak with the management about issues, even then with the pandemic, this executive order has been more or less of a wink to the management officials saying, look, do not talk with the employer, do not talk with the union, you know, and whatever issues that they bring up, just ignore it.

And prior to these executive orders, you know, we didn't have that. We had cohesiveness. We had working together. We had, you know, coming to the table and talking about issues, resolving them at the lowest level that kept us out of litigation. So, it hindered us in so many ways. That's just one.

Mr. DAVIS. Thank you very much, Mr. Chairman. And I yield back.

Mr. CONNOLLY. Thank you, Mr. Davis.

The gentleman from Pennsylvania, Mr. Keller, is recognized for five minutes.

Mr. KELLER. Thank you, Mr. Chairman.

President Trump's executive order that was issued last year that created a new classification within the Federal workforce called Schedule F for employees serving in positions considered confidential, and they were confidential with policy determining, policy-making, or policy advocating authority that are not subject to the change as a result of Presidential transitions. This order made it easier to hold accountable, remove employees, or remove employees who refuse to help the new administration or a President of any party implement policies that were mandated by the American voters.

That's why I introduced the Federal Workforce Accountability and Modernization Act, which would codify the Schedule F classification and hold accountable this—and codified into law as written in President Trump's executive order.

So, when we look at this, government agencies are currently forced to comply with a large number of lengthy and complicated procedures when it comes to taking favorable or adverse actions against employees. This puts high performers at a disadvantage and allows poor performers to easily remain in their position with no consequence.

A 2016 Merit Principle Survey revealed that less than a quarter of Federal employees believe their agency addresses poor performers effectively. Additionally, the Government Accountability Office have reported that it takes six months to a year to remove Federal employees for poor performance. It's clear that Federal employees and American taxpayers deserve a more modern, efficient, and accountable government.

So, I have a question for Mr. Sherk. And, Mr. Sherk, thank you for being here today. And in what way does rescinding the Schedule F order improve accountability in the Federal workforce?

Mr. SHERK. It doesn't. It actually moves in the opposite direction. The reality is that the founders of the merit service were very concerned that you had to have accountable employees who could be removed, and they were concerned that, look, if you put in a whole bunch of removal protections and you've got to have a trial at law before you can fire someone, then you're going to have a lot of incompetence and negligence that is going to be sealed up. And they wanted none of that. They wanted a merit service.

Any screening system—yes, the reforms were based on hiring, but they know that any screening system is going to let some bad apples through, and they believed it was very important to be able to remove that.

Merit System Principle No. 6 says that poor performers should be separated from the Federal service. And what happens right now with the extensive appeal rights Federal employees have, it almost never happens. It takes about a quarter of a Federal manager's time for a year to fire a Federal employee.

So, you can do it, but there's not that many employees who are so awful that you're going to spend 25 percent of your time for a year to fire, and the guy just sits in his office and plays solitaire two hours a day. That's the cost. But Federal employees hate the system. Again, the surveys show that by a 2-to-1 margin, they approved of the President's efforts to make it easier to fire poor performers.

Schedule F was an attempt to return the civil service to its original vision, that of apolitical hiring, but where necessary and where there's bad performance, removing people on the basis of their merit.

Mr. KELLER. Thank you for that. Before President Trump's actions related to Schedule F—and you talked a little bit about how it was hard to deal with employees that weren't carrying out the agenda and the policy mandated by the American voters. Just for a matter of scope, the Schedule F, that's a very small percentage of the workforce, isn't it?

Mr. SHERK. That's correct. My estimates are that Schedule F would have applied to between 1 and 3 percent of the Federal workforce. A very, very small fraction. There was another executive order in 2018 that said let's streamline, make more efficient the entire removal process, get rid of some unnecessary impediments that are making it take much longer than Congress ever intended. That would've applied to basically everyone, but Schedule F was a small, small fraction.

Mr. KELLER. So, we're just talking about a small portion of employees that are tasked with policymaking decisions, correct?

Mr. SHERK. That's right. Individuals—you can think about regulation writers in agencies, the folks who do the yeoman's work of drafting the regulations. You can think about people who—Congress gives agencies different functions, gives discretion by law, anyone tasked with discretion to decide how the agency will exercise that power. Some of these folks are in the Senior Executive Service, but some are in the General Schedule, and the idea is we need accountability if you're wielding this incredible power Congress has delegated.

Mr. KELLER. And with President Biden having rescinded the order and the ongoing efforts to ensure no President may take similar action ever again, how helpful is this for the current and future administrations to deliver results for the American people?

Mr. CONNOLLY. The gentleman's time has expired.

Mr. Sherk, you may briefly respond.

Mr. SHERK. If you've got poor performers in your workplace, it's going to make it harder for the diligent Federal employees to get the job done. So, I think this is going to hurt most Federal employees.

Mr. KELLER. Thank you. And I yield back.

Mr. CONNOLLY. Thank you very much.

If I can just ask a factual question you may know the answer to, Ms. Lachance, before I call on Mr. Sarbanes. Mr. Sherk just indicated that Schedule F only applied, despite this apparent broad problem of firing people, it only applied to about three percent of the workforce, meaning that it actually doesn't address the problem he has ostensibly identified, but it disproportionately affected one agency, OMB. So, it might be three percent total, but it's like 87 percent of OMB. Is that accurate?

Ms. LACHANCE. That was, as far as I know, the one agency that moved very, very quickly to identify the employees that would be moved to Schedule F, and I believe they identified some 80 percent of their workforce.

Mr. CONNOLLY. Thank you.

Ms. LACHANCE. And so how somehow or other this can be 1 to 3 percent is questionable in my mind. Also, the example of—if I could, the example of these are regulation writers and people with a lot of authority, regulations don't come from one person in the Federal Government—

Mr. CONNOLLY. I'm going to come back to that on my own time, but I just wanted to clarify for the record that number.

Mr. Sarbanes, the gentleman from Maryland, is recognized for five minutes.

Mr. SARBANES. Thanks very much, Mr. Chairman. Appreciate the opportunity.

Wanted to talk about telework, and I want to thank the chairman, Chairman Connolly, for all his work on telework over the last few years. It's been a passion of mine as well in terms of trying to make that option more available for the Federal workforce. And over the last four years, the Trump administration has really waged an assault on telework. In fact, in one case, a secretary, I guess, had a temper tantrum and reportedly cut the entire agency's telework program because the secretary couldn't talk in person to the individual that he was seeking. But we know, during the pandemic, that telework has been absolutely critical to ensure continuity of government operations to protect the health and safety of workers. And during the pandemic, 75 percent of the Federal workforce has been in a telework status of one kind or another. Nearly half of these employees are teleworking for the first time.

Mr. Kelley, could you give me a sense of what you're hearing from your members about the importance of being able to perform their jobs remotely during the pandemic?

Mr. KELLEY. Can you hear me now?

Mr. SARBANES. Yes.

Mr. KELLEY. Thank you for that question because I think it is a very important question to ask. And, you know, I will say this. Our members are very engaged and energized for the fact that they have opportunity to telework, because what we have seen is that productivity has grown up tremendously. OK. They're getting opportunities to work during the time that they would spend commuting to work. They're given an opportunity to, you know, perform their duties, you know, during the time that they would take lunch break and these types of things. It has helped, you know, the family situation. It's helped all around.

So, I could just say for a fact that the members that I represent are very excited about telework. It has proven that it is benefit to the agency as well as, you know, the employee.

Mr. SARBANES. Thank you very much. Let me state some statistics. Seventy-nine percent of the Federal workforce stated that telework during the pandemic has made them more committed to their agency's mission, 76 percent say they are more motivated to meet expectations, and 70 percent say telework has given them more trust in their colleagues.

In addition, as you just indicated, many agencies are reporting increases in productivity. For example, the Department of Transportation surveyed its managers, and 55 percent said the work units were more effective during the pandemic than before the pandemic.

Ms. Lachance, this uptake around telework suggests that on the other side of the pandemic, we may want to relook at the opportunity for telework to be used and enhanced. Can you talk about how telework could begin to represent a new normal for the Federal workforce going forward?

Ms. LACHANCE. Thank you so much. I do think telework is a critical component of attracting and retaining the kind of talent that we need in the Federal Government and, frankly, across all employers. The pandemic has made it very clear that many, many jobs can be performed at home, and it's helped keep people safe. And so I believe it's going to have to be part of—

Mr. CONNOLLY. Excuse me. If I could ask people to mute. It's hard to hear the gentlelady. Thank you.

Ms. LACHANCE. I believe it has to be part of a strategy to attract and retain the talent that we need going forward. We have shown it can be done. Supervisors who are reluctant can be trained, coached, whatever it takes, to know how to supervise and work with people that they don't see every day, and I believe it's the way of the future. And now we have experience, we have information that we can apply across the board going forward.

Mr. SARBANES. Thank you very much. You've touched on the importance of it in terms of recruiting and retaining talent. That's going to be critical, particularly as we try to build back up these agencies that have been hollowed out by the Trump administration. That's just a reality. So, telework can help us there. It's something that's here to stay. The benefits of it in terms of cost savings, productivity, stress reduction, worklife all speak for themselves.

Look forward to working with you, Mr. Chairman, to advance telework as we move forward. And I yield back.

Mr. CONNOLLY. Thank you so much, Mr. Sarbanes, and I look forward to working with you as well.

Mr. HICE. Mr. Chairman?

Mr. CONNOLLY. Yes.

Mr. HICE. Just real quickly, I wanted to ask if Mr. Sherk could respond to the question that you gave to Ms. Lachance a while ago, if he could—about OMB, if he could have a—

Mr. CONNOLLY. About OMB?

Mr. HICE. Yes, sir.

Mr. CONNOLLY. Very briefly, Mr. Sherk. And the question was purely a factual one, not an opinion.

Mr. SHERK. I'll just point out, you know, public reports say, did indicate, yes, that a large portion of OMB's workforce was proposed for Schedule F. However, OMB is a very unique agency in that pretty much all that they do is policy. And so if you've got an executive order that's, you know, basically aimed at folks who have a heavy role in policy, a lot of the OMB career staff have a greater influence on policy than Schedule C political appointees in the agency. They're very much the exception and, government-wide, my estimate was between 1 and 3 percent of the total Federal workforce.

Mr. CONNOLLY. Thank you.

Mr. HICE. Thank you, Mr. Chairman.

Mr. CONNOLLY. The gentleman from Arizona, Mr. Biggs, is recognized for five minutes. And then I'm going to interrupt the order after your questioning is finished and recognize the distinguished majority leader who has joined us, Mr. Hoyer.

Mr. BIGGS. Thank you, Mr. Chairman. I very much appreciate today's discussion because our Federal workforce is in dire need of reform.

In an ideal world, our government would be smaller, more efficient across the board. And as a believer in cooperative federalism, it greatly alarms me that Washington, DC. bureaucrats have enormous authority over so many issues that can be much better handled in state capitals. But, unfortunately, we won't be able to simply slash the size of the Washington bureaucracy any time soon, so we need to continue to think of ways to, at the very least, improve the apparatus we have already created.

In today's discussion, there's been a lot of criticism of Schedule F. In particular, there's an assumption among many members across the aisle that Schedule F was merely a nefarious move on the part of the Trump administration to ensure political loyalty, even though we have no proof that this was the intention.

Ultimately, arguing that Schedule F is simply political conveniently allows us to evade a more sensitive but nevertheless critically important issue that many career Federal bureaucrats are simply not very good or not very committed workers. I don't disparage everyone in the Federal workforce or even most, because I know there are plenty of career bureaucrats who take their oaths seriously and committed to public service, and do a really, really good job. But I've also heard way too many horror stories since coming to Washington about career bureaucrats who do not perform well. And, even worse, it is extraordinarily difficult to fire poorly performing or foot-dragging bureaucrats.

In fact, there's a bureaucracy within the bureaucracy dedicated solely to this H.R. headache, and many managers who wish to take action against an underperforming Federal worker are so worried about being sued that they pay out of pocket for liability insurance. Collective bargaining is a big part of the problem, and this trend has unofficially driven up the compensation of Federal workers over the decades.

Today, Federal workers earn considerably more than comparable private sector workers with similar skills, especially when non-salary benefits like paid leave, retirement compensation, et cetera, are factored in. When I hear about an often overpaid and underper-

forming workforce being funded by the American taxpayers, my natural inclination is to cut wages and positions, but a sledgehammer approach such as that would make bureaucracy a less desirable career option for talented candidates, as well as punishing exemplary civil servants already in the system.

And so I like many of the reforms you proposed, Mr. Sherk. Adding more performance-based metrics into Federal promotion and compensation decisions would certainly be an improvement. If you could summarize in a few top points, how would Federal employee unions undermine the merit basis of the Federal workforce system, Mr. Sherk?

Mr. SHERK. Thank you. I'd say there's two big effects they have. One is, of course, they try and make it harder to fire Federal employees. The Federal sector unions actually don't represent that many Federal workers outside the post office, which does get to negotiate pay and benefits. The unions represent about 20 percent of the Federal workforce. And when you think about it, General Schedule sets pay, Federal workforce's right to work, why do you join a union? What's the value of proposition? What's the sales pitch?

Some folks are sort of, you know, committed philosophically to the labor movement, but for most Federal employees, the sales pitch the unions make is, basically, we will protect your job. We're an insurance policy if your boss ever tries to fire you or give you a negative performance evaluation. And that's why they react with such horror every time anyone proposes taking actions against poor performers. That undermines their value of proposition to their members. Their sales pitch is, we'll make sure they can't hold you accountable. And so the union grievance process makes it very, very difficult for agencies to separate poor performers.

If an agency jumps through all the hoops and they wind up before the Merit Systems Protection Board for firing someone, if the manager spends that 25 percent of their time for a year, they prevail about 90 percent of the time. But if you bring that same individual before a union grievance arbitrator, about 60 percent of the time, the grievance arbitrator orders the employee reinstated. So, it makes it very hard to hold the agencies accountable.

Also, because the unions can grieve over performance ratings, it crops the entire performance evaluation process. If you try and give a poor performer an honest performance rating and give them less than fully successful, well, you know you're going to be in just a world of hurt and spending a ton of time grieving this with the union. And so what do the managers do? They give everyone at least a fully successful.

Congress intended the Civil Service Reform Act to meaningfully tie pay and performance to the Federal workforce, but that hasn't happened because the performance appraisal system has been corrupted. It's just too much work and too much effort for a manager to give someone an honest rating, so they give everyone flying colors.

Mr. BIGGS. Mr. Sherk, OPM reported last October that from 2016 to 2019, the number of hours Federal employees spent on union activities actually declined almost 30 percent. Isn't that a good thing? And why—go ahead.

Mr. SHERK. I think it's an excellent thing. It shows that the Trump administration was serious about cracking down on waste in government. We basically said, look, some agencies use union time more effectively than others. Agencies adopt the best practices of agencies, like the Department of Defense, Interior, State Department, be as efficient as they are, and we saw savings to the effect of tens of millions of dollars.

Mr. CONNOLLY. The gentleman's time has expired. Thank you.

We now recognize the distinguished majority leader of the House, Mr. Hoyer.

Mr. HOYER. Thank you very much, Mr. Chairman. I'm glad to be with you, and I thank you for holding this hearing and that there are so many participating. I want to thank Ranking Member Hice as well for allowing me to participate in today's hearing on revitalizing the Federal workforce.

As you may be aware, Mr. Chairman, like you, I proudly represent a very large number of Federal employees in Maryland's Fifth congressional District. Obviously, therefore, I pay attention to those issues and spend a lot of time looking at what's right and what's wrong, and I'd like to speak to some of those items today.

Mr. Kelley, who is here to testify today on behalf of the American Federation of Government Employees, not only represents many of them, but is a constituent of mine. So, Constituent Kelley, I welcome you to this hearing. I want to thank you for participating in this hearing, Mr. Kelley, along with Ms. Lachance and Dr. O'Connell, as well as others.

Mr. Chairman, too often, as you and I both know, Federal employees have been treated as though they're expendable, even though they are indispensable to the operations of our Federal service. That has been particularly true over the last four years. Perhaps the most vivid example of that was—and, of course, I disagree with the previous speaker—the Schedule F categorization that jeopardized the nonpartisan civil service and sought to intimidate Federal workers. It was to turn a merit system into a political system.

Thankfully, as all of you know, President Biden reversed that misguided action, protecting our Nation's civil service as well as our civil servants.

That wasn't the only threat, of course, Mr. Chairman, to our non-partisan civil service over the past four years. As many of you know, I've been working with Chairwoman Maloney—

Mr. CONNOLLY. Would the gentleman yield just for one second?

Mr. HOYER. Sure.

Mr. CONNOLLY. I share your view, thank God, that President Biden has overturned the executive order, but I hope to engage you, Mr. Hoyer, in codifying the legislative role. If new schedules are to be created that cannot be done unilaterally by the chief executive, they must, moving forward, require legislative approbation, and I have legislation to do that and I would welcome your involvement in that issue.

Thank you for yielding.

Mr. HOYER. Chairman Connolly, thank you for your leadership on that. Obviously, if you have a system that allows the President unilaterally to change it and turn civil servants into political ap-

pointees who serve at the will of the President, then you have undermined the whole point of having a merit system civil service. And, therefore, I look forward to working closely with you to making sure that the legislative body that makes policy, and that's employee policy as well, should be the final arbiter of whether or not we change and modify that system. So, thank you for your leadership on that effort.

Mr. Chairman, as many of you know, I've been working with Chairwoman Maloney, as well as yourself and Representative Lynch, to pass legislation to protect inspectors general across the executive branch from being fired as a result of political retaliation. We've seen that frequently in the last four years, unfortunately, and it has undermined the integrity and the role of the inspector generals.

Independent inspector generals are a critical component, Mr. Chairman, as you well know, in ensuring that the Federal workforce is able to serve the American people in a nonpartisan professional manner. And a nonpartisan professional civil service is precisely what the 1881 Civil Service Reform Act and the 1978 Civil Service Reform Act intended it to be. From pay freezes and benefit cuts to shut downs and even denigrating comments from political leaders, our Nation's Federal leaders, our Nation's Federal employees have continued to face difficult conditions as they perform the jobs serving the American people.

One of the issues, Mr. Chairman, that I've been working on for a long time, as you know, and working with you, is promoting pay parity for civilian Federal employees. Now, the previous speaker indicated that the Federal employees were largely overpaid. That is simply not a fact and very, frankly, through four or five administrations, Republican and Democratic administrations, I've said if you don't like the Pay Comparability Act, change it. Show us a better way to determine how we can pay Federal employees for comparable work, comparable skills, comparable qualifications with the private sector. Very, frankly, we don't do that.

If we wish to recruit and retain the best and brightest to serve in the Federal workforce, we must ensure that pay and benefits are competitive with the private sector. That is not the case at this point in time.

Right now, the most recent report on pay comparability from the Federal Salary Council issued in May 2020—that's not when we were in charge, but when the Trump administration was in charge—showed that Federal employees earned, on average, 26.7 percent less—less—less than their counterparts in the private sector. That is abysmal, and if we want to remain competitive with the rest of the world, if we want to have the best civil service in the world, we need to change that.

One of the ways to correct this is to set Federal civilian pay increases at parity with pay increases for our military. Frankly, Mr. Chairman, you and I know we did that for many years, but, recently, that has been the exception, not the rule.

At the same time, we need to focus on finding ways to bring competitive retirement and healthcare benefits in line with the best private sector plans. Now very frankly, in terms of retirement and healthcare, we are competitive, but we must make sure that that

advantage does not erode, lest we are less competitive with the private sector in recruiting and retaining the kind of people we need to serve the American people and to run complex, complicated, difficult enterprises.

I'm pleased, Mr. Chairman, that we're able to extend 12 weeks of paid parental leave for Federal employees last year as do so many folks in the private sector, but we need to finish the job by extending that to full family and medical leave. Our Federal employees work hard, contrary to public perception and political rhetoric, and they deserve the pay and benefits commensurate with their talent, education, experience, technical skills, and contributions. And we need to make certain that we're not driving talented employees away by failing to compete with the private sector.

Again, let me emphasize, Mr. Chairman, I've challenged Democratic and Republican administrations, if you don't like how the pay council comes to its conclusion, then send us a new system, send us another way to determine the relationship between the private and public sector pay. And very frankly, none of them have done that.

I know that our Federal workers cherish the opportunity to serve their country and want to stay with their agencies, but many will leave, Mr. Chairman, because they find more lucrative opportunities outside of government. And while there is a certain kind of security working for the Federal Government, which everybody points to, the too frequent threat of shutdown and pay interruptions is extraordinarily inefficient, costly, and traumatizing to our employees.

So, one thing we need to do, Mr. Chairman, is to make sure that we stop this silly business of failing to do our duty and funding government on time, so that we do not confront these false threats of shutting down the government of the United States. It makes no sense, it's irresponsible, and we ought to stop it.

I hope this subcommittee will continue to explore ways to address the challenges and promote pay and benefit policies that attract and retain the best Federal workforce possible.

Now, Mr. Chairman, in closing, let me refer to something that Ms. Lachance and I think John Sarbanes—

Mr. CONNOLLY. If I could address the distinguished majority leader. If he could do it quickly, we would appreciate it, because we've got a long list of other people to be recognized.

Mr. HOYER. Thank you very much, Mr. Chairman.

I would just reference on the telework issue, I worked with Frank Wolf from your state, Republican, for many, many years in the eighties on teleworking, which I think is efficient. And what I was going to say is, what COVID-19 has taught us, there is a way not to be in physical place, but to virtually do one's job, do it efficiently and effectively. And I think you're going to see a lot more than that in the private sector and in the public sector.

Thank you, Mr. Chairman.

Mr. CONNOLLY. Thank you, Mr. Hoyer. And thank you for your impassioned advocacy and protection of Federal employees and always infusing their work with dignity and respect. Thank you for your leadership. We look forward to working with you on a package of good government initiatives coming out of our subcommittee.

Mr. HOYER. Thank you, Mr. Chairman.

Mr. CONNOLLY. Thank you, Mr. Hoyer.

The gentlelady from New Mexico, Ms. Herrell, is recognized for five minutes.

Ms. HERRELL. Thank you, Mr. Chair. And I'm glad we're holding this important hearing about our Federal workforce, and we must be serious about confronting the issues. I'm glad that I have an opportunity to ask a few questions to Mr. James Sherk.

I wanted to ask him if he could discuss in more detail meaningful government workforce reform. What does that look like? Also, can you discuss what the Trump administration compared to the Biden administration should keep and why?

Mr. SHERK. Sorry. Could you clarify the last question there?

Ms. HERRELL. Did you hear the question?

Mr. SHERK. No, it didn't quite come through.

Ms. HERRELL. OK. I'm just asking you, can you discuss what you think meaningful government workforce reform would look like? And also, can you discuss what from the Trump administration versus the Biden administration should be kept and why?

Mr. SHERK. All right. I think you've got a few big problems in the Federal workforce. The biggest, which we've spent a lot of time today discussing, is just the complete failure of the performance management system. Federal employees are frustrated. The FEVS scores show that again and again and again that this is either the single biggest pain point or one of the biggest pain points in the Federal workforce, that it's simply too hard to remove a bad employee. And not just that, you also don't have a good system in place for recognizing good employees.

There is Civil Service Reform Act, the text of the statute talks a lot of great things about recognizing or rewarding performance, but the entire performance evaluation process is just being corrupted, because it's just such a litigious nightmare for a Federal supervisor to actually give someone a negative grade that you only have a few thousand employees each year at most getting anything less than a fully successful rating.

And so all the—Members of Congress of both parties have talked about, yes, we should, of course, pay the top performers more, we should connect bonuses and pay raises to performance, but if you can't meaningfully give someone a good performance evaluation, an honest performance evaluation, then all of that means nothing, because you're basing it on sand, so to speak.

So, I think those are two of the biggest problems, giving the agencies the ability to expeditiously remove poor performing employees and to reward those workers who are working hard and diligent.

I think it was something that the majority leader said and members of the committee have said that's entirely correct. While on average the Federal pay and benefits exceed those in the private sector, especially for the most skilled and the most productive employees, they do not. There are a number of occupations and positions where the Federal Government is not competitive and in positions and occupations where people are making 50 percent, again, more what they would in the private sector.

The government should be, rather than a one size fits all sort of General Schedule approach, things like with the Bush administration drive with the National Service Personnel System, connect pay banding, connecting pay to performance would make a lot of sense, and where the government's undercompensating, it should pay more, where it's overcompensating, it should pay less. You should have equity in parity between the Federal sector and the private sector.

With regards to what the government should be keeping versus should not be keeping from the Trump administration, look, I think all of the reforms were good reforms. I think Schedule F would've held those senior employees who do have a hand and control in making policy, held them more accountable for the awesome government power that they wield. I think the streamlining

[inaudible] executive order, whatever it was, making it a lot easier for agencies to take appropriate and warranted personnel actions against employees. I think it made just a lot of sense to renegotiate the collective bargaining agreements to get a better deal for the American people.

There were some lousy contracts out there with provisions that were not helping the agencies. To date, one example, the Department of Veterans Affairs, the union contract required them to post vacancies for 15 calendar days. That's three weeks before hiring—15 business days. OPM recommends five calendar days.

So, this union contract was just unilaterally making it harder for Veterans Affairs to hire needed personnel and slow down the process. It made a lot of sense to revisit those contracts and negotiate better deals for the American people. And I think union time is just used very wastefully. There's not a lot of accountability for how its used and how its spent. Saying agencies adopt best practices, employees, you've got to spend the majority of your time working for the agency that's paying you so that your skills don't erode, all of these were good reforms.

We haven't talked much about the competency-based assessment, but the President was working hard to make sure we weren't overlooking employees for hiring into the Federal service simply because they don't have a college diploma, but instead require agencies to look at the skills that employees had. All of these were good reforms and I think they should have been kept.

Ms. HERRELL. Thank you.

And, quickly, your written testimony highlights the success stories in states that have reformed their civil service frameworks. Can you tell us more about those success stories?

Mr. SHERK. Very briefly—

Mr. CONNOLLY. Just one second, Mr. Sherk. The gentlelady's time has expired, but you may respond briefly.

Ms. HERRELL. Thank you, Mr. Chair.

Mr. SHERK. Very briefly, there've been a number of states, including Georgia, Arizona, Florida, Texas, Missouri, that have reformed their civil service systems to basically eliminate removal protections for all state government employees, and those states continue to have highly successful professional civil service systems that work well for their state residents.

Ms. HERRELL. Thank you.

I yield back, Mr. Chairman.

Mr. CONNOLLY. Thank you very much.

Let me see. Mr. Lynch. The gentleman from Massachusetts, Mr. Lynch, is recognized for five minutes.

Mr. LYNCH. Thank you, Mr. Chairman. Thanks to the ranking member as well for holding this hearing.

I want to make several points. First of all, we recently had an oversight hearing in this subcommittee where we brought in the Federal managers, Postal Service and several others, and we asked the management and the department heads if official time was a problem. Every one of them said it's not a problem. It's not a problem. It's not abused and it's not a problem. They had other issues that they had problems with, but that wasn't one of them.

Second, I would refer everyone to Government Executive magazine that about two months ago said, basically, on an analysis of Schedule F, hundreds of thousands of Federal employees would be included under Schedule F, based on the broad language of that change, of that executive order.

So, they're saying hundreds of thousands. Government Executive magazine knows a little bit about how our government works, and I tend to believe what they have asserted.

Third, we're forgetting here there's a gap in what my colleagues across the aisle are saying. They're saying they're going after bad performance. The problem is that Schedule F adopts a termination for no cause standard. So, whereas of now, people can be fired for cause, for nonperformance, Schedule F moves us to a standard where performance doesn't matter. You can fire a person for no cause, nothing at all.

I'm a former employment attorney, so I have dealt with this for a long time. And the standard that Schedule F applies is that we can terminate an employee for no reason at all. No reason at all. No cause. So, it doesn't get at the people who are not performing; it just allows the executive to fire a person for no reason at all. And that—that invites very subjective measurement of employee performance. It allows you to fire a person for no reason at all. It opens up the system to abuse because of political leanings. You never have to explain why you're firing a person, as long as it's not for a bad cause, as long as you're not firing a person because of their race or their gender, but you can fire them for no cause at all.

So, it puts the lie to the idea that we're just going after these nonperformers because under Schedule F, performance doesn't matter. You can fire them for no cause. That's the way this standard works in the private sector and that's how it would work in the public sector.

Ms. Lachance, I do want to ask you a question. So, we've had a situation in the previous—in the Trump administration where at times in DOD, we've had 24 out of the 60 top level managers, and these are Senate-confirmed positions, vacant, either vacant or temporary employees, people in an acting status. Ms. Lachance, what does that do to the efficacy, the efficiency of those departments when you have 40 percent of the civilian vacancies that are Senate confirmed are vacant, not filled, and then, like I say, 24 out of the

60 top level positions are filled by acting positions? What does that do to the morale and to the efficiency of those operations?

Ms. LACHANCE. Well, it's very hard to make progress under those circumstances, Congressman, and you're absolutely right to highlight those. People have a tendency in acting positions to be cautious, to hold back, to think twice, three times, four times, or it's the other extreme where they think they have nothing to lose, they're not accountable to anyone, they're not accountable to the Senate or this Oversight Committee.

So, the acting situation seems to play out at the extreme, and I think that brings us to situations where there are inefficiencies where people are wondering what to do. There's not clear direction, and the programs essentially stop. And if you have frequent changes, over time, that leadership, that continuity, that vision that a good, strong leader provides, who's been through a confirmation process, a nomination process, just is absent. And while you may get the basics done, you're not going to be able to operate at the highest possible levels that you'd like.

Mr. CONNOLLY. Thank you. The gentleman's time has expired.

Mr. LYNCH. Thank you. I yield back.

Mr. CONNOLLY. Thank you, Mr. Lynch.

The gentleman from Georgia, Mr. Clyde, is recognized for five minutes.

Mr. CLYDE. Thank you, Mr. Chairman.

I'm a Navy officer and a small business owner, and one of my first influencers in my Navy career was my fighter squadron's commanding officer, Commander Al Gorthy at the time. He had three words painted in 3-foot high letters in the hangar bay where our F-18 Strike Fighters were parked. Those three words were "performance, not excuses." And those words have stayed with me over these last 30 years.

So, my questions are for, individually for Ms. Lachance and Mr. Kelley and Professor O'Connell, in that order. Do you support a merit-based system for Federal employment? Just please answer yes or no.

Ms. LACHANCE. Yes.

Mr. CLYDE. You do? Thank you, Ms. Lachance.

Mr. Kelley?

Mr. CONNOLLY. Mr. Kelley, if you can unmute. Mr. Kelley?

Mr. CLYDE. Then how about Professor O'Connell?

Mr. CONNOLLY. Professor O'Connell?

Ms. O'CONNELL. Sure.

Mr. KELLEY. OK. I'm sorry. Can you hear me now?

Mr. CONNOLLY. All right. Yes, Mr. Kelley, go ahead.

Mr. CLYDE. Mr. Kelley, do you support a merit-based system of Federal employment?

Mr. KELLEY. Yes, I do. Can you hear me? Yes, I do.

Mr. CLYDE. Thank you. Thank you very much.

And, Professor O'Connell?

Ms. O'CONNELL. Yes, I do, for many positions. Of course—

Mr. CLYDE. Thank you. I appreciate that.

When it is difficult to deal with a poor performer, then it's unfair to other Federal employees who are doing a good job, and that's kind of the way I see it.

I yield back the balance of my time to Ranking Member Hice.
Mr. HICE. I thank the gentleman from Georgia.

Mr. Sherk, let me go back and ask you. You'd mentioned in your opening statement about removal protections. I was very intrigued by that and what specifically you mean by that. You refer to it as a means by which some of these poor performers actually are able to seal up incompetence and insubordination.

What are you referring to when you talk about the current scenario where, in essence, poor performers have removal protections?

Mr. SHERK. So, if an agency wants to remove an employee, they have to demonstrate that they have cause to remove them. And there's a burden of proof that they have to meet. There's two basic procedures that most removals happen under. One is Chapter 75 of the United States Code—or, sorry, Title 5 United States Code. The other is Chapter 43. And, basically, there's a process where they have to gather sufficient evidence to support the removal. That process can take many months, and then the employee then can appeal to the—well, they've got many appeals roads. One is the Merit System Protection Board. One is through a union grievance and arbitration. And another would be, in some cases, they can file an EEO complaint.

Now, 97 percent of EEO complaints are decided in favor of the agency. So, I think we all agree that discrimination is abhorrent, but many employees use the EEO complaints as an alternative form of civil service protection to basically put the manager on trial. And so the agency has to go through and litigate this, and it's a very time consuming, expensive process. It's about a quarter of a manager's time for a year to litigate from start to finish one of these removals.

Mr. HICE. OK. Thank you. I'd also like for you to have the opportunity to reply to Mr. Lynch when he was painting the picture of a no cause termination in Schedule F. There are, likewise, protections not to fire people for political reasons or things along those lines. Would you like to respond to what Chairman Lynch was—or Mr. Lynch was saying a while ago?

Mr. SHERK. Certainly, and thank you. He is partially correct and partially incorrect. He's correct in that you don't have the same agency has the burden of proof that they have to overcome and has to demonstrate by a preponderance of the evidence and so on and so forth. At the same time, the agencies are absolutely prohibited from terminating someone because of their race, their sex, their religion, or their political activities. That was in the executive order itself, and the order required the agencies to put together a system and agency rules to ensure that there were no terminations on the basis of politics or anything like that.

And so under Schedule F, employees would have had considerably greater removal protections than the Pendleton Act of 1883, which did not require these internal agency rules and procedures. This was something going back to the foundations of the civil service saying, yes, you're going to have discretion; yes, there's an element of subjectivity in someone's performance, so we're not going to put you on trial, but you're trying to go into politics and this is just not allowed.

And if you look at the FEVS survey, it shows that all-time record high agreement that there was no political coercion in the Federal workplace under the Trump administration.

Mr. HICE. Thank you very much.

Mr. Chairman, I appreciate it too, and I would like to have submitted to the record really what Mr. Sherk was just now referencing regarding the survey. Some of the arguments that you presented a while ago, good arguments, but it was a select group of agencies kind of like cherry picking to say that—and we all know that when you pick certain agencies, you can paint almost any picture.

I would like to submit to the record the report agency by agency. And there's a whole list of questions here, but two of them in particular, how satisfied are you with your job, every single agency, and how satisfied are you with the organization.

Mr. CONNOLLY. Without objection, it so ordered.

Mr. HICE. Thank you.

Mr. CONNOLLY. The gentleman from Maryland, Mr. Raskin, is recognized for five minutes.

Mr. RASKIN. Good afternoon, Mr. Chairman, and thank you for calling this very important hearing.

There are really two different philosophies of government that are on view around the world today, and one is that the government belongs to the leader of the government, the President, for his own self-enrichment and profit making and self-aggrandizement and the enrichment of his personal family and his friends in corporations. And you can be a very poor performer in terms of public effectiveness. As long as you're making money for yourself and enhancing your own private interests, then it's OK.

The other theory is the old-fashioned theory that government must be an instrument of the public interest and the common good, and you must be serving the people. And it should not be an interest of private self-enrichment.

Now, I'm delighted that we are moving in America from one model to the other. I'm surprised to hear about the fact that public employees have been thrilled with the leadership of the last President in the government, and I'm going to be very interested to read about that.

I mean, perhaps it's all of those workers who are filling out the forms who are the so-called poor performers who play solitaire, watch TV, and spend their day on social media fighting with people rather than doing their jobs that may explain those results, but I don't know. I've got an open mind as to what's going on there.

In any event, the happiness of the Federal workforce is not really the controlling metric of the effectiveness of the Federal workforce, which is really what we should care about. And as a Representative who has more than 70,000 Federal workers in my district, I've heard nothing but complaint about the way that the last administration undermined the Federal workforce at every turn, beginning with the longest government shutdown in American history, 35 days; massive furloughs accompanied with that, the imposition of a hiring freeze, which is a completely arbitrary random way of figuring out where to make cuts in the Federal workforce; pay freeze; authoritarian executive orders that accomplish union busting and

the nullification of collective bargaining agreements and on and on, all the way up to the incitement of a violent insurrection against the union, the Congress, and all of the Federal workers who were there to defend us.

But I want to go back to this question F. We know that President Trump tried to pull the plug on having a professional expert workforce with an executive order at the very end of his Presidency. And, Professor O'Connell, I wonder if you would briefly state what this executive order sought to do and why it is diametrically opposed to the principles of the civil service.

Ms. O'CONNELL. Yes, Representative. So, the executive order would have created a new line in the accepted service, a Schedule F, for employees involved in confidential policy determining, policy-making, or policy advocating rules. Many estimates are quite different than Mr. Sherk's of that it would've taken many more employees from the competitive service into this new step, would've stripped those employees of their civil service protections.

Of course, our civil rights legislation would still apply, but many of the protections that the civil servants now have, those would go, and this would have many detrimental effects.

Mr. RASKIN. OK. Thank you.

Ms. Lachance, let me ask you, is President Biden's executive order reversing President Trump's Schedule F executive order enough to repair the damage of what was done? Should we just stick with that executive order by President Biden?

Ms. LACHANCE. Thank you, Congressman. I think it was a great start, and it had to be done immediately. We had to send a signal right away to say that this sort of cherry picking of deciding who stays and who goes had to end and it had to end immediately. However, I do think that the Congress should take a very, very careful look at whether those decisions should be the purview of a single President, of either party, of any party.

Shouldn't this process be subjected to and be a part of the deliberations that occur in this body and in the Senate? And shouldn't we think about these things carefully, rather than doing something with the stroke of a pen, removing people's protections, and, in my view, actually undermining an evidence-based and data-based decisionmaking—

Mr. RASKIN. Thank you. I've got to cut you off because I have one more question for President Kelley. What can we do to restore the morale of the workforce after these serial assaults on it over the last several years?

Mr. CONNOLLY. The gentleman's time has expired. Mr. Kelley, you may respond briefly.

Mr. KELLEY. Well, first of all, you know, I will say that, you know, we have to concentrate on getting the morale of the workforce back up. We have to concentrate on pay, making sure that employees are paid adequately.

Now, you know, every corporation in America has figured this out, right? You know, if you want to attract and retain better talent, pay more and offer better benefits. The Federal Government is the only place where the idea is entertained that to attract better talent you are to offer less.

Mr. RASKIN. Thank you.

Mr. CONNOLLY. Thank you, Mr. Kelley. And thank you, Mr. Raskin.

The gentleman from Kentucky, Mr. Comer, is recognized for five minutes.

Mr. COMER. I want to thank the chairman and Ranking Member Hice for having this committee and having a hybrid committee.

My questions will be for Mr. Sherk. I know that several of my colleagues have quoted the OPM 2019 Federal Employee Viewpoint Survey, but I wanted to read four of the questions that had the lowest percentage of agreement. Of course, this survey was for our Federal employees. And one question was, pay raises depend on how well employees perform their jobs. Only 28 percent of Federal employees agreed to that.

The next question: In my work unit, steps are taken to deal with a poor performer who cannot or will not improve. Only 34 percent agreed with that.

Next, promotions in my work unit are based on merit. Only 39 percent of Federal employees agreed with that.

And last, in my work unit, differences in performance are recognized in a meaningful way. And, again, only 39 percent of Federal employees agree with that.

So, I think these questions raise a problem that we have in delivering a merit-based Federal workforce for the American taxpayer.

My question is, have the limitations on Federal manager's rights to remove or discipline poor performers contributed to these views that an overwhelming majority of Federal employees share?

Mr. SHERK. The short answer is yes, and decades of study back up that conclusion. Studies by the Merit Systems Protection Board itself, which demonstrates that most Federal employees just believe it's—or sorry, most Federal supervisors don't believe that it's worth the time and the effort to remove a poor performer. It might not succeed and most of them won't even try. We've seen that for decades.

If you want to rate people on performance and pay on performance and promote on performance, you need a system where managers can accurately rate people on performance, and if you got a poor performer, get rid of them. And that is not the system we have now, unfortunately.

Mr. COMER. Now, our friend in the last question—or Mr. Raskin's concluded that the morale was low because of President Trump. But before I came to Congress, I worked in state government. I was a state representative, and I was commissioner of agriculture, so I had a government agency with about 300 employees. And I would say those survey questions would have been pretty consistent with how state employees feel as well.

So, do you agree that these responses show we have a problem in delivering a truly merit-based system of Federal employment for the benefit of the American taxpayers or is it a problem with the personality of the last administration or the management of the last administration? In other words, has this been a problem for a long time or was this just a problem over the last four years?

Mr. SHERK. Well, if you go back and look at the FEVS survey results, Federal employees, in general, have been satisfied with the work writ large, but where they find the biggest pain point is the

lack of accountability for performance that they're not promoted, they don't get raises based on performance no matter how hard they work, and then they look at their fellow employees who are poor performers and they just stay there day after day. This is being a consistent pain point. You go back year over year, that question on does your work unit get rid of poor performers is always either the first or the second most negative response in all of FEVS. So, this has been a consistent problem going back a long time.

Overall, Federal employees like their jobs and think they're doing good work, but this really irritates them, and this is something the Trump administration was trying to address to respond to the voice of the Federal employees who want us to do better.

Mr. COMER. Well, I'll agree with everything you said. And there's nothing worse for a good government employee than to have to work beside a bad government employee, one that doesn't work, one that doesn't perform, one who is tardy. And there's really often-times no incentive for that good employee to continue doing good work above and beyond.

So, I appreciate the fact that we're having this hearing. I hope that we can move forward some day and agree on reforms that will not only benefit the morale of the Federal workforce, but also benefit the American taxpayers with creating a system where the best government employees can be rewarded accordingly and the ones that are poor performers can be terminated.

With that, Mr. Chairman, I yield back.

Mr. CONNOLLY. I thank the gentleman.

The gentlelady from California, Ms. Porter, is recognized for five minutes. Ms. Porter.

Ms. PORTER. Thank you.

Professor O'Connell, we've worked together in the past on my Accountability for Acting Officials Act that closes loopholes that allow the President to go around Congress to appoint unqualified acting agency heads, effectively leaving top positions vacant. And the effect of this is that many agencies were left without real leadership during President Trump's tenure and during the COVID-19 crisis. Other agencies were completely unable to function, like the Merit Systems Protection Board.

Can you tell me very, very briefly, what the Merit Systems Protection Board does and what is its purpose?

Ms. O'CONNELL. Sure, Congresswoman. The MSPB is an independent, quasi-judicial agency that was established in the Civil Service Reform Act of 1978 to protect Federal merit systems against partisan political practices and to ensure protection for Federal employees against abuses by agency management. So protecting people like whistleblowers.

Ms. PORTER. Great. And tell me, what has the Merit Systems Protection Board been up to the last few years?

Ms. O'CONNELL. Not much. It's been without a single board member for two years, a first for the agency, and it's lacked a quorum required for operations for roughly four years.

Ms. PORTER. So, the Board has no board members. Is that correct?

Ms. O'CONNELL. That's right. It's supposed to have five Senate-confirmed appointees, and it has zero.

Ms. PORTER. OK. I have a question, and I don't know if you know these things, but I think it's good for the committee to learn. Does the Merit Systems Protection Board have staff?

Ms. O'CONNELL. Yes, it does have staff.

Ms. PORTER. Do you know about how many?

Ms. O'CONNELL. I do not know how many staff it has, but I know that it just issued a report about direct hiring authorities.

Ms. PORTER. OK. It has 235 staff members.

How about offices? Do they have offices that we're paying for as taxpayers?

Ms. O'CONNELL. Oh, yes.

Ms. PORTER. Yes, they have nine offices, actually, including one in D.C., and regional offices.

Do you know about what the budget is that we the taxpayers are paying for the Merit Systems Protection Board?

Ms. O'CONNELL. Millions of dollars.

Ms. PORTER. Correct. Their request for Fiscal Year 2021 was \$42 million. So, we're spending \$42 million, have 235 people in nine offices.

How many cases has the Board adjudicated over the last four years?

Ms. O'CONNELL. Zero. So, there's a backlog of over 3,000 cases.

Ms. PORTER. So, we spent \$42 million, have operating nine offices, with 235 Federal employees, we have adjudicated zero cases, and 3,000 Federal cases are waiting to be adjudicated, but we were unable to do them.

Ms. O'CONNELL. That's right.

Ms. PORTER. How is this good government?

Ms. O'CONNELL. It's not good government.

Ms. PORTER. So, how are we spending taxpayer dollars wisely here?

Ms. O'CONNELL. We're not. We need to get the agency staffed with Senate-confirmed appointees, and we need to clear that backlog, which is going to take—even the most aggressive estimates is that it would take 6 to 8 months. Other estimates, that it could take far longer. And we have—

Ms. PORTER. So, we're going to have to spend even more to catch up to deal with the backlog that we've allowed to be created.

Right now, if somebody—right now, who is protecting a whistleblower when they call out a Federal worker who calls out fraud, waste, and abuse? If they're attacked or fired or demoted for that, who's protecting them? Who's adjudicating that case?

Ms. O'CONNELL. Some cases, if the employee can pay, can go to the Federal circuit. But, generally, employees don't have protection. Their protection is the MSPB.

Ms. PORTER. Which, to go back, has adjudicated zero cases. So, essentially, by not appointing and confirming people to the Merit Systems Protection Board, we've wasted taxpayer dollars, we've neutered the agency from being able to do its work effectively, and we've left Federal employees who are stepping up to be whistleblowers to protect against race, fraud, and abuse. I'm just surprised there hasn't been a whistleblower from the Merit Systems Protec-

tion Board calling out the waste, fraud, and abuse that we're allowing to go on there without appointed board members.

You said that we should definitely get these board seats filled as soon as possible. You've also shown support in the past for this subcommittee and Chairman Connolly's Merit Systems Protection Board Empowerment Act. What would that Act do, and why is it important to addressing this wasteful situation we have now?

Ms. O'CONNELL. Well, we need to get members in. We also—in the case of vacancies, there was also legislation in the last session that was not enacted in the last session of Congress to perhaps delegate a certain work to the general counsel of the MSPB, which would also be critically important. And, of course, MSPB administrative judges need to be trained in whistleblowing and whistleblower protection as well before they adjudicate these critical cases.

Ms. PORTER. Thank you so much, Professor O'Connell.

I yield back.

Mr. CONNOLLY. Thank you, Congresswoman Porter. And thank you for that whiteboard. I love it.

Mr. HICE. Mr. Chairman?

Mr. CONNOLLY. Yes. Thank you.

Mr. HICE. Earlier in the hearing, I believe it was Ms. Norton and Dr. Kelley, a statement was made to the effect that there was no guidance from the Trump administration or it was so vague regarding the COVID response. And I would just like to submit to the record that that is not accurate. There was guidance for a COVID response that followed CDC guidelines and that Federal agencies have PPE, and I would like to submit for the record that guidance.

Mr. CONNOLLY. So, you are submitting that for the record?

Mr. HICE. Yes, sir.

Mr. CONNOLLY. Without objection, so ordered.

Mr. HICE. Thank you.

Mr. CONNOLLY. The gentleman from Virginia, Mr. Beyer, is recognized.

Mr. BEYER. Chairman Connolly, thank you very much. And thank you for allowing me to waive on. Ranking Member Hice also.

Chairman Connolly, as you know, we go back and forth as to who represents the most Federal workers, but I have about 87,000, and I've been listening to four years of extreme unhappiness from state Department employees, EPA, U.S. Department of Interior, the IRS, Social Security, about how they are treated. And, in fact, there's one easy way—I know people mentioning again and again the Federal employee survey, which I respect.

There's another survey which was held on the second or the first Tuesday in November. Eighty percent of the employees—of the voters in my district did not vote for the outgoing President, which I think is pretty telling about what they thought about how they were treated by that President.

By the way, this notion that you can't fire a Federal employee, 24 Federal employees are fired every day in America. Ten thousand last year. And this is after every Federal employee has a one-year probation period. In the Department of Defense, it's a two-year probation period. So many of them are let go before there's any of these, you know, ways to protest it.

In fact, Government Executive magazine had suggested that the rigors of the Federal hiring process that weed out the poor performers before they start may be one reason why that only 10,000 are fired every year.

But, Chairman Connolly, I've been a boss for a long time, and I know that the most important thing as the leader is to create a culture where workers are valued, are respected, where the work is important. And, instead, what I have heard, first from Ronald Reagan who's told us that I'm here from the government, I'm here to help you, and from my dear Republican colleagues over the years who have talked about the nameless, faceless bureaucrats, and now we learn that they played video games and social media all day long.

You know, Chairman Connolly, the ratio of Federal workers to American citizens right now is the lowest it's been since 1960. We have fewer workers serving more Americans more effectively than ever before.

But I'd like to give my—Mr. Kelley an opportunity to respond to Mr. Sherk's notion that the only purpose of a Federal employee union is to keep bad people from getting fired. Don't you think you might have a different selling proposition, Mr. Kelley?

Mr. CONNOLLY. Mr. Kelley.

Mr. KELLEY. Thank you. Can you hear me?

Mr. CONNOLLY. Loud and clear.

Mr. KELLEY. OK. Great.

Well, thank you for that question. You know, I've listened to this testimony about poor performers, you know, and Mr. Sherk testified that Federal employees jobs satisfactory roles, you know, under Mr. Trump. And I represent several hundred thousand of government—D.C. government employees. I've heard a lot of stories, but never did I hear someone say that they were better off as a Federal employee under the Trump administration, especially, you know, not after the pandemic hit.

Now, he also said that Federal employees are worried about poor performance. He's right. I remember the word that the Trump administration create a whole new class of Schedule F employees and filled those positions with unqualified, political flunkies. Now, thankfully, Mr. Trump was forced from office before he could finish this particular scheme.

Now, a lot has been made about poor performers in Federal Government, but for many of my members and most Americans, some of the worst performers of the last few years were agency heads under the Trump administration. He appointed people who were—who had dedicated their entire careers to undermining agency mission. Then they were allowed to corrupt them from the inside.

These poor performers left a mess, and the dedicated career public servants I represent are now working with the Biden administration to clean it up. Now, excuse me if I had a hard time taking lectures on performance letters from the administration responsible for the pandemic response that left 500,000 Americans dead.

Now, when it comes to the performance, we believe in due process. We believe that the problem is not the system; the problem is the management. Because if you would take time and not be lazy,

take time and document the actions of a poor performer, then it's not hard to find. As a matter of fact, it's very easy to find them.

If a person is constantly coming in late and you document it, you document that, and then you present that, and no one can argue that if you got documentation this person's been late 10 times specifically. No one can argue that. If someone is—and this is the first time I'm learning that, you know, a Federal employee is sitting around, you know, selling their businesses or during duty time, if that's the case, why the supervisor is not documenting that. Because if they document that, that is absolutely an opportunity to get rid of that employee. Because I too believe that's poor performance.

Mr. CONNOLLY. Thank you.

Mr. BEYER. Thank you, Mr. Kelley.

Mr. CONNOLLY. The gentleman's time has expired.

The gentlelady from Virginia, Ms. Wexton, is recognized for five minutes.

Ms. WEXTON. Thank you, Mr. Chairman. And thank you, Ranking Member, for allowing me to waive on to the committee today. And thank you to the witnesses for testifying.

Like many of my colleagues from the National Capital Region who are on this committee, I hear directly from state and Federal workers almost every day because they are my constituents. So, I'm really happy to be discussing these issues that are so important for a functioning civil service.

In particular, thank you for bringing up agency relocations in your testimony, Professor O'Connell.

When the Trump administration sought to relocate several executive branch agencies during their tenure, hundreds of Federal employees were told if they wanted to keep their jobs, they would need to move out of the Washington, DC. area. Some in as little as 30 days. That included employees at USDA's Economic Research Service and National Institute of Food and Agriculture to Kansas City, and the Bureau of Land Management Headquarters to Grand Junction, Colorado.

When I started looking into how to help my constituents, I was surprised to hear that—to learn that Federal agencies currently are not required to conduct a cost-benefit analysis in advance of their relocations. For example, the USDA, their move was opposed by Congress, by scientific stakeholders, by land-grant universities, and even by the labor unions representing the farmers, all of whom the agency is supposed to be serving. Only about 25 percent of ERS and NIFA's workforce relocated, and the USDA is still trying to fill open positions to replace these employees.

So, how exactly did this relocation serve the agency's mission? It's unclear because the USDA only produced an 11-page summary of a cost-benefit analysis that they paid a third party to conduct. But we know that fulfilling the agency's missions was not a priority for the Trump administration and, in fact, making it easier to fire employees was, which is why Mick Mulvaney, who was then acting White House chief of staff, praised the move because Federal employees quitting was, quote, a wonderful way to streamline the government.

My legislation, the COST of Relocations Act, will ensure that agencies seeking to relocate conduct an analysis in accordance with the Federal guidelines and best practices for conducting that cost-benefit analysis. These standards include quantitative data, such as the cost of real estate and staffing, and they also include qualitative metrics, such as employee attrition and the impact on the agency's ability to fill its mission. The analysis would be made public, and the agency's IG would quickly audit it and submit a report to Congress. That way Congress and taxpayers know exactly how a proposed move serves the American people, which should be the goal of all agencies.

Professor O'Connell, can you talk about how the threat of relocation affects agency employees at their agency?

Ms. O'CONNELL. Yes, Congresswoman. The threat of reorganization and relocation produces a lot of uncertainty. That uncertainty, especially with lack of buy-in, lowers morale. And lower morale typically undermines agency performance. So, these Federal Employee Viewpoint Surveys we're talking a lot about, those agricultural organizations sat at 36.5 and 20.3. That's the Economic Research Service was the first one, and the National Institute of Food and Agriculture was the second one. And those were drops of more 30 points in each of those agencies since 2016.

Ms. WEXTON. So, if the agency has to rehire positions, often losing people that we have with many years of experience and, you know, institutional knowledge, what does that do to the functioning of that agency? And how does that impact the ability of that agency to serve the American people?

Ms. O'CONNELL. It does in several ways. First, the departures of longstanding expert career workers, that represents years, if not decades of expertise that go out the door, and that hurts the performance of the agency. Second, when the jobs then are vacant, the agency then has to spend time and resources in filling those slots, and that's time and resources that could have been devoted to the agency's mission. And there's a cost to the taxpayers as well.

Ms. WEXTON. And specifically with regard to the relocation of the operations at the Department of Agriculture, how has it impacted their operation of the employee engagement considering that the majority of employees did not make the move?

Ms. O'CONNELL. Yes, Representative. Various news reports have indicated that at the Economic Research Service, for example, its productivity dropped by half, if you measure by the research reports, which is a predominant action of that agency. Also, news reports indicated that sponsored research by the National Institute of Food and Agriculture is receiving less supervision and less oversight. So, those are concrete examples of consequences in those two USDA entities.

Ms. WEXTON. So, it's safe to say that their missions have been impaired by this news. Would you agree.

Ms. O'CONNELL. Yes, definitely.

Ms. WEXTON. Thank you very much.

I see my time is up, and I yield back.

Mr. CONNOLLY. Right on the nose. Thank you, Ms. Wexton.
The chair recognizes himself for the last line of questioning.

Ms. Lachance, to listen to Mr. Sherk and others, apparently, despite the longest Federal Government shutdown in history, 35 days, relocation of whole offices to other parts of the country, pay freezes, hiring freezes, lack of due process because of the unwillingness to fill board positions as an organization like the Merit Systems Protection Board, and then the creation of a whole new schedule that actually allows the executive branch—the executive in the executive branch to bypass the entire civil service protection system, we're supposed to believe that people come to work happier than ever and whistle while they work.

Do you believe that that's an accurate assessment of where the Federal workforce is in terms of morale and productivity and attitude toward their jobs?

Ms. LACHANCE. It's hard to argue with data. On the other hand, a survey can't ask the opinion of people who have left, people who've been demoralized, people who have given up. They're probably not filling out the survey.

And, actually, I'm not surprised that the satisfaction increased over four years. Typically, when a new administration comes to power, there's a lot of concern on both sides. Who are these new people? Are the civil servants going to be loyal to the past administration? And over time, the humanity comes into play, and people get to know each other, they start to trust each other. So, the satisfaction rates can increase.

In the past administration, I am just sorry that that level of trust, cooperation, that seems to be exemplified by the Federal Employee Viewpoint Survey, never reached the White House. And we heard constant attacks on Federal employees throughout the last four years. It started during the campaign with the Deep State and with issues—with people who have been discredited in their jobs and not listened to, not paid attention to. They've been stifled. Their research has been limited and not been allowed to—to play a part in policy setting. And so it is hard for me to believe that if you talk to everybody who worked over the past four years, that we would be—

Mr. CONNOLLY. You obviously are familiar with the FEVS, the Federal Employee Viewpoint Survey, right?

Ms. LACHANCE. Yes, sir.

Mr. CONNOLLY. And I am looking at data. And although some would like us to believe that everybody's just happy as clams, I'm looking at six Federal agencies that had relatively significant declines in satisfaction: Labor, the Environmental Protection Agency, Justice Department, State Department, Agriculture, and Education. Education being the most pronounced, 16 percent. In fact, it's the only Federal agency that had a double-digit change of any kind, and it was negative. So, it's not like everybody's whistling to work and happy as clams.

Ms. LACHANCE. Right.

Mr. CONNOLLY. There have been consequences from the—now, Professor O'Connell, you—we were—we heard testimony here today that Schedule F is really kind of—even though it was purely by executive order, which I object to on principle, whether it's Democrat or Republican. Congress needs to be involved. And I'm hopeful I

can engage my friends from the other side of the aisle in looking at that from a purely separation of powers issue.

But if I look at the merits of Schedule F, some of the testimony we've heard today, Professor O'Connell, would have us believe that this was a good government measure. But then we heard that, actually, it's not based on performance at all. What's the story from your point of view?

Ms. O'CONNELL. I think Schedule F largely was disingenuous. I mean, I think if you're concerned about the difficulty in getting bad performing employees removed, well, then you won a fully staffed Merit Systems Protection Board to help process, you know, those deserved firings quicker. And to go for a system of all of these protections to no protections seems like the wrong answer to various concerns, right.

The head of this Federal Salary Council resigned because of the Schedule F executive order and said he simply could not be part of an administration that seeks to replace apolitical expertise with political abeyances.

Mr. CONNOLLY. Thank you. My time is up.

In closing, I want to thank our witnesses for their remarks. I want to commend my colleagues for participating in this important conversation. By the way, this is a timely hearing because we are told that within a half hour or so, the new head of OPM will be announced by the White House, or the prospective new head. So, that—it's a timely hearing.

I also want to insert into the record statements from the National Federation of Federal Employees and the National Whistleblower Center in support of the MSPB Empowerment Act, which was discussed earlier, which we are also reintroducing today.

I also want to insert into the record statements in support of our hearing from the National Treasury Employees Union; the National Active and Retired Federal Employees Association; the Partnership of Public Service; Professor Nina Mendelson, Joseph Sax Collegiate Professor of Law at the University of Michigan Law School; and Professor David Lewis, Rebecca Webb Wilson University, distinguished professor at Vanderbilt University.

With that, without objection, all members will have five legislative days within which to submit additional written questions for the witnesses through the chair which will be forwarded to the witnesses for their response. We ask all witnesses, should such questions come to you, please respond as expeditiously as possible.

With that, this hearing is adjourned. Thank you.

[Whereupon, at 1:31 p.m., the subcommittee was adjourned.]

